

Posted Workers in Slovenia – Challenges for Employers

Elizabeta Zirnstein

University of Primorska, Faculty of Management, Slovenia
elizabeta.zirnstein@fm-kp.si

Suzana Sedmak

University of Primorska, Faculty of Management, Slovenia
suzana.sedmak@fm-kp.si

Klemen Širok

University of Primorska, Faculty of Health Sciences and Faculty of Management, Slovenia
klemen.sirok@fvz.upr.si

Abstract. The single European labour market means that no barriers should be placed to the mobility of labour. Much of European legislation has been devoted to the free movement of labour, including legislation on posted workers. This paper is aimed to present the interim results of the POW-Bridge project (Bridging the gap between legislation and practice in the posting of workers)¹ in the case of Slovenia. One of the goals of the POW-Bridge is to identify challenges for posting companies and find solutions for these challenges. Slovenia is a country with a relatively large number of outgoing posted workers and a relatively low number of incoming posted workers. The analysis of employer practices and challenges suggests that Slovene companies, especially small and medium sized ones which often lack knowledge and own resources, find the posting of workers a complex and lengthy process. Several challenges for employers have been identified: one of the most often stated is obtaining all the necessary legal information when companies post workers to the other EU countries and, consequently, complying with all the relevant legislation. Because of the complexity of regulation that the posting companies must comply with, many of them have reported resorting to hiring special services to help them in that matter. Along with the complexity of the legislation to follow, the language barrier when posting workers to other countries has also been emphasised. Following identification of the challenges companies are facing when posting their workers to other EU countries, recommendations and possible solutions in the posting process are presented.

Keywords: posting of workers, posting employers, EU labour market, free movement of workers, free movement of services.

1 Introduction

Slovenia is one of the European countries with the highest number of posted workers. There were 1,149 postings from Slovenia in 2005, whereas in 2017 190,976 Portable Documents A1² (PDs A1 hereafter) have been issued. There are several reasons underlying this rise: the Slovene social security and taxation system, the geographical vicinity of the ex-Yugoslavia countries, lack of control, etc.

¹ The central goals of POW-Bridge are to study possible gaps between procedures/legislation and practices in the rules governing the posting of workers, to identify challenges and to develop and share effective solutions for posting companies and agencies tasked with enforcing posting legislation. POW-Bridge covers eight countries across Europe (Austria, Slovenia, Italy, Slovakia, Hungary, Poland, Serbia and North Macedonia). Lead partner is the European Centre for Social Welfare Policy and Research, Austria. Project duration: 2020–2021.

² Portable document A1 (PD A1) is issued to a worker posted to another country to certify which social security legislation applies. In our case the number of PDs A1 issued serves as an indicator of posting trends.

The total number of outgoing posted workers peaked in 2017 (190,976) and then dropped significantly in 2018³ (127,059) by 33%. The total number of incoming posted workers grew from 2016, reaching 9,173 in 2018 (78% growth over 2016). The labour market share of incoming posted workers also grew, reaching 1% in 2018.

The main countries of destination for posted workers remained unchanged throughout the 2016-18 period: Germany, Austria and Belgium, as did the main countries of origin of posted workers received: Croatia, Germany and Austria (see Table 1).

Table 1: Available general labour migration and posting trends in the last three years - Slovenia

	2016	2017	2018
Total number of emigrants ⁴	15 572	17 555	13 527
Total number of immigrants ⁵	16 623	18 808	28 455
Total EU migrants received ⁶	5 100	5 192	6 032
Total TCN migrants received ⁶	11 523	13 616	22 423
Share of immigrants of working age (19-65 years old) in % ⁷	76	78	79
Total number of outgoing posted workers ⁸	164 226	190 976	127 059
Total number of incoming posted workers	5 146	6 357	9 173
Labour market share of incoming posted workers	0.6 %	0.8 %	1 %
Main countries of destination for posted workers	DE, AT, BE	DE, AT, BE	DE, AT, BE
Main countries of origin of posted workers received	HR, DE, AT	HR, DE, AT	HR, DE, AT
Main countries of origin of posted workers received	HR, DE, AT	HR, DE, AT	HR, DE, AT

Sources listed in the footnote.

In Slovenia, we distinguish between two basic regimes of employment and work of foreigners (non-Slovene nationals), namely: a) free movement of workers and services between EU Member States, the European Economic Area and Switzerland (posted workers) and b) the regime of employment and work of third-country nationals.

³ The basic Slovene legislative act that implements Article 12 of the Posting of Workers Directive (a regime) is the Transnational Provision of Services Act, which came into force on January 1st 2018 – this is the reason for the drop in the numbers of outgoing posted workers in 2018.

⁴ <https://ec.europa.eu/eurostat/databrowser/view/tps00177/default/table?lang=en>

⁵ <https://ec.europa.eu/eurostat/databrowser/view/tps00176/default/table?lang=en>

⁶ https://pxweb.stat.si/SiStatDb/pxweb/sl/10_Dem_soc/

⁷ Total number of immigrants of working age (20-64): 12718 (2016), 14637 (2017), 23001 (2018)

⁸ Data regarding posted workers has been collected from three reports:

https://limo.libis.be/primo-explore/fulldisplay?docid=LIRIAS1898934&context=L&vid=Lirias&search_scope=Lirias&tab=default_tab&lang=en_US&fromSitemap=1

https://www.mobilelabour.eu/wp-content/uploads/2019/02/raport-Report-on-A1-PDs-issued-in-2017_FdW-Prof.-JP.pdf

<https://www.mobilelabour.eu/wp-content/uploads/2020/02/PD-A1-report-Reference-year-2018.pdf>

The posting of workers from and to Slovenia is regulated in the Employment Relationship Act.⁹ The act regulates employment relationships which are entered into on the basis of an employment contract concluded between the worker and the employer. It regulates employment relationships in both the public and private sector. In the event of workers posted to the Republic of Slovenia by a foreign employer on the basis of an employment contract pursuant to foreign law, the Employment Relationship Act applies in accordance with the provisions of the Employment, Self-employment and Work of Foreigners Act.¹⁰

The basic Slovene legislative act that implements the Posting of Workers Directive (to which we will refer as ‘a regime’) is the Transnational Provision of Services Act,¹¹ which came into force on January 1st 2018.¹²

2 Methodology

The methodology combined secondary and empirical data. Secondary data analysis is based on a literature review and national statistics. Empirical data was gathered from the viewpoint of employers as well as public authorities and social partners. Semi-structured interviews were conducted to elicit insights on posting practices and perceived challenges. Altogether 15 interviews were conducted by Slovenian team from May to December 2020. Of these, five interviewees were done with public authorities’ representatives, further four interviewees with social partners’ representatives, and six interviews were conducted with posting employers. In the paper only research results referring to the challenges of the posting companies are presented, focusing on the viewpoint of the employers’ associations representatives and employers’ representatives.¹³

There is a huge discrepancy in the numbers of outgoing and incoming posted workers regarding Slovenia. As of 2018 the number of incoming posted workers (9,173) represented only 7% of the outgoing posted workers (127,059), two years earlier this proportion would be even smaller – only 3%. So it was expected that the information we gathered through our interviews on posting to Slovenia would be scarce in comparison to the information on posting out of Slovenia. This is reflected in the following research results.

3 Employers’ challenges when posting workers

As mentioned earlier, Slovenia is a country with a relatively large number of outgoing posted workers and the reasons for this are multifaceted. One would be the cost of the posting for the employer. As it has been stated by the interviewees, the employers’ financial contributions are relatively low compared to many European countries (however, the same is not true for workers’ contributions). Although the posted workers will receive (at least) the minimum wage or minimum hourly wage as demanded in the destination country (which is higher than in Slovenia), the social contributions will always be calculated

⁹ Official Journal of Republic of Slovenia, no 21/2013 and following.

¹⁰ Official Journal of Republic of Slovenia, no 47/2015 and following.

¹¹ Official Journal of Republic of Slovenia, no. 10/2017. English translation is available here: <http://www.pisrs.si/Pis.web/cm?idStrani=prevodi>

¹² There will be a delay in transposing Directive 2018/957 into Slovene national laws, since the negotiations amongst the Economic and Social Council partners regarding the transposition and changes of national legislation on the posting of workers started in July 2020.

¹³ Although the employers’ representatives that took part in our research came from different sectors, the findings in this paper most often refer to the construction sector. This is due to the fact that the great majority of the workers posted from Slovenia to other European countries are construction workers. This resulted in many cases, examples and answers to the interview questions given by our social partners’ and public authorities’ interviewees referring to the construction sector.

based on the (as a rule minimum) gross wage the worker would have received for the same work in Slovenia. This regulation has been criticised as an unfair practice by other EU countries as well as by some Slovene social partners (e.g., the amount of the wages earned abroad will not be considered when calculating workers' pensions). On the other side, employers and their associations claim changing the regulations concerning this matter would make it more difficult or even impossible for Slovene employers to post their workers. As a notable Slovene economist claims, this would mean big increase in labour costs and could result in the loss of "1.7 billion euros in exports yearly," putting at risk from 13,000 to 26,000 workplaces (Damijan 2019). Another reason for a relatively large number of outgoing posted workers is the vicinity of certain Balkan countries, the historical, political, and cultural background Slovenia shares with the ex-Yugoslavia countries, bilateral agreements on employment (with Serbia and with Bosnia and Herzegovina). All of these make Slovenia an "intermediary" country – employing third country nationals in Slovene companies and posting them to other European countries. Although they are employed and posted following the Slovene and EU legislation, many of them never actually see Slovenia (see also Danaj et al. 2020). In other words: they are employed with the sole intention of posting them to other EU countries. This "business model" is often associated with exploitation of workers, letter-box companies, abuse of employers' rights, law violation, etc. Lack of control of these companies, and regulation that makes it possible for some employers to bypass the legislation (the PDs A1 issued based on the Article 13 of the Regulation (EC) 883/2004) are further reasons behind Slovenia's high numbers of posted workers.

As the interviewees generally agreed, bigger companies posting from Slovenia would encounter fewer problems during the administration processes. However, small and medium size companies usually lack knowledge and own resources, and therefore more often find the posting of workers a complex and lengthy process.

From the perspective of the Slovene employers, the coming changes to the Slovene regulations in order to meet the European legal requirements are anticipated with concern, as it is assumed that postings from Slovenia will become more difficult (and shorter). There is also a concern that the competitiveness of Slovene companies will diminish after the implementation of Directive 2018/957 into national regulations. As one of the public authorities' representatives commented, "differences in labour costs and the companies' competitiveness arise from different social systems."

As one interviewee from the public authorities said, there are a lot of posting employers who wish to abide by the law but find the Slovene labour legislation very complicated and often need substantial help from specialised agencies or legal offices in order to meet all the conditions.

3.1 Access to information

One of the most often stated challenges for employers (which can quickly transform into a problem) is obtaining the necessary information needed when companies post workers to other EU countries. Employers often find the local regulations and requests to be very complex, and therefore need the assistance of Slovene and the destination country's agencies and services in order to sort out the bureaucratic processes. In addition, once the workers are already in the destination country, a similar problem regarding the lack of information arises while trying to comply with all the relevant local legislation. As stated by an accounting service representative, posting companies are often not aware of the fact that obtaining the PDs A1 for their workers is just one (relatively) small step in a very complex posting process, comprised of different applications, registrations, obtaining consents, taxes, contracts, possible later appeals, etc. Namely, in the posting process, companies need to consider not just the legislation of the origin country but also the laws and rules of the destination country, which can differ significantly. And if a company posts to several other EU countries, it will inevitably need to comply with (sometimes very) different regulations' specifics across the EU. For example, companies may not

be aware that they may receive a balance sheet a year or two after the work has been concluded as well as a payment order along with it – usually not having a clue as to why. In short, they find compliance with different legal systems rather complicated – this is especially true for small and medium size companies which lack knowledge and tend to rely on published information and their own resources, therefore often being forced to seek the assistance of other agencies. Although agreeing that information on the posting of workers can be accessed more easily as of recent years, the interviewees still agree the amount and the complexity of the information is very often too extensive for a company to deal with it on its own. As some of the interviewees mentioned, although the accessible information on posting is becoming more comprehensive, there is still a substantial amount of information not covered – e.g., financial (tax) aspects, some legal aspects (before or after the posting). For example, several of our interviewees emphasised the difficulties they encounter in ascertaining the hourly rate for the destination country and for the sector. As mentioned above, employers very often need assistance from agencies in destination countries in order to sort out the formal process of posting. In certain countries, as stated by the transport sector interviewee, they are obliged to have a representative in the destination country – e.g., in Italy and France. Another employer mentioned they have representatives in most of the countries to which they post; in this way the posting process runs smoothly and, most importantly, all the requests of the host country are met. Sometimes employers receive assistance from their associations. But, as the employers' association representative stressed, even for them (when assisting posting companies in acquiring specific information), obtaining certain information in Slovenia can be a lengthy process, involving difficulties in reaching the right institution and the right person within that institution.

3.2 Working hours' evidence and differing legislation

As has been reported by many of the interviewees (not just by the employers' representatives), one of the biggest problems that employers encounter when posting their workers is meeting different national regulations regarding the evidence of working hours. Or, as claimed by one employers' representative (and at the same time also the employers' associations' representative) this is actually the biggest problem for the posting employers. Throughout the EU countries the maximum weekly working hours can differ substantially. For example, as our interviewee stated, in Germany the maximum weekly working hours can reach 60, while in Slovenia it is 48 hours – and there is no legal basis in Slovenia for the employer to report the 60 working hours done (legally) in Germany. The employers may encounter the problem when reporting the working hours of their workers or in the case of control. Indeed, the interviewee shared a case in which the inspecting authority concluded that the posted worker must work in accordance with the Slovene legislation – however, this is, as also stated by other interviewees, impossible to follow in practice. As stressed by the interviewee, “a posted worker from Slovenia cannot say in – for example – Germany: According to the Slovene legislation, my working day is now over.” Complying with local legislation and at the same time not breaching the legislation and regulations of the country of origin (and vice versa) can be a huge challenge in practice. Another example is posting to France, where weekly working hours are fewer than in Slovenia – meaning that a Slovene worker posted to France, working the (local) legal total of hours in a week, would not reach the required weekly working hours prescribed by Slovene legislation.

Another example of different national regulations causing confusion and adding to the consumption of time and money considers the field of health and safety at work and was given by the employers' representative; e.g., in Slovenia, workers are required to pass a medical examination and obtain medical certificates on a biannual basis. However, in Croatia (the posting destination of the company), workers are required to pass the medical examination on an annual basis.

3.3 Paperwork

Although mentioned above, it must be emphasised that the extent of the paperwork in the process of posting is, in the opinion of the employers, excessive. If the company posts to different countries (or the work is done in different countries, as is the case in the transport sector), this problem is even more pertinent. With different legislation systems and regulations, the amount of documentation that is required increases. For small companies, this represents an especially huge challenge. One of the interviewees (posting company representative) mentioned attending four seminars on the PDs A1 topic alone – a fact that clearly illustrates the complicated processes the employers face when posting. In addition to this, employers also report that different countries claim different documents must be translated into local languages (e.g., in Italy the PD A1 must be translated, although no other country demands this).

3.4 Confusion arising from uncoordinated institutional decisions

In the process of issuing PDs A1 in Slovenia, employer controls are not very rigorous and conditions for issuing PDs A1 are different in cases under article 12 in of the Regulation (EC) 883/2004 in comparison to cases under article 13 of the Regulation (EC) 883/2004.¹⁴ The process of issuing these (compared to PDs A1 based on Article 12) is also much faster – the employers receive them the same day – which is an important factor for them. However, in a possible control procedure taking place later, a labour inspector might claim that the PDs A1 were not issued correctly considering the work that has been done. This can even occur a few years after the posting process – although the PDs A1 were issued by a public authority, the employer may subsequently be penalised, which is seen by at least some employers as confusing or contradictory.

3.5 Pandemic related challenges

Employees report different experiences when posting workers during the COVID-19 pandemic period. Some of them encountered problems in border crossing – in some countries the 10 or 14-day quarantine period is or was obligatory (with the additional requirement to undertake testing after five or six days in some countries). This can, of course, complicate the work process and add a financial burden. As mentioned by one of the interviewees, this is especially hard for smaller businesses and some of these will therefore provide services abroad without reporting to the local authorities, i.e., they perform undeclared work. In addition to the financial burden, the pandemic has caused more documentation work for the posting companies, so the “bureaucratic” burden has escalated, too. The posting companies also need to follow the development of events regarding the pandemic and related changes in the regulations on a daily basis because the situation changes very quickly in some instances.

On the other hand, others did not encounter any problem in border crossing – they (did) need to provide some proof or contract of providing services, but otherwise were not affected by the pandemic related travel restrictions. However, one of our transport sector interviewees did mention the problem his drivers encounter – because the accommodation facilities remain closed in many European countries, truck drivers cannot comply with the EU regulations (45-hours weekly rest time away from the trucks).

4 Recommendations and concluding remarks

Our research shows that there is a need to unify and simplify the regulations and procedures regarding posting of workers in the EU. Despite the fact that minimum workers’ rights are harmonised in the EU,

¹⁴ The conditions for obtaining the PD A1 under the regime Article 13 are less severe than the conditions for obtaining the PD A1 under Article 12, making it easier for employing companies to obtain PDs A1 for their worker based on the Article 13 of the Regulation (EC) No 883/2004.

there are still substantial differences in the labour regulations of the EU countries. In our research, employers and their representatives reported the problem of maximum allowed working hours, which vary from country to country. In this specific area (working hours), employers are faced with the dilemma of whether to respect the law of the host country or the law of the home country. A similar problem arises regarding the rules relating to safety and health at work (e.g., in Slovenia, a worker's medical condition certificate must be renewed after two years, whereas in Croatia it must be renewed every year). The employers' representatives are of the opinion that, to make it easier for employers to comply with all the legislation, labour law rules and/or bureaucratic requirements should be further harmonised at the EU level in regard to posted workers, especially those regulations pertaining to maximum working hours and the rules on health and safety at work.

Employers also report that different countries claim different documents must be translated into local languages (e.g., in Italy the PDs A1 must be translated, although no other country demands this). We suggest a further EU harmonisation, possibly even a unification, of procedural rules regarding the issue of PDs A1. In addition to this, the control of the PDs A1 forms via QR code seems a good practice that could be established on the EU level.

As the public authorities' interviewee expressed, the posting employers who wish to abide by the law find the Slovene labour legislation very complicated and often need substantial help from specialised agencies or legal offices in order to meet all the conditions. As some of the interviewees mentioned, although the accessible information concerning posting is becoming more comprehensive, there is still much that is not covered – e. g. financial (tax) aspects, some legal aspects (before or after the posting). However, in our research we witnessed some good practices from abroad that could be implemented in Slovenia and would help to remedy this problem. One such is the Austrian website that offers very detailed information for posting employers and workers. In Slovenia, there is a national website with information about posting (<https://www.napotenidelavci.si/sl/>). However, this is general, with no detailed information available on all the aspects of posting (tax aspects, financial aspects, legal aspects during posting). Moreover, the relevant legislation is accessible only in Slovene. We suggest the further development of the national website on posting to incorporate more detailed information pertaining to all aspects of posting and provide links to legislation in (at least) English.

We have noticed a certain degree of scepticism amongst employers regarding the transposition of the Directive 2018/957 and changes to the Slovene legislation. They fear the process of posting will be further complicated and bureaucratised, which – in their experience – happens each time new legislation is passed. Rather, they see the need to unify and simplify the procedures and regulations. Although they see the idea of a European website that hosts crucial information concerning posting as promising, they would rather see more effort being put into eliminating the bureaucratic barriers.

In our research, we also gathered some suggestions for amendments to the Transnational Provision of Services Act. These include changes regarding the definition of “infringements of important provisions of labour law relating to the rights of the worker”, changes regarding the criminal provision of the Act, changes regarding the conditions for the issuance of PD A1 under Article 13 and changes regarding the responsibility for compliance with the legislation.

As described above, there is a strong interest that the bureaucratic procedures for issuing the PD A1 should be further simplified. Employers from the construction sector reported that, in practice, there are frequent instances in which the PD A1 has already been issued, but the posting abroad was postponed due to unfavourable weather conditions. In such cases, the employer must file a request for the revocation of the PD A1 and then file a new application for a new PD A1. The employers are of the opinion that it would be more practical if they were required to submit only a notification of a change

in the date of posting. Therefore, our recommendation is to put more effort into eliminating the bureaucratic barriers in this field.

The employers are of the opinion that the extent of the paperwork in the process of posting is excessive. Of course, with different legislation systems and regulations, the requirements for documentation provision increase. For small companies this represents an especially huge challenge. As already proposed, the legislation regarding posting should be further harmonised or unified, with more effort being put into eliminating the bureaucratic barriers.

References

- Damijan, J. P. (2019, December 30). Se nam ponavlja leto 2013? Damijan blog. <https://damijan.org/2019/12/30/se-nam-ponavlja-leto-2013/>
- Danaj, S., Geyer, L., Cukut Krilić, S., Toplak, K. & Vah Jevšnik, M. (2020). From Bosnia and Herzegovina to Austria via Slovenia: Migration and Posting of Third Country Nationals in the EU. A Regional Case Study, European Centre Report. Vienna: European Centre. <https://www.euro.centre.org/publications/detail/3796>

Legislation

- Law on Contributions for Social Security. Official Journal of Republic of Slovenia, no 5/1996 and following.
- Law on Health Care and Health Insurance. Official Journal of Republic of Slovenia, no 9/1992 and following.
- The Employment Relationship Act. Official Journal of Republic of Slovenia, no 21/2013 and following.
- The Employment, Self-employment and Work of Foreigners Act. Official Journal of Republic of Slovenia, no 47/2015 and following.
- Transnational Provision of Services Act. Official Journal of Republic of Slovenia, no. 10/2017.