

Studies on obstacles and opportunities for doing business in the region

Study no.2

Movement of posted workers without work permits



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EXECUTIVE SUMMARY

The debate about posting, its economic and social consequences, and ways to manage it is hampered by the fact that reliable, comparable data on the phenomenon are lacking. Accurate statistics on the number of posted workers, their characteristics and the working conditions they experience are not available, which leaves plenty of room for debate.

This report will give a brief overview of worker mobility in Europe, from several aspects. The first part describes a key chapter concerning worker mobility, which is Chapter 2 - Freedom of movement for workers. This chapter contains 4 subchapters: Access to labour market, EURES, Coordination of the social security system and European Health Insurance Card. In addition to the explanation of the subchapter, a table of information related to Chapter 2 for candidate and potential candidate countries for EU accession is presented, which is based on European Commission staff working document, for the following countries: Montenegro, Serbia, North Macedonia, Albania, Turkey, Bosnia and Herzegovina and Kosovo*.

The second chapter of the report presents an overview of the overall European regulations for posting of workers. The first directive related to posted workers - Directive 96/71/EU is presented, as well as the second which is an adaptation of the first one - Directive 2014/67/EU. In 2016, there was a new revision of the last Directive, and so in 2018 a new directive was created - Directive 2018/957/EU. The deadline for the implementation of the amendments adopted by this Directive was 30 July of the current year, and the adopted amendments covered three main areas: The remuneration of posted workers, Long-Term overseas postings and Temporary agency workers.

The third chapter, entitled - Mobility of workers in the EU - Annual statistics, presents conclusions based on a couple of reports from the past few years. In 2018, there were 17,6 million EU-28 movers in the EU, out of which 12,9 million EU movers of working age (20-64 years), according to Eurostat population statistics. The stock of EU movers of working-age grew by only 3,4% in 2018, in comparison to the average 5% from previous years. There was a slightly larger share of female movers than male movers (51% to 49%). In 2018 three-quarters of EU-28 movers were residing in five major destination countries: Germany, UK, Spain, Italy and France. Just under half of all EU-28 movers were residing in Germany or the UK. Romania, Poland, Italy, Portugal and Bulgaria remained the five most important sending countries in 2018. Net mobility of nationals of EU Member States remained negative, meaning that for every four persons who leave, three return.

In 2018 almost 3 million PDs A1 were issued. By far the most PDs A1 were issued according to Article 12 (some 1.8 million PDs A1). In addition, approximately 1.1 million PDs A1 were issued according to Article 13 and finally only 55,000 PDs A1 to other categories. A detailed analysis of posted workers according to Articles 12 and 13 of Basic Regulations is presented in the third chapter of the report.

The fourth chapter provides an overview of the transposition of the PW Directive in the WB countries. WB countries have concentrated their efforts predominantly on the design stage of the policy cycle establishing the legal framework and structures, although some form of posting is already

* This designation is without prejudice to positions on status, and is in line with United Nations Security Council Resolution 1244/99 and the Advisory Opinion of the International Court of Justice on Kosovo's* declaration of independence

happening. The transposition and the implementation of the Posting of Workers Directive reveals the contradiction in the EU integration process, as potential Member States are stuck in a transitional phase where they are asked to set up the legal and institutional framework prior to membership, although their prospects of membership remain uncertain.

The fifth chapter shows overviews by WB country, when it comes to posting workers. For four WB countries, based on a report *Posting of workers in Eastern Europe – EEPOW*, the main conclusions from publications are shown, through the domains: Legal and institutional framework and institutional challenges, while for the remaining two countries the basic available informations are shown.

The sixth chapter shows the recommendations by the each Western Balkan country. Recommendations are taken from the report *Posting of Workers in the Western Balkans* (the cases for each of four WB countries which are covered by the report), and from Employment Policy Review: for Bosnia and Herzegovina. For Kosovo*, no recommendations are available.

The seventh chapter, deals with global recommendations for the EU labour mobility. It was mentioned that in addition to the Chapter 2, Chapters 19 (Social policy and employment) and Chapter 24 (Justice, freedom and security) also regulate areas relevant to labor mobility. The first suggestion is to harmonize Social Security Regulations (Basic Regulations) and Posting of Workers Directive (because of some differences in notion and scope between them). Further on, there is a need for improving the monitoring of posted workers, and there are two main steps in that case: Scope and quality of data to be collected and Efficient and coordinated way of data collection. At the very end of the paper, six areas were singled out in which there seems to be a consensus that policies and practices should be improved:

- I** Ensuring fair wage and other employment conditions for posted workers based on host country standards;
- II** Ensuring that protections granted to posted workers in law are actually effectively accessible to the worker;
- III** Extending cooperation between systems of worker protection, both between local/national actors and cross-border;
- IV** Applying effective and dissuasive sanctions against companies who cheat workers of pay, or who otherwise commit serious labour rights violations, or who fail to pay social security contributions or taxes;
- V** Ensuring that posted workers have an effective and accessible right to join, be represented by and participate in trade unions (or works councils, where applicable), and lodge complaints in host country courts;
- VI** Collecting and making available more extensive, systematic and reliable data about posting of workers;

In the conclusion of the report, despite the marginal impact of posting on total EU employment, it is stated that posting could be considered as an interesting tool:

- to stimulate intra-EU labour mobility;
- to stimulate intra-EU competition;
- to increase the income of posted workers;
- to create social convergence; and
- to support adjustment to 'asymmetric shocks'.

INTRODUCTION

Posting is a situation when a worker is sent abroad by his or her employer to work for a limited time, as part of an ongoing work relationship in the home country. Legally, posting is based on the freedom of movement for services and establishment - i.e. on the right of the firms to move their employees between EU member states. Individual movement of workers, on the other hand, is based on the right of free movement of labour. This seemingly unimportant difference actually has important implications for the *labour rights* to which the worker in question has access - for posted workers, their rights derive in the first instance from *sending* country (usually, but not always, their home country); for individual free movers, their rights derive from the country in which the work is performed. This means that posted workers are in a partial *state of exception* to the principles of territorial sovereignty, which have in the past governed labour regulations, through which worker safety, union representation, and social welfare have all been ensured.

This situation of posted workers combines with the usual challenges that migrant workers have in protecting their labour rights and makes posted worker protection particularly challenging for unions and labour inspectorates. There is now widespread recognition among unions, researchers, and labour inspectors that systems of worker protection for posted workers in the European Union have serious inadequacies. Problems include an epidemic of wage theft, the growth of a grey economy of labour intermediaries, violations of trade union rights, and social security fraud. Intra-EU labour mobility brings job opportunities to millions, but taking advantage of these opportunities can be a risky business for workers.

In this document, an overview of the EU chapter 2 – Freedom of movement for workers is given, as well as an overview of the legislation dealing with this topic. After this part, the available statistical data on the movement of workers for 2017 and 2018 are presented, based on two reports of the European Commission. In addition to the above, an overview of the transposition of the PW Directive in the WB countries. After that, there is also overviews by WB country, when it comes to posting workers. At the end, an overview of the recommendations for improving worker mobility, from several angles is shown, both for the countries of the WB and for the EU.

1. Freedom of movement for workers – EU Chapter 2

Before we move on to a more detailed story of posted workers area, it is important to look at Chapter 2 in accession to the European Union, which deals with the regulation of freedom of movement for workers.

The *acquis* under this chapter enables EU citizens of one Member State to work in another Member State. The so called EU migrant workers must be treated in the same way as national workers when it comes to working conditions, social and tax advantages. Freedom of movement for workers is one of the fundamental principles of the European Union and one of the four freedoms in the internal market. It is laid down in *Article 45 of the TFEU (Treaty on the Functioning of the European Union)*¹ and is a fundamental right of workers, complementing the free movement of goods, capital and services within the European single market. It entails the abolition of any discrimination based on nationality as regards employment, remuneration and other conditions of work and employment. Moreover, this article stipulates that an EU worker has the right to accept a job offer made, to move freely within the country, to stay for the purpose of employment and to stay on afterwards under certain conditions.

General principles related to access to labour market provide for non-discriminatory treatment (on the basis of nationality, residence and language) of workers who are legally employed in a country other than their country of origin. Certain rights are also extended to family members of the worker. The general principle includes also provisions related to supplementary pension rights of employed and self-employed persons moving within the Community. Member States also participate in the EURES system (European Employment Services) that enables close cooperation among national employment services to exchange information on employment opportunities. This *acquis* also includes a mechanism to coordinate national social security provisions for insured persons and their family members who are moving from one Member State to another.

Chapter 2 – Freedom of Movement for Workers includes the following subchapters:

- **Access to labour market:**
 - right to work without work permit (except for workers from new Member States that are covered by transitional period);
 - equal treatment in employment for migrant workers and nationals of the state in which the work is carried out;
 - right to equal social security for migrant workers and nationals of the state where the worker is employed;
 - right of family members to join the worker and receive family benefit;
 - complete coordination of the social security system (right to pension and contributions for social security);
 - mutual recognition of qualifications.

¹ <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12008E045:en:HTML>

- **EURES** - European public employment services network (within the countries of European Economic Area plus Switzerland). The EURES network has been established in 1993 aimed at being an instrument of improvement of special and professional mobility of the workforce in the European labor market. The purpose of the EURES is to provide information, counseling and recruitment services to employers and jobseekers, but also to those who want to be informed about the freedom of movement for workers.
- **Coordination of the social security system** - Freedom of movement of workers is strengthened with the System of coordination of systems of social security. This system covers right of migrant workers and those who are supported by the workers to acquire, cumulate or to transfer social security contributions, as well as to receive payment of these contributions.
- **European Health Insurance Card** - free card that gives you access to medically necessary, state-provided healthcare during a temporary stay in any of the 27 EU countries, Iceland, Liechtenstein, Norway, Switzerland and the United Kingdom, under the same conditions and at the same cost (free in some countries) as people insured in that country. However, it is important to note that European Health Insurance card is not an alternative to travel insurance, does not cover costs in case of travelling for the express purpose of obtaining medical treatment and does not guarantee free services. In the health care field, medical expenses will need to be reimbursed for all necessary treatment of nationals falling ill or having an accident during a temporary stay in another Member State. European Health Insurance Card has to be issued to all nationals.

The following is an overview of candidate and potential candidate countries for EU accession, with key information on open and closed negotiation chapters, and conclusions related to Chapter 2 - Freedom of Movement for Workers (Table 1). The table was created based on the report of the European Commission - *COMMISSION STAFF WORKING DOCUMENT, Brussels, 6.10.2020.*, for the following countries:

- | | |
|--------------------------------|---------------------------------------|
| • Montenegro ² | • Turkey ⁶ |
| • Serbia ³ | • Bosnia and Herzegovina ⁷ |
| • North Macedonia ⁴ | • Kosovo* ⁸ |
| • Albania ⁵ | |

² https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/montenegro_report_2020.pdf

³ https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/serbia_report_2020.pdf

⁴ https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/north_macedonia_report_2020.pdf

⁵ https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/albania_report_2020.pdf

⁶ https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/turkey_report_2020.pdf

⁷ https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/bosnia_and_herzegovina_report_2020.pdf

⁸ https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/kosovo_report_2020.pdf

Table 1: Informations about Candidate and Potential Candidate Countries, with an emphasis on Chapter 2

Countries	Status	Informations about chapters	Chapter 2 - Freedom of movement for workers
Montenegro	Candidate Country	<ul style="list-style-type: none"> ✓ 30 Opened Chapters × 3 Chapters provisionally closed × 2 Chapters currently not applicable 	<p>Montenegro has some level of preparation in this area, registering some progress during the reporting period on implementing access to the labour market and the European Health Insurance Card, resulting from the EU support project on social security schemes and the chapter 2 action plan.</p> <p>In the coming year, Montenegro should in particular:</p> <ul style="list-style-type: none"> → continue to establish structures and develop administrative capacity to implement the EU acquis in line with the results of the EU support project on social security schemes and the chapter 2 action plan.
Serbia	Candidate Country	<ul style="list-style-type: none"> ✓ 16 Opened Chapters × 2 Chapters provisionally closed × 17 Remaining Chapters 	<p>Serbia is moderately prepared in the area of freedom of movement for workers. Some progress was made, in particular in relation to last year's recommendation to carry out preparations for joining the European network of employment services (EURES).</p> <p>In the coming year, Serbia should in particular:</p> <ul style="list-style-type: none"> → continue to enhance cooperation with EU Member States on coordination of social security systems.
North Macedonia	Candidate Country	/	<p>North Macedonia is at an early stage in the area of freedom of movement for workers. No progress was made in the reporting period and last year's recommendations still stand.</p> <p>In the coming year, the country should:</p> <ul style="list-style-type: none"> → continue to adapt the legal framework in line with the EU acquis on access to the labour market, in particular regarding non-discrimination on grounds of nationality against EU workers; → take steps in coordinating social security systems to identify which administrative measures would have to be introduced in preparation for future accession.
Albania	Candidate Country	/	<p>Albania is at some level of preparation in freedom of movement for workers. Some progress was achieved on implementing recommendations of the previous report, when it comes to free movement of family members of EU citizens, conclusion of new social security bilateral agreements and with preparation for joining the European network of employment services (EURES) upon accession.</p> <p>In the coming year, Albania should:</p> <ul style="list-style-type: none"> → adopt the law amending the law on foreigners and enabling family members of EU citizens to work in Albania without a work permit in line with the EU acquis in the area of freedom of movement for workers; → continue negotiating and implementing new bilateral agreements on social security, notably with EU Member States;
Turkey	Candidate Country	<ul style="list-style-type: none"> ✓ 15 Opened Chapters × 1 Chapter provisionally closed × 8 Chapters suspended and 6 unilaterally blocked × 5 Remaining Chapters 	<p>Preparations in the area of freedom of movement for workers are at an early stage and there was no progress during the reporting period.</p>
Bosnia and Herzegovina	Potential Candidate		<p>Bosnia and Herzegovina has some level of preparation in the field of free movement of workers. However, no progress was made in the reporting period.</p> <p>In the coming year, Bosnia and Herzegovina should in particular:</p> <ul style="list-style-type: none"> → start developing a countrywide database on vacancies; continue negotiating and concluding new bilateral agreements on social security, notably with EU Member States.
Kosovo*	Potential Candidate		<p>Kosovo* remains moderately prepared for the free movement of workers, services and the right of establishment. Limited progress was made during the reporting period.</p> <p>As most of last report's recommendations have not been addressed yet, Kosovo* should:</p> <ul style="list-style-type: none"> → remove the identified barriers to the right of establishment and freedom to provide services, by rolling out the action plan for the full implementation of the Law on services; → align with the EU acquis on mutual recognition of professional qualifications; → continue to align with the EU acquis on postal services and further open the postal market.

Source: European Commission reports for the countries listed in the table for 2020

2. Review of European regulations on posting of workers

A "posted worker" is an employee who is sent by his employer to carry out a service in another EU Member State on a temporary basis, in the context of a contract of services, an intra-group posting or a hiring out through a temporary agency. For example, a service provider may win a contract in another country and send his employees there to carry out the contract. Posted workers are different from EU mobile workers in that they remain in the host Member State only temporarily and do not integrate its labour market.

The EU law defines a set of mandatory rules regarding the terms and conditions of employment to be applied to posted workers:

- to guarantee that these rights and working conditions are protected throughout the EU;
- to ensure a level-playing field and avoid "social dumping" where foreign service providers can undercut local service providers because their labour standards are lower.

These rules establish that, even though workers posted to another Member State are still employed by the sending company and subject to the law of that Member State, they are entitled to a set of core rights in force in the host Member State.

This set of rights consists of:

- Minimum rates of pay;
- Maximum work periods and minimum rest periods;
- Minimum paid annual leave;
- The conditions of hiring out workers through temporary work agencies;
- Health, safety and hygiene at work;
- Equal treatment between men and women.

The EU law thus provides a clear framework to guarantee fair competition and respect for the posted workers' rights so that both businesses and workers can take full advantage of the internal market opportunities.

The abovementioned rules are set out in the *Posting of Workers Directive* which was adopted in 1996 (*DIRECTIVE 96/71/EC*⁹).

In 2014 the *Enforcement Directive* (*DIRECTIVE 2014/67/EU*¹⁰) was adopted with the aim to strengthen the practical application by addressing issues related to:

- Fraud;
- Circumvention of rules;
- Inspections and monitoring;
- Joint liability in subcontracting chains;
- Exchange of information between the Member States.

On the 8 of March 2016, the European Commission proposed a revision of the rules on posting of workers within the EU to ensure they remain fit for purpose. The Commission proposal was adopted on 28 June 2018 - *DIRECTIVE (EU) 2018/957*¹¹. Member States shall adopt and publish, by 30 July 2020, the laws, regulations and administrative provisions necessary to comply with Directive 2018/957.

⁹ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31996L0071&from=EN>

¹⁰ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0067&from=fr>

¹¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018L0957&from=EN>

Member States shall apply measures from 30 July 2020. Until that date, Directive 96/71/EC shall remain applicable in its wording prior to the amendments introduced by this Directive.

Effective from 30 July 2020, the Posted Workers Amendment Directive 2018/957 will affect three main areas: ***The remuneration of posted workers, Long-Term overseas postings*** and ***Temporary agency workers***.

Remuneration

The condition of remuneration requires that posted workers are remunerated according to the rules and practices in the host member state.

A posted worker must be paid at least the basic salary of the category, position, professional qualification and seniority that is paid to the “same” local employee in the host member state. In addition to the basic salary, a posted worker must be paid any other mandatory element of remuneration that is paid to local workers in the relevant category, position, professional qualification and seniority in the host member state according to the local rules and practices.

Long-Term Posting

The directive introduces a time limit to a posting, so in principle we will now have a concept of a long-term posting. Employers who post workers to another EU member state for up to 12 months must comply with the regulations in the host country on the following matters:

- Working and resting periods;
- Minimum paid annual leave;
- Remuneration, including overtime rates;
- The conditions for hiring-out workers;
- Health, safety and hygiene at work;
- Non-discrimination;
- Protective measures for women in the context of pregnancy and childbirth;
- The conditions for accommodation when provided by the employer;
- Allowances and reimbursement for cost for travel, board and lodging.

In addition to these terms and conditions for employment, those employers who post workers to another EU member state for more than 12 months must also apply the employment law in the host country for other terms and conditions.

A posting that is longer than 12 months is in principle defined as a long-term posting, and, as such, requires extensive application of the employment law in force in the host member state (*Procedures for conclusion and termination of a contract, including non-competition clauses and supplementary occupational retirement pension schemes, are excluded and can continue to be governed by the rules in the home country irrespective of the duration of a posting*). The time limit of 12 months can be extended with an additional 6 months and this requires a separate application to and an approval by the authorities in the host member state. Such application must be filed before the expiry of the first 12 months of posting.

Replacement - The duration of a posting of 12 (18) months is deemed to be the effective cumulative duration of different posting periods during which one or several posted workers carry out the same task at the same place on behalf of their employer. This means that if a worker is posted for 12 months and the employer then sends another worker to do the same job at the same place for another 12 months (replacing the first posted worker), then the employer must apply the labour law in the host member state for the second posted worker. The limit of 12 months is used by the first posted worker and an extension is allowed only up to 6 months, so the second posted worker will be considered as a long-term posting.

Temporary agency workers

Directive 2018/957/EU lays down specific rules for posted temporary agency workers. The employer (the temporary agency) must guarantee to posted temporary agency workers the terms and conditions of employment which apply pursuant to article 5 of Directive 2008/104/EC on temporary agency work, i.e., in principle at least those that would apply if they had been recruited directly by the user undertaking to occupy the same job. Member States may also require that, in addition to the provisions of Article 5 of Directive 2008/104/EC, posted temporary agency workers benefit from any more favourable terms and conditions that apply to temporary agency workers at national level.

The previous section provides an overview of the three main areas in which certain changes have taken place under Directive 2018/957. Certainly, for more detailed guidelines, the European Commission has prepared a guide - ***Practical guide on posting***¹². This document aims at assisting workers, employers and national authorities in understanding the rules on posting of workers, as they have been revised with the adoption of Directive 2014/67/EU and Directive 2018/957/EU. This understanding is essential to ensure that workers are aware of their rights and that the rules are correctly and consistently applied by national authorities and employers throughout the EU.

¹² <https://op.europa.eu/o/opportal-service/download-handler?identifier=8ac7320a-170f-11ea-8c1f-01aa75ed71a1&format=pdf&language=en&productionSystem=cellar&part=>

3. Mobility of workers in EU – Annual statistics

The *Annual report on intra-EU labour mobility for 2019*¹³ provides updated information on labour mobility trends in EU and EFTA countries. The analysis considers the mobility of all working-age citizens (20-64 years) as well as the mobility of those who are active (employed and unemployed). The report also looks at indicators of economic integration of mobile citizens, such as employment/unemployment rates and occupations. The two main data sources used are *Eurostat population and migration statistics* – for mobility of all citizens – and the *European Labour Force Survey (EU-LFS)* for the analysis of mobility of active citizens and economic integration. The main findings of the mentioned report are shown below.

Table 2: Composition of Intra-EU mobility, EU-28 citizens in the EU-28

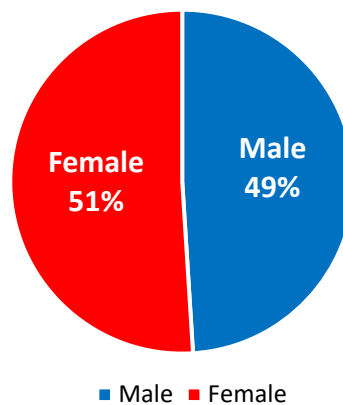
Type of mobility	2018	2017	Annual change
Long-term EU-28 movers (all ages) living in EU-28 (Eurostat demography figures)	17,6 million	17 million	+3,6%
Long-term EU-28 movers of working ages (20-64 years) living in EU-28 (Eurostat demography figures)	12,9 million	12,4 million	+3,4%
As share of the total working-age population in the EU-28	4,2%	4,1%	
EU-28 movers of working ages living in EU-28 (EU-LFS figures)	11,7 million	11,5 million	+1,1%
...of which active EU-28 movers (employed or looking for work)	9,7 million	9,5 million	+1,9%
(as share of total labour force in the EU-28)	4,1%	4%	
EU-28 movers of working age who were born outside the country of the residence (EU-LFS figures)	10,95 million	10,8 million	+1,4%
Cross-border workers (20-64 years) EU-LFS figures	1,5 million	1,4 million	+2%
(as share of the total employed in the EU-28)	0,7%	0,7%	
Number of postings (of employed and self-employed), all ages (no. of PDs A1) (source: HIVA-KU Leuven)	3 million	2,8 million	+6%
= approximative number of persons	1,9 million	1,8 million	+6%
Annual return mobility (20-64 years)	723,000 (2017)	680,000 (2016)	+6%
(as ratio to EU-28 nationals leaving their country of origin in 2017)	72%	66%	

Source: 2019 Annual Report on Intra-EU Labour Mobility

¹³ <https://op.europa.eu/o/opportal-service/download-handler?identifier=40821c65-2a24-11eb-9d7e-01aa75ed71a1&format=pdf&language=en&productionSystem=cellar&part=>

The latest developments confirm that **intra-EU mobility continued to grow, but at a slower pace than in the previous years**. In 2018, there were **17,6 million EU-28 movers in the EU**, out of which **12,9 million EU movers of working age (20-64 years)**, according to Eurostat population statistics. The stock of EU movers of working-age grew by only 3,4% in 2018, in comparison to the average 5% from previous years. The EU-LFS indicates a figure of 11,7 million EU movers of working age, out of which active movers make up 83% (9,7 million in 2018), a 2% increase from 2017. In addition, there were **1,5 million cross-border workers in the EU**.

Chart 1: Gender distribution of EU-28 movers, 2018



Source: Chart created by the Autor, based on 2019 Annual Report on Intra-EU Labour Mobility

At EU level there is a **slightly larger share of female movers than male movers (51% to 49%)**. In Greece, Portugal and Italy, 60% or more of EU-28 movers are female, whereas in the Czech Republic and Germany there are significantly more male movers (58% and 54%).

4. The transposition of the PW Directive in the WB countries

The European Union (EU) has played a major role in the post-regime change and post-conflict reconstruction of the countries of the Western Balkans. The EU's politically driven dual strategy of state-building and European integration (Bieber, 2011) has manifested itself through the prism of Europeanisation of the WB countries and the promise of their eventual accession to the EU. Accession negotiations commenced with North Macedonia (2005), Montenegro (2012), Serbia (2014) and Albania (2014), while Bosnia and Herzegovina and Kosovo* became potential candidates that were promised the prospect of joining when ready. None of the candidate countries achieved sufficient progress to be offered membership until now, but the European Council reaffirmed its "unequivocal support" for the enlargement, welcomed the progress made by the countries and stressed the EU's commitment to support them in conducting EU-oriented reforms and projects.

The prospect of actual membership is still under question. In the Commission's document titled *A credible enlargement perspective for and enhanced EU engagement with the Western Balkans*¹⁴ issued in 2018, also known as the Western Balkan Strategy, 2025 was indicated as the earliest year any further enlargement could happen.

This document also highlighted six flagship initiatives to be undertaken by the countries of the region in order to make their enlargement perspective 'credible', namely:

- to strengthen the rule of law;
- to enhance support for socio-economic development;
- to increase transport and energy connectivity;
- to develop a Digital Agenda for the Western Balkans; and
- to support reconciliation and good neighbourly relations.

The Law on Foreigners and other related legal mechanisms in each country regulate the employment of foreign workers in general. Laws on foreigners have recently been revised in all four countries to include, among other amendments, the posting of EU workers to these countries. In North Macedonia and Montenegro, the legal adjustments also include mainstreaming the issuing of permits in one-stop shops, which means that the working and residence permits are processed and issued as a single document. In Albania, EU citizens do not need work permits, but there is a specific permit for posted workers (known as A/P type, granted based on the CMD no. 84 dt.2014), whereas Serbia has amended the law on the employment of foreigners ("Official Gazette of the RS", Nos. 128/14, 113/17 and 50/2018) in order to further simplify procedures for issuing work permits. The sending of nationals to other countries in the frame of temporary service provision is regulated through other national laws. In the process of legislation approximation to the *Acquis*, Albania and Serbia have reformed their national labour codes and included an article on the posting of their nationals abroad. Montenegro is still in the process of regulating it with a draft law prepared and sent for review to the EU. North Macedonia, on the other hand, already has a specific law on posting that entered in force in 2012; however, the law is sectoral and covers only the construction sector. Each of these laws on the sending of own nationals to temporary provide services in another country, include the text of the PWD, in particular Article 3 on terms and conditions for posted workers.

¹⁴ https://ec.europa.eu/info/sites/info/files/communication-credible-enlargement-perspective-western-balkans_en.pdf

However, there are differences in the way the PWD has been transposed in all four countries. A detailed analysis of the legislation in force indicates that the definition of posting as described in the PWD is fully included in the Albanian and Serbian legislation, but only partially in the other two countries. There exists also some terminological confusion because posted workers are often referred to as detached workers, as observed in the Albanian and Montenegrin cases. Additionally, length of stay and pay are regulated in the Albanian and Serbian legislation, but only partially in the North Macedonian. In Montenegrin legislation pay is not regulated and length of stay only partially. Travel, board and lodging are not included in the Albanian and Macedonian legislation, but they are in the Serbian one and only partially in the Montenegrin one. Allowances are included in the Albanian and Macedonian legislation but not in the Montenegrin and Serbian one.

Other mechanisms, such as the liaison office, the provision of information to posted workers, and the national website on posting specified in the Enforcement Directive, have not been included in any of the current legislations or other regulations in any of the countries, except for a partial mention of the provision of information in the Serbian law. Reference to the Directive is also not included in any of the countries, apart from mentioning it in the Albanian Law on Foreigners. Similarly, none of the changes of the Revised Directive of 2018 have been addressed by WB policymakers, except for Montenegro where the actual passing of the law is in process and it might still include the revisions in its final form. There are currently no measures in place in the event of failure to comply with the Directive in Albania and Montenegro and only partial ones in North Macedonia and Serbia. The Macedonian Law on working relations (Article 265) foresees a penalty of 2,000-3,000 EUR in cases when the employer is posting a worker abroad under different terms and conditions than the ones stipulated by the Law. The Serbian Labour Law also contains general provisions imposing penalties and suspension of business activities for a certain period in cases of illegal employment. The Ministry of Labour, Employment, Veterans and Social Affairs (MOLEVSA) can also revoke or suspend the employment license of private agencies due to irregularities as regards their job offers.

In terms of issue-relevant regulations, such as the coordination of the social security systems, all countries have already signed bilateral agreements with several EU Member States and neighbouring countries (as well as other countries where a considerable number of nationals have migrated to), but not with all. In Albania, bilateral agreements on social insurance exist with 7 EU MS. Montenegro has signed bilateral agreements on social security with 17 EU MS. North Macedonia has signed bilateral agreements on posting with Germany and on social security with 11 EU MS. Serbia has several bilateral agreements with respect to social security (with 19 EU MS), temporary work for its citizens abroad (with Slovakia and Slovenia), and on posting (with Germany). In addition, it also has agreements on the European Social Insurance Card signed with 9 EU MS. As a result of these agreements, Serbia and North Macedonia have also been posting their nationals to these various EU countries. Agreements on health insurance have not been pursued in Albania, whereas the other three countries have already signed agreements with several EU countries and are in the process of negotiating others. Nonetheless, there has been no progress in the use of the European Health Insurance Card in any of these countries (European Commission, 2018b, c, d, e). Furthermore, the issue of double taxation is a strong deterrent factor for the posting of own nationals in the case of Albania, where lack of agreements to avoid double taxation and/or the complicated bureaucratic procedures to achieve that, has resulted in companies only rarely using posting as a form of cross-border labour mobility.

Despite the fact that technically the PWD should come into force once the WB countries become EU Member States, the passing of the laws and regulations on posting, the signing of bilateral agreements on the coordination of the social protection systems among WB and EU countries, as well as the additional bilateral agreements on posting signed by Serbia and North Macedonia with Germany provide the legal framework for posting to occur already, especially from the WB towards EU countries.

These reported findings transform posting into a current policy issue for the candidate countries, which means that the policy cycle for this policy area is not only at the design phase but also at the implementation phase, at least partially, which makes our analysis of the institutional capacities of the WB countries to transpose and implement the PWD relevant for national policy.

5. Posting of workers in Western Balkans

Within the research *Posting of workers in Eastern Europe - EEPOW*¹⁵, there are some publications which is related to the specific country of WB. For each WB country¹⁶ we will show the main conclusions from publications, through the domains: Legal and institutional framework and institutional challenges.

5.1. Montenegro¹⁷

As non-EU citizens, Montenegrin citizens are currently posted to work in EU Member States via another EU Member State. This makes them doubly vulnerable: first, as migrant workers that work and reside in an EU Member State and later, as posted workers that are sent to perform services in another EU Member State. However, with the accession of the country into the EU, posting of workers from and to Montenegro will also gain increased policy significance. The Posting of Workers Directive (PWD) is among the key policy documents concerning the free movement of services to be transposed into national law. In this respect, the aim of the Policy Brief is to present the existing institutional capacities as well as the needs and requirements for the transposition of the PWD into national legislation in Montenegro.

Although foreigners living and working in Montenegro come from more than 80 countries, the country is still deeply embedded into regional mobility and migration networks. In this respect, individuals from the former Yugoslav republics still prevail among immigrants.

Montenegro is facing significant labour shortages, particularly in the sectors of construction, tourism and other service activities, which make the country the main employer of migrant labour within the Western Balkans region. Seasonal work, especially in the tourism sector during the summer, is also of paramount importance. In addition, the country is faced with: significant internal migration

¹⁵ <https://www.euro.centre.org/projects/detail/1673>

¹⁶ This project contains publications just for four WB countries: Montenegro, Serbia, North Macedonia and Albania

¹⁷ *Posting of Workers in the Western Balkans: The Case of Montenegro* - Sanja Cukut Krilić (2019); and *EEPOW Posting of Workers in Eastern Europe, Country Report for Montenegro* - Sanja Cukut Krilić and Mojca Vah Jevšnik (November 2018)

from the (predominantly) rural Northern areas to the Southern (coastal) areas of the country, regional inequalities; a significant mismatch between labour market needs and skills; and high youth unemployment. Since emigration is not systematically monitored in Montenegro, it is not clear how many people take up jobs abroad, but emigration is highest from the Northern part of the country. The Ministry of the Interior of Montenegro has reported that the number of workers posted to Montenegro (defined as providing contracted services and movement of individuals within a foreign company) has been: 1.616 in 2016, 3.029 in 2017, 4.371 in 2018 and 2.393 in 2019. In view of this growing trend and the significant labour shortages in Montenegro, posting of workers to, not only from, Montenegro, could be of future significance as well. The demand for foreign workers in Montenegro reflects not only the needs and shortages on the national labour market, but also the need for workers performing work at lower costs compared to the local population.

5.1.1. Legal and institutional framework

The legislative framework regulating the work of foreigners in Montenegro is mainly part of the Law on Foreigners from 2018 that provides the framework for determining the number of work permits for foreigners on an annual basis (previously, the Law on the Employment and Work of Foreigners regulated these issues) (Institute for Strategic Studies and Prognoses, 2016; Zakon o strancima 01-205/2, 2018). Quotas are distributed for the purpose of seasonal work, for posted workers that perform cross-border services in Montenegro and for professional training and education (Zakon o strancima 01-205/2, 2018). The number of quota workers determined for 2018 is 23.185. Until the end of October 2018, 22.062 work permits for foreigners were issued (13.502 within the quota and 8.560 outside the quota). As the data on quotas for 2017 demonstrate, 76,3% of the used quotas were within the construction sector, services for providing accommodation and foods, trade and other service activities (CdM, 2018). The Law on Foreigners understands posted foreigners as individuals in an employment relation with the employer outside the territory of Montenegro who performs certain services on the territory of Montenegro. According to the same Law, posted foreigners can perform services if they have been employed with a company for at least one year. Posted foreigners can be issued with more work permits, but altogether not for longer than three months per calendar year. In exceptional cases, this period can be prolonged for objective reasons or if the performed services are of special interest for Montenegro (Zakon o strancima 01-205/2, 2018).

Montenegro is not generally recognised as a country of emigration, it does not have significant experience in the area of posting at the moment. Despite this, the transposition of the Directive into national law and the adoption of the new legislative framework were recognised as fundamental for the state of Montenegro.

The Law on Protection of Rights of the Citizens of Montenegro working abroad was passed in 2004, while the new Law on Intermediaries in Employment and Rights during Periods of Unemployment that has also not been passed yet, arises from the need to harmonise the legislation with the EU regulations, especially the Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services. Some of the regulations, such as the role of intermediaries in employing Montenegrin citizens abroad, will also be transposed into the new Law on Intermediaries in Employment and Rights during Periods of Unemployment.

In the area of labour mobility, including posting, the Ministry of Labour and Social Welfare is responsible for the preparation of the legislative framework and its enforcement and for the overall social protection system. Also, the Ministry of Labour and Social Welfare is responsible for the overall coordination of the implementation of the National Strategies for Employment and Human Resources Development. The Employment Agency of Montenegro is responsible for the planning and implementation of employment strategies at the national level. The Ministry of the Interior is (as of 2018) responsible for issuing the combined residence and work permit.

Table: Factsheets on posting workers for Montenegro

LEGAL FRAMEWORK	<p><u>List of national laws</u></p> <ul style="list-style-type: none"> • <i>The Law on Foreigners</i> (2018, No. 01-205/2) - defines posted foreigners as individuals in an employment relation with the employer outside the territory of Montenegro who perform certain services on the territory of Montenegro; • <i>Draft Law on the Protection of Posted Citizens of Montenegro Working Abroad</i>: the main legislative act transposing the Directive into national law, still under review. <p><u>Bilateral agreements that enable posting</u></p> <ul style="list-style-type: none"> • No specific agreement on posting in place; • Social security bilateral agreements in place with Austria (2010), Belgium (2010), Slovakia (2016), Czech Republic (2002), Denmark (1977), France (1950), Netherlands (1956), Croatia (2014), Italy (1957), Luxembourg (2008), Hungary (2008), Germany (1974), Poland (1958), Slovenia (2011), Great Britain (1958), Bulgaria (2016), Sweden (1978).
NATIONAL INSTITUTIONS	<ul style="list-style-type: none"> • <i>Ministry of Labour and Social Welfare Directorate for Labour Market and Employment</i> - responsible for the preparation of the legislative framework transposing the Directive into national law; • <i>Employment Agency of Montenegro</i> - Responsible for the planning and implementation of employment strategies at the national level. • <i>Ministry of Interior Affairs Direction for foreigners, migration and readmission</i> - responsible for issuing all necessary documents for foreign workers (single residence and work permit); • <i>Administration of Inspection Affairs The Department of Labour inspection</i> - a constituent part of the Administration for Inspection Affairs of Montenegro, responsible for monitoring of labour relations and employment and occupational safety and health at work. <p><u>Social Partners</u></p> <ul style="list-style-type: none"> • <i>Association of Free Trade Unions of Montenegro</i> • <i>Association of Trade Unions of Montenegro</i> • <i>Montenegrin Employers Federation</i>

Source: Informative booklet: *Posting of Workers in Eastern Europe, October 2019*¹⁸

¹⁸ <https://drive.google.com/file/d/1znSETVqC32sh9kzb-pT5-pPvzKubCiTs/view>

5.1.2. Institutional challenges

Institutional challenges that pertain to insufficient inter-sectoral cooperation mechanisms, a lack of human resources at relevant public institutions as well as a lack of cross-border cooperation mechanisms in the area of labour mobility and posting, remain pertinent in Montenegro. Although stakeholders are generally aware of the process of posting third-country nationals via transit EU countries to work abroad in another EU country, they are overall less familiar with the content and the stipulations of the PWD. There exist also terminological confusions, as stakeholders also refer to posted work as 'engaged' or 'detached' work. The practical implementation of the PWD and the lack of in-depth knowledge and training on specific issues that are addressed in the Directive, also remain among the under-communicated issues to stakeholders as well as to the general public.

Although Montenegro has achieved some level of preparation in the process of EU accession, in the area of freedom of movement of workers especially its capacities to strengthen the coordination of social security systems need to be improved. Implementation of legislation remains weak due to the lack of political will and a lack of administrative capacities. Cross-border labour law violations are generally solved on a case-to-case basis rather than through established procedures and coordination mechanisms. The lack of coordinating mechanisms at the national and, in particular, the transnational level has implications for the delivery of services to and the protection of both citizens and foreigners. Without proper structures and channels of cooperation across the border, it is difficult for national authorities to follow through with the irregularities they encounter and make sure that workers are protected. Since the Law on Foreigners from 2018 states that employment of foreigners is conducted directly by the employer and not by public employment agencies, less control over employment practices, undeclared work and other violations of foreign workers' rights in Montenegro are also issues of concern. In view of postings as even more short-term working arrangements, this could be an issue also in the cases of PW. Nevertheless, the Sector for Labour Inspection is monitoring also the situation of foreign workers in the field, and intensified control takes place especially during the summer months in the sectors of tourism and construction that employ the most foreigners.

The lack of human resources at the Sector for Labour Inspection that could be used to monitor cross-border labour mobility, is also a concern. Challenges have already been encountered in relation to seasonal work, in sectors like construction and tourism, where foreigners generally are employed and where most violations have been identified by the authorities. The lack of coordinating mechanisms at the national and especially the transnational level, has implications also for the level and quality of information delivered to both citizens and foreigners, who are often uninformed and/or misinformed about their rights and duties in relation to migration and mobility.

Tripartite and bipartite social dialogue and interagency cooperation in Montenegro remain weak. Due to the lack of coordinating mechanisms among stakeholders, workers cannot be systematically supported when violations of labour rights occur. Knowledge exchange and information sharing on a national as well as transnational level are also insufficient. Foreign investments especially in tourism and construction are important in terms of meeting occupational health and safety standards as well as establishing more efficient mechanisms for improved stakeholder engagement in the area of labour mobility. Nevertheless, the lack of coordinating mechanisms at the transnational level connected to the lack of a legislative framework in the area of posting, remain pertinent issues.

5.2. Serbia¹⁹

Freedom of movement including labour mobility as a fundamental principle of the internal European Union (EU) market functioning, are part of the Republic of Serbia's Negotiation Process for EU membership. Although the corresponding chapters are still not opened for negotiation between EU and Serbia, the country has already been working on the approximation process to the *Acquis Communautaire*, in which the transposition of the Posting of Workers Directive (96/71/EC) is included.

Posting of workers from Serbia towards the EU Member States has increased considerably in the last 3 years, after the introduction of posting in legislation and the adoption of the Law on Posting. If only 607 workers were posted in 2015, the numbers jumped to 10.576 one year later in 2016, and have been increasing systematically every year with 15.503 Serbian citizens posted to the EU in 2018.

Apart from private agencies, posting can also be conducted with the support of the National Employment Service (NES). With the assistance of NES in 2016, for example, 516 persons were employed abroad, mostly in Germany and Slovenia. In terms of the posting of workers to Serbia from EU and other countries, the number of temporary working permits issued to foreigners in 2017 was 7.405, and that of permanent permits 240. The largest number of permanent permits was issued to citizens from China, the Russian Federation, Macedonia, Italy, Turkey and Greece. Although some of these workers have been posted, the official data do not distinguish between posted workers and other temporary foreign workers in Serbia.

5.2.1. Legal and institutional framework

The Posting of Workers Directive is not fully transposed to Serbian legislation. At the moment, the PWD is discussed among decision-makers, without consultation with stakeholders (non-governmental institutions and NGOs). According to the available information, the Posting of Workers in Eastern Europe (EEPOW) project is one of the first efforts made by the Ministry of Labour, Employment, Veterans and Social Affairs (MOLEVSA), with the support of EU partners, to discuss EU legislation in the field of the free movement of workers.

In Serbia, posting of workers abroad is regulated by the Law on conditions for posting employees to temporary work abroad and their protection (2015 and updated in 2018) which clearly defines the duration of the posting of workers (i.e. up to 12 months with the possibility of extension), and provides strict obligations for employers who post workers from Serbia to EU countries. The employee must be employed for at least three months to be eligible for posting in another country. The employer is obliged to conclude an annex of the employment contract with the worker, where basic earnings are included, before the posting offer is made (National Assembly of Republic of Serbia, 2018). Employers must submit the notice about posted workers to the Central Register of Obligatory Social Insurance (CROSI) that collects data on posted workers, as well as on employers who post them. Furthermore, employers are obliged to request permission of the posting country when changing the insurance for posted workers.

¹⁹ *Posting of Workers in the Western Balkans: The Case of Serbia* - Kristina Djuric and Gordana Tiodorovic (2019); and *EEPOW Posting of Workers in Eastern Europe, Country Report for Serbia* - Kristina Djuric and Gordana Tiodorovic (November 2018)

Posting is also regulated by International Agreement signed with the Federal Republic of Germany as well as by bilateral agreements and by support of mediators: the National Employment Service (NES) and employment agencies (MOLEVSA, 2018).

Bilateral agreements for posting from Serbia – Serbia has signed several bilateral agreements with other countries on temporary employment abroad by which equal payment and conditions at work are guaranteed to Serbian citizens such as the residents of those countries. Social security insurance is also regulated with bilateral agreement signed (MOLEVSA, 2018).

International agreement signed with Germany for the detachment of workers from Serbia – There is an international agreement between Germany and Serbia; for the latter, to post workers via a detachment procedure to Germany. Annual quotas of workers are negotiated in advance between MOLEVSA and the Germany Bureau for Employment. According to a decision of MOLEVSA, the Chamber of Commerce and Industry of Serbia (CCIS) is the appointed institution responsible for the allocation of these quota, the management of records and the monitoring of the process. Business operators registered in Serbia are eligible to apply for distribution of the determined quota of workers.

The employment of foreigners in Serbia, on the other hand, is regulated by the Law on Employment of Foreigners. The legislation stipulates, among others, that the types of permits that can be issued are for employment, self-employment and working education with the possibility to transfer employees abroad within the same company. However, a single document for residence and working permit does not exist yet, which means that there are two institutions responsible for issuing permits: the Ministry of Interior is in charge of issuing residence permits and the National Employment Service (NES) of issuing working permits (National Employment Service, 2018).

The Labour Law (2005, updated 2013, 2014, 2017 and 2018) also addresses the issue of illegal employment by imposing penalties and the suspension of an employer's business activities for a certain period of time. However, a criminal offence is not foreseen for the employment of irregular migrants.

Institutionally, labour mobility, employment and movement of workers come under the authority of MOLEVSA. The Labour Inspectorate (LI) and the Directorate for Safety and Health at Work (DSHW) are the main intermediate authorities responsible for posting abroad and employment of foreigners in Serbia. Further institutional actors involved in posting in Serbia include:

- The Health Insurance Fund (HIF), which cooperates with the Institute for Social Insurance on the international social insurance agreements signed and the implementation and reimbursement of health care expenses occurred during the posting abroad or in case of employment of foreigners in Serbia. Electronic exchange of social security data is available with most of the Western Balkan Countries;
- The Central Register of Obligatory Social Insurance (CROSI), which is responsible for maintaining the register of obligatory social insurance of workers and regularly submits the reports to MOLEVSA;
- The NES that acts as a mediator in employment of Serbian citizens abroad on foreign employers' request and is in charge of issuing working permits to foreigners.

The NES and private employment agencies with the appropriate licence, are acting as mediators in the employment of Serbian citizens abroad and vice versa. On employers' demand, the NES announces the job vacancies whereas the requirement process is settled between employer and job-seeker. The NES is not involved in the process of selection of candidates. They also provide information to potential working migrants from and to Serbia on the risks of irregular migration, procedures for legal employment abroad, access to health care, education abroad, and so on.

Table: Factsheets on posting workers for Serbia

LEGAL FRAMEWORK	<p><u>List of national laws</u></p> <ul style="list-style-type: none"> • The Law on conditions for posting employees to temporary work abroad and their protection (2016). • The Posting of Workers Directive is still not in force in Serbia. <p><u>Bilateral agreements that enable posting</u></p> <ul style="list-style-type: none"> • Bilateral agreement on posting of Serbian workers with Germany. • Bilateral agreements on temporary employment of Serbian citizens abroad and foreign citizens in Serbia, signed with Slovakia, Slovenia as well as with Bosnia and Herzegovina and Belarus (negotiations ongoing with Malta). • Memorandum of cooperation in the field of employment between the Ministry of Labour, Employment, Veteran and Social Affairs of the Republic of Serbia and the Ministry for National Economy of Hungary • Bilateral agreements on social security coordination signed with 19 EU MS (Austria, Cyprus, Slovakia, Great Britain, Luxembourg, France, Hungary, Denmark, Bulgaria, Czech Republic, Italy, Germany, Sweden, Slovenia, Netherlands, Poland, Belgium, Romania and Croatia), plus Norway and Switzerland. • Agreements on the European Social Insurance Card signed with 9 EU MS. • Agreements on electronic data exchange on pension and disability insurance are being implemented with former Yugoslavian countries.
NATIONAL INSTITUTIONS	<ul style="list-style-type: none"> • <i>MOLEVSA</i> - It is the responsible ministry for the implementation of labour and employment policies; • <i>National Employment service office</i> - Modern public service providing services to unemployed persons and employers in Serbia; • <i>Employment agencies</i> - Register of Employment Agencies. <p><u>Social Partners</u></p> <ul style="list-style-type: none"> • <i>Confederation of Trade Unions of Serbia (CATU)</i> - CATU has two ongoing projects related to posting which are implemented in cooperation between MOLEVSA, the employers' organization, trade unions and chambers; • <i>United Branch Trade Unions Independence (UGS "Nezavisnost")</i> - representative union, member of the Social and Economic Council of the Republic of Serbia

Source: Informative booklet: *Posting of Workers in Eastern Europe, October 2019*²⁰

²⁰ <https://drive.google.com/file/d/1znSETVqC32sh9kzb-pt5-pPvzKubCiTs/view>

5.2.2. Institutional challenges

Although the legal framework on posting exists, changes in the law and by-laws on labour mobility were introduced several times in the last few years. MOLEVSA as the line ministry for labour mobility should better anticipate priorities and deadlines for further harmonization of legislation and involve the relevant stakeholders in order to avoid possible problems in implementation. There is a need to include these priorities in the National Programme for the adoption of the Acquis Communautaire for the next period, as the revision of this document is sometimes used as reason for postponing the harmonisation of laws and bylaws with EU Directives and Regulations. The timeline for full harmonization of national legislation with the PWD is also not yet defined, which can be a challenge for the accomplishment of this objective.

Inter-institutional cooperation is established at the operational level between MOLEVSA and other line ministries (foreign affairs, interior affairs, finance, tax administration) as well as with the employment office on labour mobility. At the decision-making level, however, there is no overall plan for implementation of joint actions on posting from Serbia. Liaison officers responsible for communicating and coordinating activities related to posting have not been established. Therefore, in the forthcoming period it will be challenging to introduce a single (residence and work) permit for the employment of foreigners in Serbia, as this procedure will require institutional changes.

Cooperation between Serbia and EU Member States on the full coordination of social security systems and implementation of the European Health Insurance Card is still missing. Moreover, cooperation with international partners lacks a systemic approach and is usually limited to an exchange of information without any mutual actions.

A further challenge concerns the lack of trained staff in institutions in charge of labour mobility and movement of workers. There is a strong need for the employment of additional staff because of the unfavourable existing age structure. Further, specialization of staff dealing with labour mobility does not exist and it is necessary to introduce trainings for experts from different institutions involved in the process of labour mobility. Finally, there is a need to improve the overall working conditions for the staff of implementation and enforcement agencies (earnings, equipment, space, training etc.).

The consultation process with stakeholders on labour mobility is weak. Social partners, institutions and NGOs are involved in the improvement of legislation on an irregular basis. Existing networks and cooperation mechanisms that national stakeholders have with foreign partners, are not recognised as potential channels for enhancement of cooperation with institutions abroad. Because social partners as organizations with a national mandate cannot protect Serbian workers outside the territory of Serbia, collaboration with their sister organizations in the countries where Serbian workers are posted can be used for exchange of information and provision of support. Social tripartite dialogue and collective bargaining, which could be used to discuss issues related to posting is also not well enough developed. This prevents trade unions, for example, to advocate for the interests of workers in a desirable manner.

Finally, public awareness and visibility of posting and what it entails is still not developed enough. Without joint activities of all stakeholders and focused public campaigns, it will be difficult to prevent illegal migration, inform people on the legal framework for the posting of workers, and promote EU best practices.

5.3. North Macedonia²¹

North Macedonia is going through a slow process of EU integration that has started in 2009. Freedom of movement including labour mobility as a fundamental principle of the internal European Union (EU) market functioning, is an integral part of the integration process. The Posting of Workers Directive (PWD) is among the key policy documents concerning the free movement of services to be transposed into national law.

Posting of workers from and to North Macedonia is happening to a limited extent. According to the evidence of the Ministry of Labour and Social Policy, during 2017 in total 570 workers have been posted to Germany, mainly in the construction industry. There is no official data on the number of posted workers to North Macedonia, although in general the number of foreigners with temporary stay in the country is relatively low. According to the official estimates of the State Statistical Office, during 2017 there were in total 2.322 foreigners with temporary stay and 1.760 foreigners with extended stay, while 283 foreigners with temporary stay have left the country during the same year. From a regional perspective, during 2015, 2016 and 2017 the majority of foreigners reported their stay in the Skopje region, respectively 1.043, 1.769 and 1.286 persons.

5.3.1. Legal and institutional framework

The Posting of Workers Directive has not been fully transposed in North Macedonia nor has the 2018 revision of the Directive been introduced into national law.

There are three leading legal frameworks that regulate and enable posting of workers from and to the country. In terms of posting of workers from North Macedonia, there are two important pieces of legislation. One is the Law on Working Relations of 2005 that regulates the allowances for a posted worker and the length of posting in cases when employees are assigned for the purposes of provision of services abroad. The second piece of legislation which was adopted in 2012 and explicitly targets posting, is the Law on posting of workers from the Republic of Macedonia to other countries for carrying out construction works through project contracts and other seasonal works. This law regulates the terms and conditions of posting to countries with which North Macedonia has concluded bilateral agreements on posting. To date, the country has concluded bilateral agreements with Germany on posting workers and with Slovenia and Qatar on seasonal workers; however, in practice only the contract with Germany is operational.

The regulatory framework that enables posting of workers to North Macedonia, is the Law on Foreigners which was formally adopted in February 2006. With this Act the country aligned its migration legislation with the EU Acquis and follows the Migration Resolution. The Act regulates the basic principles of the national policy for employment and work of foreigners, issuance of the working permits, types and procedure of issuance of the working permits, the conditions for cross-border cooperation with foreign companies, seasonal work, right of foreign students to work, work performed by foreign companies or self-employed persons. The law also regulates other issues related to work of

²¹ *Posting of Workers in the Western Balkans: The Case of North Macedonia* - Klimentina Ilijevski and Aleksandra Iloska (2019); and *EEPOW Posting of Workers in Eastern Europe, Country Report for the Former Yugoslav Republic of Macedonia* - Klimentina Ilijevski and Aleksandra Iloska (November 2018)

foreigners, such as supervision, data management, protection of the employment rights of foreign workers, etc.

One of the major limitations identified in the existing regulatory framework is the absence of a clear definition of posted workers. Neither the 2012 Law on posting nor the 2005 Law on working relations provide a definition what a posted worker is. Other missing aspects in the available regulatory framework are the absence of regulation on travel, board, and lodging; establishment of liaison offices; and a national website on posting. The available national regulatory framework does not integrate any reference to the PWD. Therefore, the national regulation does not foresee measures in the event of failure to comply with the Directive. However, the Law on working relations (Article 265) foresees a fee in the amount of 2.000-3.000 EUR in cases when the employer is posting a worker abroad under different terms and conditions than the ones stipulated by the Law.

In terms of bilateral social security agreements with EU/EU Member States, there are 22 bilateral agreements on coordinating social security systems, 15 of which are with EU Member States. In terms of bilateral health insurance agreements with EU/EU Member States, so far, the country has concluded only 9 bilateral agreements.

In North Macedonia, there is no separate agency responsible for monitoring and controlling labour migration, including posting of workers, between the country and the EU. Labour migration is only partially monitored within the Ministry of Labour and Social Policy as an integral part of the entire spectrum of labour and employment issues, while the development and implementation of employment policies with regard to posted workers are delegated to the Department for the Labour Market which is in charge of the introduction and implementation of bilateral agreements on the coordination of social security systems.

Work permits for foreigners are issued by the National Employment Agency, while the Ministry of Interior Affairs is responsible for temporary and permanent residence permits. The National Employment Agency proposes the annual work permit quotas to the Ministry of Labour and Social Policies and keeps the statistical overview of the issued work permits.

There are four migration service centres functioning within the Employment Agency where migrant workers can get information on the labour market in North Macedonia and in most European countries. However, posting has not been explicitly targeted by the migration service centres. It also remains unclear whether these centres are operational and in what capacity.

Additionally, the 2012 Law on posting foresees the establishment of a separate Commission with a competency to define a yearly quota of workers that will be posted for carrying out project contracts.

Table: Factsheets on posting workers for North Macedonia

LEGAL FRAMEWORK	<p><u>List of national laws</u></p> <ul style="list-style-type: none"> • The 2012 Law on posting of workers from the Republic of North Macedonia in other countries for carrying out construction works through project contracts and other seasonal works (<i>Official Gazette of the Republic of North Macedonia No. 166 from 26.12.2012</i>). <p><u>Bilateral agreements that enable posting</u></p> <ul style="list-style-type: none"> • Bilateral agreements on posting are in place with Germany, Slovenia and Qatar. • Bilateral agreements on social security signed with 15 EU MS (Austria; Croatia; Slovenia; Switzerland; Bulgaria; Germany; Czech Republic; Netherlands; Romania; Poland; Luxembourg; Belgium; Slovakia; Italy and Hungary.)
NATIONAL INSTITUTIONS	<ul style="list-style-type: none"> • <i>Ministry of Labour and Social Policies, Department for the labour market</i> - It is the institutional responsible body for posting; • <i>Employment Agency</i> - It is responsible for work permits for foreigners; • <i>Ministry of Interior Affairs</i> - responsible for temporary and permanent residence permits; • <i>Labour Inspectorates</i> – It is also the body in charge of grievance procedures for posted workers; <p><u>Social Partners</u></p> <ul style="list-style-type: none"> • <i>Federation of Trade Unions of Macedonia (SSM)</i> - an autonomous organization, independent of government, employers, political parties and other organizations and institutions.

Source: Informative booklet: *Posting of Workers in Eastern Europe, October 2019*²²

5.3.2. Institutional challenges

Although the PWD and the Enforcement Directive envisage the establishment of liaison offices for cooperation, information sharing and exchange between national institutions and EU Member States and EU-level institutions, in North Macedonia, no such office has been established yet and they are not on the policy agenda. To date, cooperation with other countries is mostly done through electronic exchange of needed data on individual cases and each country has its own database. North Macedonia as an accession country does not have access to the Internal Market Information System (IMI), which is only available to the EU Member States.

Generally, there is a lack of available human resources involved in monitoring labour mobility, including posted workers. Very few of the stakeholders engaged in the chain of posting have been properly trained on the implementation of the PWD. Apart from the human resources at the institutional level, employment agencies, the majority of trade unions, employers' associations and other stakeholders have not been trained on the PWD.

²² <https://drive.google.com/file/d/1znSETVqC32sh9kzb-pT5-pPvzKubCiTs/view>

At the national level, there is a limited stakeholder engagement in terms of managing labour mobility in the country. Tripartite and bipartite social dialogue and interagency cooperation in North Macedonia remain weak. Based on research findings, trade unions, employer associations, Chambers of Commerce and civil society so far have very limited involvement in the process of transposition of the PWD.

5.4. Albania²³

Albania is progressing toward approximating its national labour legislation to the *Acquis Communautaire*. The national labour legislation, amended in 2015, adopted the concept of posted workers similarly to the PWD. However, by-laws, which remain crucial to implementation of the law in compliance with EU standards, are not yet prepared, consulted with stakeholders or adopted. Nationally, the institutional structure, responsible for implementing and monitoring posting of workers, is not yet consolidated and the human resources do not yet have the capacities to implement posting regulation in compliance with the specificities of the Directive.

Based on the Law on Foreigners No. 108/2013, as amended in 2016, citizens of an EU or Schengen state are free to work in Albania without the need for a work permit, as long as they are legally residing in the country. As a result, the posting of workers from the EU to Albania is free of barriers and of procedural burdens. Reducing the barriers to labour market access has created a flow of foreign residents living in the country for employment purposes. Data from the National Institute of Statistics (INSTAT) show that almost 50% of foreigners in Albania are residing for employment purposes. Thus in 2017, from 12.906 foreigners with a permit of stay in Albania, 6.334 were residing for employment purposes (INSTAT, 2018).

Posting is a recently adopted legal form of labour mobility in Albania: 75 employees overall were posted to Albania in 2018. Considering the total number of foreign workers employed in Albania, posted workers represent a mere 1% of the 6.334 foreigners residing in the country for employment purposes. Thus, posting does not yet represent a form of temporary employment from EU Member States to Albania. For non-EU citizens, there is a specific type of work permit issued when posted to Albania, known as A/TN type, as stipulated by the Decision of the Council of Ministers No. 85 in 2014. Yet, the situation is different for Albanian citizens going abroad as posted workers. As Albania is still not a member of the European Union, it cannot post workers to any of the EU Member States based on the Directive 96/71/EC alone. However, posting employees to any of the EU Member States is done by following the labour migration procedures of the host country. When out-posting, there is no obligation for the companies to inform Albanian institutions; as a consequence, there are no data on the number or the typology of Albanian posted workers. Albanian institutions do not have information, not only about the number of posted workers, but also not on their working conditions and treatment. This lack of information or of a monitoring mechanism remains a serious obstacle for national structures to offer support to individuals being posted and facing unjust situations.

²³ *Posting of Workers in the Western Balkans: The Case of Albania* - Mimoza Agolli and Nirvana Deliu (2019); and *EEPOW Posting of Workers in Eastern Europe, Country Report for Albania* - Mimoza Agolli and Nirvana Deliu (November 2018)

5.4.1. Legal and institutional framework

The major aspects of labour and employment relations in Albania are legally regulated through the Labour Code, which has been amended in 2015. Among amendments of the Labour Code, Article 3/1 introduces the concept of posted workers. Albania has also amended the Law on Foreigners in 2016, which has partially harmonized the Posting of Workers Directive. Hence, a full alignment of the labour and employment legislation with the EU acquis and with the PWD, is yet to be achieved.

The Posting of Workers Directive 96/71/EC represents an instrument of EU labour market integration, endorsed by EU Member States in 1996 with the aim of coordinating and regulating the temporary labour mobility within the Single Market and among Member States. In 2014 the Directive 2014/67/EU of the European Parliament and of the Council, on Enforcement of Posting of Workers, was adopted. The Enforcement Directive aims “to establish a common framework of a set of provisions, measures and control mechanisms necessary for uniform implementation, application and enforcement in practice of Directive 96/71/EC” (Article 1).

Albania reports a partial transposition of the PWD into national labour and migration legislation. The amended Labour Code has transposed the concept of Posted Workers into labour legislation, with posting being defined, similarly to the text of the PWD, as “a service provided by a company or temporary employment agency to Albania or from Albania”, (ref. Article 3/1 of the Albanian Labour Code). Posting, however, is not limited only to EU Member States, citizens from the rest of the world can also be posted to Albania. Article 3/7 of the Labour Code defines a list of employment conditions and activities that are not considered as posting, same as those listed in the PWD.

Other elements of the PWD adopted in the Labour Code are: (I) The right to apply, in any posting assignment, the most favourable employment conditions whether from sending or receiving country; (II) A guarantee of the minimum wage for the foreign worker; (III) Enforcing equal treatment and fighting discrimination, etc. (Albanian Labour Code, as amended in 2015). Furthermore, Article 18/5 of the Labour Code foresees the establishment of Temporary Employment Agencies, and a Decision of the Council of Ministers for its functionality has been adopted: DCM No. 286, dated 21.5.2018, “On some particular rules for temporary employees hired by the Agency of Temporary Employment”.

In Albania, as per the legal framework and the actual institutional structure, the roles and responsibilities in managing posting of workers are shared between different institutions. At the central level, it is the Ministry of Finance and Economy, Directorate of Labour and Migration that bears the responsibility to develop the strategic and legal framework regarding labour and employment in Albania. This directorate monitors the developments on the labour market, including labour migration (in & out) and proposes amendments of existing laws/by-laws or drafting new ones. The Ministry of Interior and the State Police and Directorate of Border Control and Migration are national authorities responsible for the implementation of the Law on Foreigners in Albania. They are the institutions responsible for issuing the residence permit, and to keep data and documentation on all foreigners in Albania, including posted workers. The National Employment Service (NES) and the employment offices in all the regions of the country monitor the labour market, employment and unemployment, skills and human capital. NES is the national authority issuing the work permits for foreigners that aim to reside in Albania for work purposes, including posted workers as well. In this regard, all the data about foreign employees in Albania are collected and updated by the National Employment Service. Yet, this service and all employment offices do not have any data or information about the Albanian

workers that are posted abroad. Another relevant national authority is the State Inspectorate of Labour and Social Services (Labour Inspectorate). Its main task is inspection and monitoring of work conditions concerning health and safety, in order to be in compliance with labour legislation. While the Labour Inspectorate has the authority to monitor the workers posted to Albania, inspectors have no means to monitor out-posting.

The institutional map concerning implementation of the posting of workers involves numerous institutions, each of which responsible to deal with one aspect of posting. However, there is a missing link, the lack of a lead authority, that would be explicitly responsible to monitor and coordinate posting in Albania (as required by the PWD).

Table: Factsheets on posting workers for Albania

LEGAL FRAMEWORK	<p>List of national laws</p> <ul style="list-style-type: none"> • <i>Law No. 7961, 12.7.1995, “Labour Code of the Republic of Albania”, as amended by Law No. 136/2015, 5.12.2015</i> • <i>Law No. 108/2013, “On Foreigners of Albania”</i> • <i>Law No. 74 dated 14.07.2016 “On some amendments and additions to Law no. 108/2013 “On Foreigners””</i> • <i>Decision of Council of Ministers No. 85, dated 12.02.2014 “On the definition of criteria, documentation, and procedures for the issuance, refusal, renewal and annulment of work permit to the transferee within the enterprise, type “A/TN”</i> • <i>Decision of Council of Ministers No. 67, dated 12.2.2014, “On determining the criteria, documentation and the procedure for equipping, refusal, regeneration and cancelling of the work permit for contracting services, type “C/SHK”</i> • <i>Decision of Council of Ministers No. 286, dated 21.5.2018, “On some particular rules for temporary employees hired by Agency of Temporary Employment”</i> • <i>The national labour legislation transposes the Posting of Workers Directive (PWD) (96/71/ EC), including its definition, exemptions, fair employment, equal treatment conditions of posted workers</i> • There is a lack of proper regulation for posting workers from Albania to the EU <p>Bilateral agreements that enable posting</p> <ul style="list-style-type: none"> • No specific agreement on posting of workers, but construction companies in Albania have earned international contracts for civil works for posting employees. • <i>Agreements on social insurance with Belgium, Czechia, Germany, Luxembourg, Hungary, Austria, Romania, North Macedonia and Turkey. Agreements with Romania and Kosovo* are ratified, and are expected to enter into force. Negotiations with Switzerland and Canada to reach an agreement are ongoing, while initial meetings with other countries such as Italy, Montenegro, Bulgaria, Spain, France and Croatia have been conducted. There is no evidenced progress on negotiations with Greece, as one of the countries with the majority of Albanian workers.</i>
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NATIONAL INSTITUTIONS	<ul style="list-style-type: none"> • <i>Ministry of Finance and Economy, Directory of Employment Policy and VET</i> - It adopts the legislation and strategic framework regarding labour and employment in Albania. • <i>Ministry of Interior</i> - implements the Law on Foreigners in Albania and is the main institution accounted for issuing permits of stay for foreign citizens. • <i>The National Employment Service (NES)</i> alongside with its Offices distributed in all the regions of the country – monitors the labour market, and maintains and updates the national register of employees, for all types of employment arrangements, including posting. AN integral part of 36 employment offices are Migration Centres, that provide information on regular migration and labour law and social rights in EU countries. <p><u>Social Partners</u></p> <ul style="list-style-type: none"> • <i>Union of Independent Trade Unions of Albania (BSPSH)</i> - It contributes in socio-economic development of the country, by proposing laws and policies, protecting socio-economic rights, offering trainings and promoting the social dialogue. • <i>Trade Unions Confederation of Albania (KSSH)</i> - protects workers' rights and advocates for better working and living conditions, while promoting inclusion of all types of workers' in Albania. • <i>Union of Chambers of Commerce and Industry of Albania (UCCIAL)</i> - The largest independent nation-wide business association in Albania established in 1995 - promotes and supports Albanian business, and is provides suggestions and assessment about various legal initiatives, draft laws and policies undertaken by the government which affect Union's members activities and interest. • <i>Union of Albanian Business (BIZNES ALBANIA)</i> - established in 2010 as a merging of 24 smaller associations, it represents, promotes and safeguards the rights and interests of employers in Albania. • <i>Albanian Agribusiness Council (KASH)</i> - is the union of 32 members independent agribusiness associations (20 national associations and 12 Regional Agribusiness Councils, with the main goal to protect members' interest via advocacy, partnerships, legal and policy recommendations and capacity building activities.
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Source: Informative booklet: Posting of Workers in Eastern Europe, October 2019²⁴

5.4.2. Institutional challenges

As posting of workers is a form of labour mobility introduced only recently in the national labour legislation, the institutional awareness and preparedness remains modest, especially on different aspects of implementation and monitoring. Institutions responsible for managing posting of workers need to develop by-laws and require guidance to improve understanding and practices in implementation. By-laws would clarify different procedural aspects of posting, aspects of monitoring and reporting, roles and responsibilities of different national institutions, modalities of inter-agency cooperation and exchange of information.

Roles and responsibilities among institutions involved in posting of workers at the national and local level in Albania need to be distributed in a structural and clear manner. The PWD demands that each

²⁴ <https://drive.google.com/file/d/1znSETVqC32sh9kzb-pt5-pPvzKubCiTs/view>

Member State should assign/establish a managing authority responsible for monitoring posting. This managing authority, defined as liaison office in the PWD, is held responsible for the inter-agency coordination at national and European level. As already mentioned, the Labour Code in Albania has not foreseen the establishment of such an authority. Until now, the responsibility to exchange information, monitor the posting process and cooperate with other institutions falls to the Ministry of Finance and Economy/ Directorate of Labour and Migration. The Directorate is responsible for all matters and issues regarding labour and migration but with little focus and with restricted capacities as regards posting.

The Temporary Employment Agencies, whose role is to facilitate posting of workers, have been established only recently. The procedural aspects of reporting to national authorities are yet to be developed, including modalities of Labour Inspectorate controls and inspections. Most of posting, as a form of temporary employment, will be done/facilitated through this type of employment agencies. Therefore, mainstreaming their practices will be a focal point for posting to be implemented and monitored in Albania.

Generally, there is a lack of information and understanding of posting and of its legal framework. National institutions are currently not fully prepared for implementing and monitoring posting in and out the country. It is assessed that they do not have the means to monitor out-posting of Albanian workers, while the capacities and expertise to deal with posting in Albania are missing and staff is not trained on this matter. Representatives from related institutions and stakeholders, including employers' associations, trade unions or businesses, report not to have adequate information and awareness on posting. They also report lack of capacities to follow and complete posting procedures. This incapability of institutions increases the risk of exploitation of workers or of irregular employment.

PWD has not been part of the major debate and discussion and only recently this topic is being put in the spotlight. As a result, among concerned stakeholders, such as public institutions, workers and business associations, little information and awareness is transferred. It is evidenced that these actors lack information and guidance on properly implementing, monitoring or coordinating the posting arrangements.

5.5. Bosnia & Herzegovina

Bosnia & Herzegovina is not included in the research related to the four previously mentioned countries of the Western Balkans, so only the basic characteristics of posting workers from BiH will be presented below.

Following the Dayton Peace Agreement, the country was divided in two political entities, the Federation of Bosnia and Herzegovina (the "Federation") and the Republika Srpska. Each entity has its own government, president, parliament and police forces. As a result, each entity has its own authorities overseeing labour and employment issues. In the case of the Federation of Bosnia and Herzegovina, the Ministry of Labour and Social Policy is responsible for social policy, labour and employment and pension and disability insurance. In the case of the Republika Srpska the Ministry of Labour, War Veterans and Disabled Person's Protection is the highest authority over labour issues.

The Labour laws define the operation of collective bargaining – without distinguishing between the public and private sectors, the levels at which these agreements may be signed or the conditions under which they apply. Bargaining can take the form of general collective agreements, branch collective agreements, company agreements and individual employment contracts. General collective agreements cannot stipulate conditions that are less advantageous than those set forth in the Labour Law. The same applies throughout the hierarchy of bargaining instruments. The degree of enforcement of these agreements is high in the public sector, but rather low in the private sector.

Tripartite co-operation between the governments and the social partners takes place in the Economic and Social Councils, consultative bodies provided for by the three labour laws of the FBiH and the RS. At state level, an agreement on the establishment of the Economic and Social Councils was drafted in 2006.

Based on the number of ZKO3 forms submitted to the Austrian Financial Police about the incoming posted workers, third-country nationals posted to Austria have accounted for between 5-12% in recent years. Among those, citizens of the following Western Balkan States – Bosnia and Herzegovina, Serbia, North Macedonia, and Kosovo* – made up the largest group. Bosnian posted workers accounted for between one-third and half of all third-country nationals posted to Austria during 2016-2019. In total numbers, between 3.100 and 38.000 citizens of Bosnia and Herzegovina were posted to Austria annually during this period. Most of these individuals were posted by companies located in Slovenia.²⁵

From 2016 to 2018, citizens of Bosnia and Herzegovina were the largest group of recent (2018) immigrants to Slovenia followed by citizens from Croatia, Kosovo*, Serbia, Bulgaria, and North Macedonia (Eurostat, 2020). The number of citizens of Bosnia and Herzegovina living in Austria has fluctuated between 89.000 and 107.000 since 2002. Slovenia has bilateral agreements with Bosnia and Herzegovina (since 2013) which allow citizens of both countries to work in Slovenia following simple procedures. They have unrestricted access to the Slovenian labour market, if the following conditions are fulfilled: They register with the employment office in their home country, there is a justifiable demand for labour abroad, and they are offered a work contract for at least one year by a Slovenian employer (Danaj et al., 2020: 26).

The labour market in Bosnia and Herzegovina has suffered from political and economic instability, the collapse of key industries and skills and demand mismatches in the labour market (ILO, 2011; Friedrich Ebert Stiftung, 2020). For most of the last decade, the country has struggled with an unemployment rate of over 25% (ILO, 2020) and with wages significantly below those of Slovenia and, even more so, Austria (Danaj et al., 2020: 16). The principal pull factors are the relatively better employment opportunities – in terms of both pay and employment conditions – in richer European countries. Up until the outbreak of the COVID-19 crisis, the discouraging economic conditions in Bosnia and Herzegovina were contrasted by high labour demand in Slovenia and Austria, especially for construction workers (Danaj et al., 2020).

²⁵ Here, not to stay – The posting of third-country nationals between Bosnia and Herzegovina, Slovenia, and Austria - Sonila Danaj and Leonard Geyer (2020) <https://www.euro.centre.org/publications/detail/3845>

5.6. Kosovo*

The same is the case in Kosovo*, as it was with Bosnia - it is not included in the research related to sending workers to the Western Balkans, so only the main sources of employment law will be shown.

The main sources of employment law in the Kosovo* are:²⁶

- Constitution of the Kosovo*;
- Law on Labour No. 03/L-212;
- Law on Safety and Health at Work No. 04/L-161;
- Law on Foreigners No. 04/L-219;
- Law on the Protection of Breastfeeding No. 05/L-023;
- Law for Organising Trade Unions in Kosovo* No. 04/L-011;
- Law on Strikes No. 03/L-200;
- Law on Social Economic Council No. 04/L-008;
- Law on Labour Inspectorate No. 2002/9;
- Law on Protection of Whistleblowers No. 06/L-085;
- Law on the Protection from Discrimination No. 05/L-021.

²⁶ Employment & Labour Law 2020 - https://www2.deloitte.com/content/dam/Deloitte/al/Documents/legal/EMP20_Chapter%2023%20-%20Kosovo.pdf

6. Policy recommendations by WB countries

6.1. Montenegro²⁷

On the legal framework and institutional mechanisms:

- Coordination mechanisms among stakeholders/institutions on a national as well as transnational level should be improved;
- Systematic and clear procedures on how to deal with violations of workers' rights at a transnational level need to be established;
- There exists a need for more information sharing, training and exchange among stakeholders nationally and transnationally;
- Enforcement and implementation of existing regulations need to be improved.

On the protection of workers and the area of information sharing:

- Workers are to be provided with clear, accurate and timely information on their rights and duties when working abroad and info points providing all such information are to be developed centrally;
- Protection of workers should be improved with the establishment and implementation of cross-border cooperation mechanisms that would enable workers to enforce their rights also transnationally.

On data about posting and labour mobility:

- Timely, accurate and reliable data collection mechanisms are to be established;
- Monitoring mechanisms and data-based reviews and analyses on the topics of labour migration/mobility and the posting of workers need to be strengthened.

6.2. Serbia²⁸

The continuous increase of posted workers' numbers from Serbia to the EU in the last three years makes posting an important policy area for the country. Positive trends on legislation improvements and simplification of procedures for labour mobility and posting of workers are evident but harmonization with EU legislation should be continued. A number of recommendations have been drawn in coordination with representatives from various institutions and other stakeholders:

- For a more successful implementation of the Posting of Workers Directive in Serbia, the country needs to complete its legislative framework and better anticipate the priorities for further harmonisation of the national legislation with the EU's *Acquis Communautaire* on

²⁷ Recommendations are taken from: *Posting of Workers in the Western Balkans: The Case of Montenegro* - Sanja Cukut Krilić (2019)

²⁸ Recommendations are taken from: *Posting of Workers in the Western Balkans: The Case of Serbia* - Kristina Djuric and Gordana Todorovic (2019)

labour mobility. The PWD is still in the phase of public discussion and the timeline for its transposition should be more precisely defined.

- The responsible authorities need to have clear mandates and strengthen their inter-institutional cooperation. Even though cooperation between line ministries exists at the operational level, it should be focused on the decision-making level and performance of joint activities in order to reduce overlapping of assignments between national institutions. Furthermore, cooperation with international partners should be extended, from exchange of information to implementation of joint actions that should be agreed on at the decision-making level. The existing structure for exchange of information and cooperation (e-inspectors, networks, etc.), should be used in a more effective manner.
- More should be done for the specialization of public servants and for the reduction of multiple duties assignments. Additionally, public servants' and inspectors' working terms (salaries) and conditions (equipment, space, trainings, etc.) should be improved. Specialized trainings on labour mobility and employment are needed at all levels, i.e. of decision-makers, stakeholders, employers and employees.
- The involvement of stakeholders (social partners, NGOs, the public) in the drafting of employment and mobility policies needs to become more concrete. They should be more involved in the negotiation process for EU membership as well as in changing and adopting legislation from the early phases of legislation-drafting onwards in order to minimize the problems in implementation. Further, best practices of EU countries in collective bargaining and tripartite social dialogue should be used as models to be adopted in Serbia.
- Joint activities of institutions and stakeholders are needed in order to promote legal labour migration and increase the visibility of good practices in the posting of workers.
- And finally, although Serbia has improved ranks on some of the aspects of public governance, institutions should be more focused on their fight against corruption.

6.3. North Macedonia²⁹

The existing regulatory framework provides a solid legal basis for posting workers from and to North Macedonia. However, its enforcement has been very limited so far, while cooperation between the relevant stakeholders is insufficient and should be further improved. Policy-makers should further develop and manage labour mobility as a factor for socio-economic development. They should further investigate new mechanisms to benefit from the globalizing labour market and ensure human capital development in the country.

Along with the definition of the strategic orientation, the regulatory framework should be further strengthened and improved as a supporting mechanism:

- The Law on labour inspection should provide specific obligations related to migrant workers, including posted workers.
- Full transposition of the Posting of Workers Directive, including its revisions and its application to all sectors.

²⁹ Recommendations are taken from: *Posting of Workers in the Western Balkans: The Case of North Macedonia* - Klimentina Ilijevski and Aleksandra Iloska (2019)

In the light of improving the institutional arrangements for labour migration and posting of workers, additional institutions should be established as a supporting mechanism for enforcement of the existing regulatory framework:

- A regional employment agency that will improve labour mobility among neighbouring countries.
- A national office for the labour force. The office should conduct a regular analysis of the occupational shortages at the national level and of the most recent developments in industry.
- Establishment of an information system for the labour markets in the countries of admission regarding the possibilities for temporary / seasonal employment (including posting), as well as greater awareness of the citizens for the possibilities for temporary emigration on the basis of education, training, etc.

In terms of inter-agency cooperation, the following reforms should be undertaken:

- To establish clear structures and protocols for cooperation in matters that reflect different aspects of labour migration on both national and international levels.
- To explicitly define channels of cooperation, information sharing an exchange between national institutions and EU Member States and EU-level institutions.

The EU financial support that is aimed at strengthening human resources in terms of labour mobility in general and posting of workers in particular, should be better coordinated at the national level. Moreover, adequate mechanisms should be established in order to ensure that the generated knowledge will be properly institutionalized. Stakeholder participation in the entire policy cycle of labour migration should be ensured and strengthened.

6.4. Albania³⁰

On the Legislative and Policy Measures:

- A complete transposition of the PWD and other relevant Directives into national legislation needs to be achieved. So far, the PWD is only partially harmonized. It is assessed that adoption of several by-laws can improve the implementation of this Directive.
- Monitoring the impact of posting on the labour market in Albania in a longterm perspective is essential, specifically with regard to the social protection system. To make this possible, identification of posted workers should be undertaken by distinguishing them from other foreign workers in Albania.

On the Institutional Framework:

- A clear distribution of roles and responsibilities among related institutions as regards posting of workers, whether current or newly established ones, is assessed as key to promote and enhance multi-stakeholder coordination and information sharing.

³⁰ Recommendations are taken from: *Posting of Workers in the Western Balkans: The Case of Albania* - Mimoza Agolli and Nirvana Deliu (2019)

- The institutional framework responsible to safeguard implementation of posting of workers needs to be completed by establishing a liaison office as stipulated in the PWD, and in full alignment with the European institutional set-up with respect to posting. This liaison office would be the lead authority, responsible to coordinate institutional cooperation and information exchange. Until now, the Ministry of Economy and Finance has played this role, as the national authority responsible for labour legislation in general. However, this might not be adequate given the particularities of posting.
- Intra-agency coordination and information exchange regarding posting of workers need to be strengthened and to become operational, in order to encourage the positive impact of labour mobility, while workers' rights are respected during and after the posting.
- The posting of workers needs to be integrated by cooperation modalities of Albanian institutions with EU institutions covering sensitive areas such as employment, migration and social protection.

6.5. Bosnia and Herzegovina

Recommendations:³¹

- The poor enforcement of both labour laws and collective agreements is undesirable because it leaves workers without protection. That is why it is important to strengthen the mechanisms for enforcing collective agreements in both the entities;
- Strengthen the role and functioning of the Economic and Social Councils at the entity and district level;
- Consider setting up special committees of the Social Councils to deal with employment issues. The members of these committees could participate in the designing, monitoring and evaluation of employment policy and programmes;
- Review the composition of the Employment Agencies' advisory boards to make sure that the social partners are represented. This recommendation entails introducing a tripartite board for the State Employment Agency and re-introducing a tripartite board for the Employment Agency of the RS, which was discontinued in 2006;
- Improve the social partners' skills on employment policy issues and encourage them to integrate employment concerns into their agreements.
- Introduce representativeness criteria for social partners;
- Enforce the labour law provisions governing the friendly settlement of disputes to reduce the caseload and waiting time in court proceedings.

6.6. Kosovo*

N/A

³¹ *Employment Policy Review: Bosnia and Herzegovina* - http://www.oit.org/wcmsp5/groups/public/---europe/---ro-geneva/---sro-budapest/documents/publication/wcms_169176.pdf

7. Recommendations received from respondents

Part of the project is to examine several leading regional companies, which are leaders in their fields, about the experiences they had through sending workers from one country in the region to another. The goal is to get first-hand information on the necessary procedures in order to create certain recommendations within the project, which would be submitted to policy makers in all economies through the Chambers of Commerce of the Western Balkan countries, and to improve and facilitate this process.

The survey included leading companies in the fields of construction, telecommunications, distribution, banking and insurance. Respondents answered four open-ended questions:

- What is the number of workers you send from country to country, on an annual basis?
- What is the procedure for sending workers? Specify the necessary documentation and conditions that must be met in advance.
- List the problems you faced when sending workers from state to state.
- Recommendations, according to experience and your needs.

A summary of the obtained responses is shown below.

From the interlocutor from BiH, company *“Hering” dd Široki Brijeg*, which covers the construction sector, we received the following answer: **The procedure is extremely complex, and also time-consuming**, and these are exactly the things that need to be changed. In addition, **the filling of the annual quota is another of the key problems** that this respondent singled out. If the planned quota is filled, there is simply no possibility to send workers until the quota is expanded. When it comes to procedures, the present situation, where employee must submit the application in person, is very unfavorable for both the employee and the Employer.

Therefore, we the following general recommendations:

- Establish electronic application system for posted workers
- Simplify procedures for movement of posted workers
- Reduce required documentation and streamline regulation through the region
- Adopt legal deadline for resolving the submitted requests (shortening the deadline);
- Amend current quota system (increase quotas gradually)
- Allow usage of health benefits for posted workers in countries where they work
- Abolish the proclamation of specific project as a project of special state/national interest
- Procedure for posting of workers from one country to another to work within the same company can't be the same with the procedure for posting of workers who are establishing an employment with the employer for the first time;
- Enable possibility of extending obtained work permits;
- Abolish work permits through ammendment of CEFTA protocol 6 (Annex 1 or Annex 3)
- Involve representatives of companies into working groups for designing solutions
- Raise the level of communication of institutions which are involved in the process
- Establish transition period for testing and fine tuning

1.1. Findings and recommendations from companies

From the interlocutor from Serbia, company “Roaming Networks” doo Belgrade, one of the leading companies in the region in the ICT sector, we received a response divided by the countries where they send their workers:

Croatia: The adoption of the new Law on Foreigners, starting from 01/01/2021, for citizenship of third countries, the possibility of posting workers is significantly narrowed. Specifically, for their activity and sphere of business, posting is no longer a possibility – only and exclusively regulation of residence and work of the citizens is possible through the Residence and Work Permit. Only in the case of a Residence and Work Permit based on relocation within related parties (where only a manager/director, expert or trainee is possible to be posted), is possible to talk about some kind of posting, but now longer term, because the Permit is issued for a period of one year, and only for the specified category of employees.

Recommendations: For their projects and business activities, it would be useful to have a certificate of registration of work (for a period of up to 90 days), because work in certain positions covers exactly that period. Also, the procedure of issuing it lasted much shorter than the procedure for a work permit, and there was no need for termination of employment in Serbia. Expanding the list of exceptions/basis that allows third-country nationals to work in Croatia by posting/issuing a certificate of registration (up to 30 or 90 days), would allow significantly freer access to the labor market, because currently based on the above-mentioned Law and procedures that follow it, it is quite difficult or impossible.

Bosnia and Herzegovina: They used relocation within legal entities, and this is a posting without a work permit, for a period of one year. Among other things, the conditions that are required are that the employee must be a manager, expert, or trainee, so again the list is narrowed, but the expertise is proven by the statement of the employer. Furthermore, it is required that the employee is employed for a minimum of 12 months before the posting.

Recommendations: The same story as stated for Croatia – It would be desirable to reduce the time period of 12 months, in order to find the workers easier. Regarding the posting for 90 days, based on the certificate of registration of work, the same as stated for Croatia, a list of basis on which this short-term posting would be possible.

Germany: Regarding the posting of employees to Germany, the problem is the fact that the legal framework for posting is provided by a bilateral agreement between Germany and Serbia. The given agreement is somewhat favorable to the companies that are engaged in performing construction activities, but for various reasons, for companies that are engaged in other activities, this agreement is unusable. For example, in one contract it is allowed (and only in "justified" cases) to specify up to 5 locations where the works are performed and the locations must be known at the time of starting the procedure for approving work permits before the competent authority in Germany. This is a problem because companies that deal with activities in which changes of location are frequent cannot meet these conditions, especially having in mind that the approval procedure is long (2-3 months) and it is impossible to plan jobs so much in advance. Also, due to the price of works for only 5 locations, it is questionable whether work permits will be approved, because the value of the contract must be higher than the projected salaries and other costs related to the execution of the contract. Also, if the company is engaged in construction sector, the client (a company from Germany) must also be a construction company. This is a problem because the competent authority can assess that certain

works belong to the construction industry, although by their nature (even according to other authorities in Germany) the works do not constitute construction works (works in the field of passive optical networks). This limits the possibilities of concluding a contract, because the client cannot be any company from Germany (or the EU), but only a company registered to perform construction activities, and the number of posted workers depends on the number of employees with the client. In this case, for example, a company dealing with telecommunications in Germany cannot hire a company dealing with telecommunications in Serbia to perform works in the field of passive optical networks, because the competent authority classifies this activity as a construction activity.

Recommendation is that the existing agreement need to be revised and amended.

Austria: In relation to the posting of workers to work in Austria, the posting is based on Austrian internal regulations, which provide a legal framework that is subject to different interpretations. This primarily refers to the duration of the posting, and there is a danger that the competent authority will not allow the extension of the posting or increase the number of posted workers, but will insist on direct employment in Austria.

Recommendation is that an agreement can be concluded with Austria, on the basis of which the conditions for posting of workers would be specified.

We received a response from another interlocutor from BiH, from the Republic of Srpska, from company *“Integral inženjering” PLC Banja Luka*, which covers also construction sector. The company has its business units in other countries: in Republic of Serbia, and in Republic of Croatia. Posting of workers employed in RS/BiH to the Republic of Serbia or the Republic of Croatia is preceded by the adoption of the Decision on posting of workers. Other necessary documentation is submitted upon request of persons employed in business units, who are in charge of obtaining work and residence permits for posted workers abroad. The largest part of the task of obtaining the necessary permits is in the business units located in the country to which the worker is posted. Company had presented the following experience from practice in terms of posting workers from one country in the region to another, as well as the problems they encountered and also, their suggestions and recommendations.

The procedures for posting of workers are explained in detail by the respondent, but below, due to their scope, we have only presented the laws that serve as the basis for the above procedures for posting of workers. For the above three countries, to obtain certain permits, it is necessary to follow the procedures prescribed by the following laws:

- in BiH / Republic of Srpska - Law on Foreigners of Bosnia and Herzegovina (Official Gazette of BiH No. 88/15);
- in the Republic of Serbia - the Law on Foreigners of the Republic of Serbia (Official Gazette of the Republic of Serbia No. 24/2018 and 31/2019);
- in the Republic of Croatia - Law on Foreigners, Law on Sending Workers to the Republic of Croatia, and new laws entered into force on 01.01.2021.

In addition, the respondent singled out some of the problems he encounters when posting workers, which are presented below. Also, after the mentioned problems, the recommendations are presented.

The problems they face:

- The whole procedure of obtaining the necessary permits (work, residence) is complicated and requires a lot of time to obtain documentation, both from the worker who comes from abroad, from the business unit from which the worker comes, and from the company where the worker comes. In addition, the worker does not work on his/her work assignments while he/she personally obtains documents from various institutions before sending and upon arrival in the country of work. The procedure, from the moment of starting the collection of documentation to the moment of issuing permits, can last up to 3 months, and in that period the worker cannot work without obtained permits.
- According to the activity performed by the company, as well as the uncertainty of the duration of the works, in practice they often encounter a problem related to predicting the duration of the need for a particular worker who is posted, which further complicates the procedures for obtaining permits. It often happens that at the time of applying for a permit, it is not known whether the need for a worker will last 90 days or longer (since up to 90 days goes to the certificate of registration of work, which is quite simple, and over 90 days in regular licensing procedures). It was also known that workers work based on a certificate of application issued for up to 90 days and it cannot be extended after the expiration of the approved period, while the need for a hired worker still lasts, in example the planned work is not completed within some reasons, within 90 days. It is quite easy to get into a situation where, due to a short deadline, the work process is interrupted to obtain a work permit and a residence permit.
- In the laws of several countries, there is a provision on the need to prove that the competent authority has declared a project due to which workers are brought as a project of national importance. In essence, this makes it significantly more difficult for workers to move on all other projects, as well as the activities of small and medium enterprises, which usually do not work on projects of national importance.
- The impression is that different administrative bodies within one state do not officially communicate with each other, so identical documents are submitted several times. This slows down processes, makes them more expensive (certification of copies and transcripts of documents) and leads to the loss of working hours of already critical workers.
- There are examples of claims of personal data of employees, which according to valid decisions fall into the category of protected personal data (in example the obligation to submit to the Ministry of the Interior scanned payrolls of employees, as proof that they received a salary).
- The existing solutions on the movement of workers are set restrictively, as if the countries of the Western Balkans are developed and saturated with domestic labor, so it is necessary to further protect the local labor force and the labor market. The reality is different. Accelerating economic growth requires faster and easier movement of labor.

Recommendations they singled out:

- By amending the current legislation, it is necessary to introduce facilitations regarding the posting of workers from one country in the region to another to work within the same company. It is possible to simplify the procedure for obtaining permits with as little paperwork as possible, as well as to shorten the deadline for issuing permits. Namely, these workers mostly remain employed in the country from which they are sent (they are

instructed to do a certain job and return). Their treatment with regard to the procedure and the duration of the procedure for obtaining permits can in no way be the same as with the employment of foreign workers who are establishing an employment relationship with the employer for the first time. They believe that in this case, 7 working days or less is enough to issue permits.

- They suggest that for workers who are posted within the same company, only requests for issuance of a certificate of registration of work are submitted, and that the period of 90 days be extended to a minimum of 6 months with the possibility of extending it to the entire period of need for a posted worker.
- Applying for the necessary permits electronically would be one of the mitigating circumstances for employers, especially in the current duration of the corona virus-induced pandemic.
- It is also necessary to automatically communicate between the institutions involved in the processes (Employment Office, Foreign Service, Border Police, Basic Court, Ministry of Interior), and to conduct official checks (in example checking the day of entry of a foreigner with the Border Police, checking registration of the alien's residence, check with the Ministry of the Interior on impunity and with the court on not conducting criminal proceedings (in case of extension of the residence permit)).
- Abolition of employment of foreign workers "in quota" having in mind the fact that the labor market in BiH is underdeveloped, and labor shortage as well as increased need for workers in the field of construction (especially construction workers and construction machinery operators, where there is a constant outflow of labor abroad). It should also be noted that for 2021, the Decision on determining the annual quota of work permits for the employment of foreigners in BiH has not been made yet.
- Abolish the provision that one of the preconditions for bringing in foreign workers is the proclamation of a project as a project of special state/national interest.
- Review valid regulations from the point of view of personal data protection and do not collect (make available) unnecessary personal data of workers (citizens). Current practice opens the possibility for initiating litigation against employers.

2. Improving EU labor mobility - Recommendations

A brief overview of the EU acquis on labour mobility will be given at the very beginning of the chapter. The first chapter focuses on EU Chapter 2, as it represents a key chapter in this topic. However, it is possible to single out two more chapters related to this topic, in order to complete the story about the mobility of workers from different angles.

Negotiations between the EU and candidate countries have a chapter by chapter approach. In total, 35 chapters need to be addressed. Three chapters of direct relevance for the purpose of the current legal assessment are **Chapter 2** (*Freedom of movement of workers*), **Chapter 19** (*Social policy and employment*) and **Chapter 24** (*Freedom, security and justice*). Chapters 2 and 19 primarily cover equal enjoyment of labour and social rights by all groups of the population, including foreigners. The legal aspects of regulating foreigners' entry, stay, residence and access to labour markets are dealt with in chapter 24, among other migration and asylum related matters. The specific issues regulated by the three chapters can be described as follows in Table 4:

Table 4: EU acquis chapters of relevance to labour mobility

EU ACQUIS CHAPTER	REGULATED AREAS
CHAPTER 2: FREEDOM OF MOVEMENT FOR WORKERS	<ul style="list-style-type: none"> • Includes a mechanism to coordinate national social security provisions for insured persons and their family members who are moving from one Member State (MS) to another; • Provides rights for all EU citizens to work in another EU MS and to: <ul style="list-style-type: none"> • reside there for that purpose, with their family; • be treated equally as national workers with regards to working conditions, social and tax advantages; • This acquis also includes a mechanism to coordinate national social security provisions for insured persons and their family members who are moving from one Member State to another
CHAPTER 19: SOCIAL POLICY AND EMPLOYMENT	<ul style="list-style-type: none"> • Minimum standards in areas of labour law, equal opportunities, health and safety at work and antidiscrimination; • MS participate in EU policy processes in the areas of employment policy, social inclusion and social protection; • The social partners of Member States participate in social dialogue at European level; • The European Social Fund (ESF) is the main financial tool
CHAPTER 24: JUSTICE, FREEDOM AND SECURITY	<ul style="list-style-type: none"> • Maintain and further develop the Union as an area of freedom, security and justice; • Focus areas: external migration, asylum, border control, visas, judicial cooperation in criminal and civil matters, police cooperation, the fight against organized crime and terrorism, cooperation in the field of drugs and customs cooperation.

Source: Report - Labour Mobility as a Factor of Development in South-East Europe, Regional Overview³³

³³ https://publications.iom.int/system/files/pdf/labour_mobility_factor_development_see.pdf

Following the example of the end of the last chapter, where is the recommendations for improving the area of labor mobility on the framework of the CEFTA agreement, this chapter will shows a review of recommendations and suggestions also for improving labor mobility at the EU level.

As could be concluded from the previous one, the regulatory framework is regulated by two main regulations: **Social Security Regulations** (Regulation (EC) No 883/2004, also referred to as the Basic Regulation and Regulation (EC) No 987/2009), and the **Posting of Workers Directive** (Directive 96/71/EC), and there is some differences in notion and scope between them. This differences should be harmonized for several reasons. In the *Eurofond ad hoc Report - Improving the monitoring of posted workers in the EU*³⁴, the above differences are presented in more detail, while they will be briefly presented below.

The notion of a ‘posted’ worker is used in both the Basic Regulation and in the Posting of Workers Directive. However, each set of rules give a different meaning to the notion, implying different consequences and rights. They have different objectives, and therefore different scopes. Because of the differences in scope, persons may be regarded as ‘posted’ under the Basic Regulation, but not under the Posting of Workers Directive. For instance, self-employed persons fall under Article 12(2) of the Basic Regulation but are not covered by the Posting of Workers Directive.

The differences between the Basic Regulation and the Posting of Workers Directive in defining posting are of relevance with regard to the provision of data. Calculations based on definitions following the Basic Regulation will lead to different numbers than calculations applying the scope of the Posting of Workers Directive.

Same Eurofond report shows recommendations for some steps towards improving the monitoring of posted workers in the EU. Improving data sources to allow for the monitoring and analysis of incidents of posting, and the characteristics and working conditions of posted workers, is needed to ensure that businesses are competing fairly across Europe and that the labour and social rights of posted workers are recognised. Sufficient and accurate statistical data, providing reliable information on the number of posted workers per Member State and for specific employment sectors, are not currently available. Below we have outlined what needs to change (in terms of the type of data to be collected and the harmonising of data collection across the Member States), according to the Eurofond report.

Steps towards improving the monitoring of posted workers in the EU:

✓ Scope and quality of data to be collected:

- Minimalist approach -

Data collection results in basic information about the main players in posting situations. The minimalistic approach produces sufficient data to monitor posting in terms of the number of posted workers, the number of posting companies, the duration of postings, the countries of origin and destination, the precise location of posting in the receiving country, the occupation of the workers and the sectors they are employed in.

³⁴ https://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef19054en.pdf

- Comprehensive approach - This approach, on the other hand, would require more effort, in terms of filling in more detailed forms and processing and storing the requested data. It would also allow for much deeper analysis, however. It contains more elements that characterize the organisations involved in the posting – size of the posting organisation, in terms of employment, respective share of posted workers, characteristics of the receiving company including ownership (private versus public), and motivation for using services provided through posted workers, for example. In this scenario, more information on the situation of the posted worker would be available, including elements such as contract type, number and schedule of working hours, remuneration (including overtime rates), and leave entitlements during posting.

✓ Efficient and coordinated way of data collection:

- Improving the coordination of data collection across Europe (3 steps):

Step 0 – Low Coordination - No change;

Step 1 – Medium coordination - Harmonizing existing declaration systems;

Step 2 – High coordination - Creation of a European electronic declaration system.

As outlined above, improving the monitoring of posting of workers in Europe requires action in two areas: improvement of the scope and quality of data collected, and improvement of the coordination and data sharing among Member States. Pursuing both approaches would lead to an ‘ideal scenario’, characterized by the availability of comprehensive data, and easy access to it, at Member State level and European level.

The paths described are considered **incremental**. Moving in one step from the current situation to a fully harmonized, comprehensive (in terms of data) and coordinated (in terms of collection) system is highly improbable. There are a high number of possible intermediate steps. Deciding on the path to follow for getting better quality of data will require consultation of all stakeholders as well as careful attention to data protection rules. It is also important to note that technological developments can assist in the process of achieving a fully integrated European registration system. ICT-based solutions make it possible to control access to information and restrict accessibility to personal information, while still allowing for the monitoring of overall numbers and flows of posted workers in the EU.

As a continuation of the story from the previous report under the topic of improving the current situation in the field of the posted workers, from another Report - *Protection of Posted Workers in the European Union: Findings and Policy Recommendations based on existing research*³⁵, **we can identified six areas, in which there seems to be a consensus that policies and practices should be improved.**

They are presented and briefly explained below:

³⁵ PROMO briefing paper, University of Jyväskylä - <https://www.jyu.fi/hytk/fi/laitokset/yfi/en/research/projects/sustainability/promo/research>

I. Ensuring fair wage and other employment conditions for posted workers based on host country standards

Many studies have shown that rules and regulations applicable to posted workers have created regulatory caps and posting of workers can provide companies a competitive advantage through using regulatory arbitrage and/or regulatory evasion. To successfully fight unlawful posting practices, labour inspectorates and trade unions need more rights and resources. Especially after the Laval quarter judgments it has become clear that some national systems are better for protecting the rights of posted workers than others. For ensuring that posted workers are protected from extreme abuses, statutory minimum wages and/or generally applicable collective agreements play a key role in many contexts. The right to a collectively bargained wage should not depend on the host country having a system of legal extension of collective agreements. If it does, then Member States and trade unions should consider implementing legal extension systems. To guarantee wage-based non-discrimination of posted workers, statutory wages should cover different skill categories (and regions), so that posted workers would not only get minimum wages applicable. To close regulatory caps, countries should also extend posting regulations to all sectors.

II. Ensuring that protections granted to posted workers in law are actually effectively accessible to the worker

In each country, the rules and regulations which apply to posted workers are different from those in other countries, and also different from those which apply to non-posted workers. Lack of knowledge about these (by posted workers and/or service providers) can lead to non-compliance with posting regulations. Posted workers should also have a possibility to consult relevant authorities about their rights. Good practices that can enhance the compliance with posting regulations are information centers directed to migrant/posted workers (preferably providing information in multiple languages), administered either by trade unions, other civil society organisations or state institutions. Trade unions' actions (e.g. organising campaigns, distributions of information, mobilisation) towards posted workers also help to raise the workers' awareness of their rights and to gain knowledge about local practices. State-administered web-pages and European-wide information sites have been put forth as a solution to the problem of lack of knowledge about relevant labour standards. So far, there is little evidence that these are effective.

III. Extending cooperation between systems of worker protection, both between local/national actors and cross-border

Posting of workers is a complex phenomenon. Ensuring that the rights of posted workers are protected in practical situations requires comprehensive cooperation – like joint visits to work sites of posted workers, enhanced information exchange – of different national actors (depending on national system these can be inspectorates, other state bodies, and social partners). National actors also need more resources (such as training and finances) to deal with the complex phenomenon of posting. Moreover, posting of workers falls under both sending and receiving country regulations, but enforcers of the rights of posted workers (e.g. trade unions, labour inspectorates) are constrained by their national jurisdictions. In order to more effectively monitor and enforce the rights of posted workers, more extensive cross-border cooperation – requiring additional resources – is crucial.

IV. *Applying effective and dissuasive sanctions against companies who cheat workers of pay, or who otherwise commit serious labour rights violations, or who fail to pay social security contributions or taxes*

There is an epidemic of wage theft in the European Union, centered around worker posting. Many studies have shown that there are companies that violate posting rules and regulations in numerous ways. At the same time, labour inspectors lack the resources to control and combat the fraud effectively and transnational enforcement of fines is a long and complicated process, indicating that more resources, knowledge and transnational cooperation are necessary.

The basic problem is twofold:

- 1) Enforcement is too weak, so the prospect of getting caught is small, and
- 2) Penalties are not punitive, so that getting caught leads only to a small fine, and paying the legally required wages and fees.

For firms the clear rational choice is to try to get away with wage theft, and if caught simply pay what is required. Higher fines might help to force firms to comply with applicable regulations. Stricter liability schemes (like the German chain liability system) and 'soft measures' (like making service recipient co-responsible for the violation of subcontractors through collective agreements) might help more effectively ensure the compliance of foreign service providers with applicable rules and regulations and ensure that posted workers will receive their earned wages. Rules on corporate registration should be changed to discourage letterbox companies.

V. *Ensuring that posted workers have an effective and accessible right to join, be represented by and participate in trade unions (or works councils, where applicable), and lodge complaints in host country courts*

Posted workers generally do not join host country trade unions, and are often unwilling to share information about their wages and conditions (or even talk with anyone they think might be from the union). One reason seems to be because they are afraid, with good reason, that if employer finds out, they will get fired. In practice, there seem to be no repercussions to employers for dismissing posted workers for union activities or union membership. As a result, posted work is usually non-union work, and posted workers are effectively excluded from this well-established fundamental right of collective representation. Posted workers need better protection from unfair dismissal for union activities, and for registering complaints with authorities. Their well-justified fear of dismissal underlies many of the other problems with posted work regulation. They should also have practical access to host country's juridical system. The time needed for labour courts to handle posted worker cases should be shortened, and possibilities for access improved – including making them more affordable and available to workers who have to leave the country before a decision is made.

The well-known Laval case even calls into question the right of posted workers to bargain collectively, in absence of extended generally applicable collective agreements or minimum wages. Works council-based worker representation systems, such as exist in Germany, are problematic for posted workers, as the firm-centred nature of representation usually prevents them from having elected shop-floor representatives of their own, because they work in foreign subcontractors. Representation by main contractor's works councillors is often unavailable or problematic for them: shop steward based systems are less problematic in this respect. Works councillors should have legal rights to represent workers on the same sites at subcontractors, and they should be encouraged to do so when appropriate.

VI. *Collecting and making available more extensive, systematic and reliable data about posting of workers*

Accurate data is crucial for answering urgent questions about posting, in order to design good policies and effectively find posted workers and enforce their rights. Such data is scarce, mostly because appropriate systems have not been set up to collect it, but also because collecting the data is seen as a possible infringement on the free movement rights of firms. Although numerous qualitative studies about posting of workers have been conducted, the nature and volume of these is different between countries and sectors (e.g. construction sector is rather well studied; very few studies cover Eastern Europe as a receiving region). Case studies and other qualitative data collection suggest that posting of workers is most commonly used by firms seeking to avoid labour regulations, but there is almost certainly a bias toward studying the more problematic cases: there is a large amount of legitimate worker posting also occurring. We do not know how much of this occurs, or why, however, because we do not have the data.

Quantitative studies are either based on national data, or have to cope with the inadequacies of using A1 Portable documents as a data source. Currently, the only comparative quantitative data source is based on the Portable Documents A1 that posted workers are required to obtain from their sending countries if they pay social contributions in another member state than the one they are posted to. This data source, however, provides only an indicative picture of the actual number of postings. The lack of adequate data hampers the possibility to get a proper picture of the phenomenon, and the possible economic and social benefits of this form of mobility which should be weighed against the regulatory challenges.

Some countries have established mandatory registration systems for foreign service providers/posted workers, but these are not available everywhere, nor are they comparable across sectors and countries. We suggest that there is a need for improving the reliability and compatibility of administrative data collection across the EU, and also increasing the amount of information collected. Stricter registration rules (like notifications before service provisions, penalties for not following the rules, making service recipients co-responsible for registration) for service providers using posted workers could enhance the quality of information about postings and monitoring and enforcing the rights of posted workers.

CONCLUSION

As it says in the title of the mentioned report - *Labour Mobility as a Factor of Development in South-East Europe*, South-Eastern Europe is at the brink of taking important and relevant next steps towards sustainable economic development with due attention to growth, optimized labour participation and a duly qualified labour force.

In this report we have shown a comparative analysis of the transposition and implementation of the Posting of Workers Directive in the countries of the Western Balkans. Transposition of the Posting of Workers Directive in the Western Balkans is driven by their ambition towards EU integration and the process of approximation of the national legislations to the *Acquis Communautaire*. As a result, while these countries have been preparing the legal and institutional framework, the PWD should come into force once the countries become full EU Member States.

While the number of posted workers has continued to increase over the past years, there is remarkably little evidence about the economic value and impact of services provided through posting workers. Despite the marginal impact of posting on total employment, it could be considered as an interesting tool³⁶:

- to stimulate labour mobility;
- to stimulate competition;
- to increase the income of posted workers;
- to create social convergence; and
- to support adjustment to 'asymmetric shocks'.

From the part that refers to the recommendations of companies for improving the complete process of posting workers, we can single out some general recommendations that are common to all respondents:

- Establish electronic application system for posted workers
- Simplify procedures for movement of posted workers
- Reduce required documentation and streamline regulation through the region
- Adopt legal deadline for resolving the submitted requests (shortening the deadline);
- Amend current quota system (increase quotas gradually)
- Allow usage of health benefits for posted workers in countries where they work
- Abolish the proclamation of specific project as a project of special state/national interest
- Procedure for posting of workers from one country to another to work within the same company can't be the same with the procedure for posting of workers who are establishing an employment with the employer for the first time;
- Enable possibility of extending obtained work permits;
- Abolish work permits through ammendment of CEFTA protocol 6 (Annex 1 or Annex 3)
- Involve representatives of companies into working groups for designing solutions
- Raise the level of communication of institutions which are involved in the process

³⁶ An ad hoc statistical analysis on short term mobility – Economic value of posting of workers - <https://ec.europa.eu/social/BlobServlet?docId=15425&langId=en>

- Establish transition period for testing and fine tuning

In addition to the challenges and recommendations listed in the paper, it is inevitable to mention the impact of covid-19 virus. Posted workers in the EU face particular challenges in view of the COVID-19 outbreak and the measures imposed, not only in terms of border restrictions on the free movement of workers and services, but also in terms of emergency measures introduced to mitigate and protect workers and businesses from negative consequences of the crisis. Consequently, ETUC³⁷ posted a note on Posted Workers and the COVID-19 Outbreak³⁸, and also European Commission published Guidelines³⁹ on the free movement of workers against the background of the COVID-19 pandemic and the border restrictions that have been put in place by Member States.

³⁷ European Trade Union Confederation

³⁸ <https://www.etuc.org/sites/default/files/document/file/2020-05/ETUC%20note%20on%20Posted%20Workers%20and%20COVID-19%20outbreak%20-%20updated%2020%20May%202020.pdf>

³⁹ <https://ec.europa.eu/social/BlobServlet?docId=22486&langId=en>

Annex 1: List of used literature and data sources

List of used literature:

- An ad hoc statistical analysis on short term mobility – Economic value of posting of workers (2016);
- Annual report on intra-EU labour mobility for 2019;
- EEPOW Posting of Workers in Eastern Europe, Country Report for Albania - Mimoza Agolli and Nirvana Deliu (November 2018);
- EEPOW Posting of Workers in Eastern Europe, Country Report for Montenegro - Sanja Cukut Krilić and Mojca Vah Jevšnik (November 2018);
- EEPOW Posting of Workers in Eastern Europe, Country Report for Serbia - Kristina Djuric and Gordana Todorovic (November 2018);
- EEPOW Posting of Workers in Eastern Europe, Country Report for the Former Yugoslav Republic of Macedonia - Klimentina Ilijevski and Aleksandra Iloska (November 2018);
- ETUC note on Posted Workers and the COVID-19 Outbreak (May 2020);
- Eurofound (2020), Improving the monitoring of posted workers in the EU, Publications Office of the European Union, Luxembourg;
- European Commission - A credible enlargement perspective for and enhanced EU engagement with the Western Balkans (Western Balkan Strategy);
- European Commission - COMMISSION STAFF WORKING DOCUMENT, Brussels, 6.10.2020, for the Montenegro, Serbia, North Macedonia, Albania, Turkey, Bosnia and Herzegovina and Kosovo;
- European Commission – Guidelines - Information for frontier workers and posted workers (March 2020);
- European Commission - Practical guide on posting;
- Here, not to stay – The posting of third-country nationals between Bosnia and Herzegovina, Slovenia, and Austria - Sonila Danaj and Leonard Geyer (2020);
- International Comparative Legal Guides - Employment & Labour Law 2020 – 10th edition;
- International Labour Organization Employment Policy Review – Bosnia and Herzegovina (2007 and 2008);
- Posting of Workers Directive 1996 (DIRECTIVE 96/71/EC), Enforcement Directive (DIRECTIVE 2014/67/EU) and DIRECTIVE (EU) 2018/957;
- Posting of workers in Eastern Europe – EEPOW informative booklet (October 2019);
- Posting of Workers in the Western Balkans: The Case of Albania - Mimoza Agolli and Nirvana Deliu (2019);
- Posting of Workers in the Western Balkans: The Case of Montenegro - Sanja Cukut Krilić (2019);
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- Posting of Workers in the Western Balkans: The Case of Serbia - Kristina Djuric and Gordana Todorovic (2019);
- PROMO briefing paper, University of Jyväskylä - Protection of Posted Workers in the European Union: Findings and Policy Recommendations based on existing research;
- SEE2020 - Labour Mobility as a Factor of Development in South-East Europe – Regional Overview;
- Sonila Danaj - Posting of workers in Eastern Europe – EEPOW;
- Treaty on the Functioning of the European Union – Article 45

List of data sources

- <https://eur-lex.europa.eu/>
- <https://ec.europa.eu/>
- <https://op.europa.eu/en/home>