



The challenges faced by Slovene posting companies*

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Introduction

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The aim of this policy brief is to identify the challenges Slovene companies are facing when posting their workers to other EU countries and to give recommendations and possible solutions in the posting process. The information and data presented in this document are based on the research conducted in 2020 through 15 interviews with representatives of posting companies, employers' associations' representatives, and public authorities' representatives.

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Slovenia is a country with a relatively large number of outgoing posted workers and a relatively low number of incoming posted workers. The analysis of employer practices and challenges suggests that Slovene companies find the posting of workers a complex and lengthy process, especially when trying to obtain all the necessary legal information when they post workers to other EU countries and, consequently, complying with all the relevant legislation. This and several other challenges identified are discussed in this policy brief followed by recommendations and possible solutions.

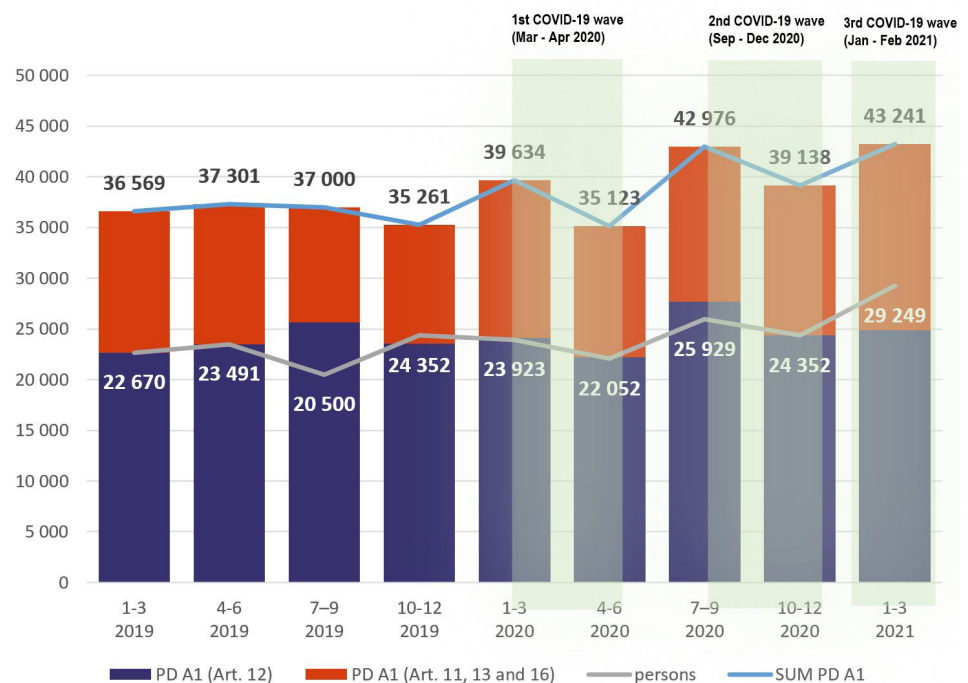
Posting from Slovenia

Slovenia is one of the European countries with the highest number of posted workers. There were 1,149 postings from Slovenia in 2005, whereas in 2017 190,976 Portable Documents A1 (PDs A1 hereafter) have been issued.

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The total number of incoming posted workers grew from 2016, reaching 9,173 in 2018 (78% growth over 2016). The labour market share of incoming posted workers also grew, reaching 1% in 2018. The total number of outgoing posted workers reached 190,976 in 2017 and then dropped significantly in 2018 (127,059) by 33%. The reason for this drop was that on January 1st 2018 the Transnational Provision of Services Act came into force. However, in the following year (2019) the number of posted workers exceeded the number of 2018 – and continued to rise in 2020, despite the Covid-19 pandemic and pandemic related difficulties the companies faced in the process of posting their workers (see Table 1). This trend is observable also in 2021.

Table 1: Total number of PDs A1 issued, breakdown by type: Slovenia, 2019-2021



Source: Data from Health Insurance Institute of Slovenia (2021), own calculation

The main countries of destination for posted workers remained unchanged throughout the 2016-20 period: Germany, Austria and Belgium, as did the main countries of origin of the incoming posted workers: Croatia, Germany and Austria.

The posting of workers from and to Slovenia is regulated in the Slovenian Employment Relationship Act. The act regulates employment relationships which are based on an employment contract between the worker and the employer. It regulates employment relationships in both the public and private sector. The basic Slovene legislative act that implements the Posting of Workers Directive is the Transnational Provision of Services Act, which came into force on January 1st, 2018.



There are several reasons why Slovenia has a relatively large number of outgoing posted workers: the Slovenian social security and taxation system, the geographical vicinity of the former Yugoslav countries, lack of sufficient monitoring and control, and so on. In Slovenia the employers' financial contributions are relatively low compared to many European countries (however, the same is not true for workers' contributions). Although the posted workers will receive (at least) the minimum wage or minimum hourly wage as demanded in the destination country (which is generally higher than in Slovenia), the social contributions will always be calculated based on the (as a rule minimum) gross wage the worker would have received for the same work in Slovenia. As one of the public authorities' representatives interviewed commented, "differences in labour costs and the companies' competitiveness arise from different social systems." This regulation has been criticised as an unfair practice by other EU countries as well as by some Slovenian social partners (e.g., the amount of the wages earned abroad will not be considered when calculating workers' pensions). On the other side, employers and their associations claim changing the regulations concerning this matter would make it more difficult or even impossible for Slovene employers to post their workers. As a notable Slovene economist claims, this would mean big increase in labour costs and could result in the loss of "1.7 billion euros in exports yearly," putting at risk 13,000 to 26,000 workplaces (Damijan, 2019).

Another reason for a relatively large number of outgoing posted workers is the vicinity of certain Western Balkan countries (Bosnia and Herzegovina, Serbia, North Macedonia), the historical, political, and cultural background Slovenia shares with the former Yugoslav republics, as well as similar languages which make communication between Western Balkan workers and Slovene employers easier. The bilateral agreements on employment with Serbia and with Bosnia and Herzegovina further ease employment (and later on posting) of these country nationals in Slovenia. All these reasons make Slovenia an "intermediary" country – employing third country nationals in Slovene companies and posting them to other European countries. Although they are employed and posted following the Slovene and EU legislation, many of them never actually see Slovenia (see also Danaj et al., 2020). In other words: they are employed with the sole intention of being posted to other EU countries. This "business model" is often associated with exploitation of workers, letter-box companies, abuse of employers' rights, law violation, etc. Lack of control of these companies, and regulation that makes it possible for some employers to bypass the legislation (the PDs A1 issued based on the Article 13 of the Regulation (EC) 883/2004 of the European Parliament and of the Council on the coordination of social security systems) are further reasons behind Slovenia's high numbers of posted workers.

Compared to bigger companies, small and medium sized companies face more challenges when posting workers due to lack of knowledge and lack of own resources



Posting companies' challenges

Slovene companies are faced with many challenges in the process of posting their employees to other EU countries. As our research shows, bigger companies posting from Slovenia would encounter fewer barriers in administrative procedures. However, small and medium size companies usually lack knowledge and own resources, and therefore more often find the posting of workers a complicated and lengthy process.

The challenges employers are facing in the process of posting workers to other EU countries, identified in our research, are presented below.

Access to information

Access to information and complexity of local regulations represent some of the biggest challenges for Slovene posting companies

One of the most often stated challenges for employers is obtaining the necessary information needed when companies post workers to other EU countries. Employers often find the local regulations and requests to be very complex, and therefore need the assistance of Slovene and the destination country's agencies and services in order to sort out the pre-posting bureaucratic processes. In addition, once the workers are already in the destination country, a similar problem regarding the lack of information arises while trying to comply with all the relevant legislation in the receiving country. Posting companies are often not aware that obtaining the PDs A1 for their workers is just the first step in a very complex posting process, comprised of different applications, registrations, obtaining consents, contracts, possible later appeals, taxes, etc. Namely, the laws and rules of the destination country can differ significantly from the home country regulations. And if a company posts to several EU countries, it will inevitably need to comply with (sometimes very) different regulations' specifics across the EU. For example, companies may not be aware that they may receive a tax balance sheet a year or two after the work has been concluded as well as a payment order along with it.

Posting companies often need to subcontract a representative in the destination country in order to sort out the bureaucratic requirements and comply with local regulations, resulting in higher posting expenses

In short, representatives of posting companies find compliance with different legal systems rather complicated – this is especially true for small and medium sized companies which lack knowledge and tend to rely on published information and their own resources, therefore are often forced to seek the assistance of other agencies. Although agreeing that information on the posting of workers can be accessed more easily in the recent years, it has been stated that the amount and the complexity of the information is very often too extensive for a company to deal with it on its own. The accessible information on posting is becoming more comprehensive, however, there is still a substantial amount of information not covered – e.g., financial (tax) aspects, some legal aspects (before



or after the posting). For example, the difficulties that employers encounter in ascertaining the hourly rate for the destination country and for the sector have been emphasised.

Posting companies are obliged to have a representative in certain destination countries – e.g., in Italy and France. Some employers (usually bigger ones) tend to have representatives in most of the countries to which they post; in this way the posting process runs smoothly and, most importantly, all the requests of the host country are met. Sometimes employers receive assistance from their associations. However, in our research even the employers' associations' representatives reported difficulties in obtaining certain information, reaching the right institution and the right person within that institution.

Working hours' evidence and differing legislation

Throughout the EU the maximum weekly working hours can differ substantially, posing a challenge for the posting companies in complying with both home and destination country regulations

Complying with local legislation and at the same time not breaching the legislation and regulations of the country of origin (and vice versa) can be a huge challenge in practice. As shown in our research, one of the biggest problems that employers encounter when posting their workers, is meeting different national regulations regarding the evidence of working hours. Throughout the EU countries the maximum weekly working hours can differ substantially. For example, as one of the interviewees stated, in Germany the maximum weekly working hours can reach 60, while in Slovenia it is in general 48 hours (although there are differences and exemptions across sectors) – and there is no legal basis in Slovenia for an employer to report the 60 working hours done (legally) in Germany. The employers may encounter the problem when reporting the working hours of their workers or in the case of control. In one case, the inspecting authority concluded that the worker posted from Slovenia to other EU countries must work in accordance with the Slovene legislation – however, very often this would be impossible to follow in practice. As illustrated by a posting company representative interviewed, “a posted worker from Slovenia cannot say in Germany: According to the Slovene legislation, my working day is now over.” A similar example is posting to France, where weekly working hours are fewer than in Slovenia – meaning that a Slovene worker posted to France, working the (local) legal total of hours in a week, would not reach the required weekly working hours prescribed by Slovene legislation.

Another example of different national regulations causing confusion and adding to the expenditure of time and money pertains to workplace health and safety. For instance, in Slovenia, workers are required to pass a medical examination and obtain medical certificates on a biannual basis. However, in Croatia (a possible posting destination country), workers are required to pass the medical examination on an annual basis.



Employers claim the amount of paperwork in the process of posting is excessive and increasing

Paperwork

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

Confusion arising from institutional decisions

In some cases, Slovenian posting companies see the decisions taken by different authorities as contradictory. Namely, in the process of issuing PDs A1 in Slovenia, verification of compliance with posting conditions are not very rigorous. In addition, the process of issuing PDs A1 under Article 13 of the Regulation (EC) 883/2004 is much faster, due to even less rigorous conditions compared to obtaining PDs A1 under Article 12. The former are issued in the same day (the latter would take five days), which is an important factor for the posting companies. In some cases, the posting companies would (knowingly or unknowingly) opt for PDs A1 under Article 13, even when they would not be eligible. However, in a possible control procedure taking place later, a labour inspector might claim that the PDs A1 were not issued correctly based on the work that has been done by the posted worker(s). Checks can occur even a few years after the posting process – although the PDs A1 were issued by a public authority, the employer may subsequently be penalised, which is seen by employers as confusing, even contradictory, and as if decisions taken by different authorities, were uncoordinated.

Pandemic related challenges

The COVID-19 pandemic poses new barriers in posting of workers

Posting companies report different experiences when posting workers during the COVID-19 pandemic period. Some of them encountered problems in border crossing – in some countries the 10 or 14-day quarantine period is or was obligatory (with the additional requirement to undertake testing after five or six days). This can, of course, complicate the work process and add a financial burden on posting companies. This is especially hard for smaller



businesses, therefore, some of these provide services abroad without reporting to the local authorities, i.e., they perform undeclared work. In addition to the financial burden, the pandemic has increased documentation work for the posting companies, so the “bureaucratic” burden has escalated, too. The posting companies also need to follow the development of events regarding the pandemic and related changes in the regulations daily, because the situation changes very quickly in some instances.

In some cases, the pandemic containment measurements make it difficult for the posting companies to comply with the national and EU regulations. For example, the EU requirement of the 45-hours weekly drivers’ rest time away from the trucks, was difficult if not impossible to meet, since in many EU countries the accommodation facilities were closed during lockdowns.

On the other hand, other posting companies did not report any problem in border crossing – they (did) need to provide some proof or contract of providing services, but otherwise were not affected by the pandemic related travel restrictions.

Policy recommendations

There is a need to harmonise posting regulations and procedures at the EU level

Our research shows that there is a need to unify and simplify the regulations and procedures regarding posting of workers in the EU. Even though minimum workers’ rights are harmonised in the EU, there are still substantial differences in the labour regulations of the EU countries. In the research, the problem of maximum allowed working hours has been reported, which vary from country to country. In this specific area (of working hours), employers are faced with the dilemma of whether to respect the law of the host country or the law of the home country. A similar problem arises regarding the rules relating to safety and health at work. The employers’ representatives are of the opinion that, to make it easier for employers to comply with all the legislation, labour law rules and/or bureaucratic requirements should be further harmonised at the EU level regarding posted workers, especially those regulations pertaining to maximum working hours and the rules on health and safety at work.

Employers should more easily access the detailed information on posting requirements in different EU countries

Employers also report that different countries claim different documents to be translated into local languages (e.g., in Italy the PDs A1 must be translated). A further EU harmonisation, even a unification, of procedural rules regarding the issue of the PDs A1 is suggested. In addition to this, the control of the PDs A1 forms via QR code seems to be a good practice that could be transferred to other countries or even established at the EU level.



The process of issuing the PDs A1 should be further simplified, considering the nature of work in different sectors

The posting companies who do not have an intention of breaching the regulations, find the Slovene labour legislation very complicated and often need substantial help from specialised agencies or legal offices to meet all conditions. However, in our research we encountered some good practices that could be implemented in Slovenia and would help to remedy this problem. One such practice is the Austrian national website on posting that offers very detailed information for employers that post their workers and for posted workers. In Slovenia, there is a national website with information about posting (<https://www.napotenidelavci.si/sl/>). However, the information given is fairly general, with no detailed information available on all the aspects of posting (tax aspects, financial aspects, legal aspects during posting). Moreover, the relevant legislation is accessible only in Slovenian. We suggest the further development of the national website on posting to incorporate more detailed information pertaining to all aspects of posting and providing links to legislation in Slovenian and (at least) English. Based on reports from posting companies' representatives, similar recommendation is given for most of the EU national websites on posting.

More effort should be put in diminishing the bureaucratic burden of the posting companies

There is a strong interest that the bureaucratic procedures for issuing the PDs A1 should be further simplified. Employers from the construction sector reported that, in practice, there are frequent instances in which the PD A1 has already been issued, but the posting abroad was postponed due to unfavourable weather conditions. In such cases, the employer must file a request for the revocation of the issued PD A1 and then file a new application for a new PD A1. The employers would wish to submit only a notification of a change in the date of posting. Therefore, our recommendation is to put more effort into eliminating bureaucratic barriers in this field.

The employers see the extent of the paperwork in the process of posting being excessive – with different legislation systems and regulations, the requirements for documentation provision increase. For small companies this represents an especially huge challenge. As already proposed, the legislation regarding posting should be further harmonised or unified and bureaucratic barriers removed. Not only posting companies but also posted workers would benefit from this process, in the sense of easier access to information on their rights while being posted, better understanding of regulations (e.g., occupational safety and health protection), which could consequently lead to more effective enforcement of their rights.



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