



PROGRAMME AND BOOK OF PROCEEDINGS

Occupational Safety and Health of Posted Workers

International Conference

**Research Centre of the Slovenian Academy of Sciences and Arts
Slovenian Migration Institute**

Ljubljana, Slovenia, 15 February 2017

Occupational Safety and Health of Posted Workers

International conference



PROGRAMME AND BOOK OF PROCEEDINGS

Occupational Safety and Health of Posted Workers – International conference Research Centre of the Slovenian Academy of Sciences and Arts

Ljubljana, Slovenia, 15 February 2017

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Occupational Safety and Health of Posted Workers – International conference
Research Centre of the Slovenian Academy of Sciences and Arts

Ljubljana, Slovenia, 15 February 2017



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Nataša Rogelja

Kristina Toplak

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OCCUPATIONAL SAFETY AND HEALTH OF POSTED WORKERS – INTERNATIONAL CONFERENCE

Research Centre of the Slovenian Academy of Sciences and Arts
Ljubljana, Slovenia, 15 February 2017

Organiser: Slovenian Migration Institute, ZRC SAZU

Organisation committee: Kristina Toplak, Mojca Vah Jevšnik, Nataša Rogelja, Jernej Mlekuž, Mateja Gliha

International conference “Employment/Working Conditions, Occupational Safety and Health of Posted Workers” brought together experts (researchers and practitioners) from several European countries to discuss the existing and new challenges relating to the OSH (occupational safety and health), labor and working conditions of posted workers. The conference served as the launch event of the POOSH project, financed by European Commission (Program EaSI PROGRESS). Contributions at the conference presented and reflected on a variety of issues related to the process of posting of workers and specifically on their occupational safety and health.

// PROGRAMME

CONFERENCE VENUE: Atrij ZRC / ZRC Atrium, Novi trg 2, Ljubljana

08:30 AM - 09:00 AM	Registracija / Registration
09:00 AM - 09:05 AM	Pozdravni nagovor / Welcome
09:05 AM - 09:20 AM	<p>Zakaj projekt POOSH – Uvod v projekt in njegov konzorcij / Why project POOSH – Introduction to the project and its consortium</p> <p>Kristina Toplak, ZRC SAZU, Ljubljana, Slovenija</p>
09:20 AM - 10:05 AM	<p>Uvodno predavanje / Key note: Delovni pogoji napotениh delavcev – kaj pa zdravje in varnost pri delu? / Working conditions of posted workers – what about OSH?</p> <p>Goran Lukič, Delavska svetovalnica, Ljubljana, Slovenija / Counseling office for Workers, Ljubljana, Slovenia</p>
10:05 AM - 10:10 AM	Odmor / Break
10:10 AM - 11:30 AM	I SEKCIJA / SESSION
10:10 AM - 10:30 AM	<p>Delovna mobilnost v EU in zaščita delavcev / Labour mobility in the EU and worker protection</p> <p>Magdalena Bernaciak, European Trade Union Institute, Brussels, Belgium</p>

10:30 AM - 10:50 AM	<p>Zdravstvene in varnostne posledice napotenega dela: primer britanskega gradbenega inženiringa / Health and Safety Implications of Posted Work: the example of British Engineering Construction</p> <p>Sonila Danaj, University of Jyväskylä, Finland; European Centre for Social Welfare Policy and Research Vienna, Vienna Austria</p>
10:50 AM - 11:10 AM	<p>Napotitev delavcev v gradbeništvu: evropska perspektiva / Posting of workers in the construction sector: A European overview</p> <p>Rossana Cillo - Fabio Perocco, Ca' Foscari University of Venice, Venice, Italy</p>
11:10 AM - 11:30 AM	Razprava / Discussion
11:30 AM - 11:45 AM	Odmor za kavo / Coffee break
11:45 AM - 13:05 PM	II SEKCIJA / SESSION
11:45 AM - 12:05 PM	<p>Zdravje in dobrobit napotenih delavcev: oris raziskovalne niše / Health and wellbeing of posted workers: outlining the research niche</p> <p>Mojca Vah Jevšnik, ZRC SAZU, Ljubljana, Slovenia</p>
12:05 PM - 12:25 PM	<p>Vloga in posredovanje sindikatov v Evropi in Italiji / Role and intervention of trade unions in Europe and in Italy</p> <p>Mercedes Landolfi, Italian Federation of the Workers of Wood, of Building, of Similar industries- General Federation of Italian Trade Unions, Rome, Italy</p>
12:25 PM - 12:45 PM	<p>Promocija zdravja na delovnem mestu - ali se izplača? / Workplace health promotion - is there an economic case?</p> <p>Klemen Podjed, Inštitut za produktivnost, Kranj / The Productivity Institute, Kranj, Slovenia</p>

12:45 PM - 13:05 PM	Razprava / Discussion
13:05 PM - 14:20 PM	KOSILO / LUNCH and POOSH tiskovna konferenca / press conference
14:20 PM - 15:50 PM	III SEKCIJA / SESSION
14:20 PM - 14:40 PM	<p>Nekateri pravni in praktični vidiki uveljavljanja zakonodaje s področja varnosti in zdravja pri delu za napotene delavce / Some legal and practical considerations on enforcement of OSH regulation for posted workers</p> <p>Karel Van Damme, Belgian Federal Public Service, Employment, Labour and Social Dialogue, Brussels, Belgium</p>
14:40 PM - 15:00 PM	<p>Romunska zakonodaja o napotениh delavcih v evropskem kontekstu / Romanian legislation regarding posting of workers in the European context</p> <p>Niculae Voinoiu, Romanian Labour Protection, Bucharest, Romania</p>
15:00 PM - 15:20 PM	<p>Varstvo pri delu delavcev napotениh v Republiko Hrvaško / Posted workers to Croatia and safety at work</p> <p>Miro Babič, Ministry of Labour and Pension System of the Republic of Croatia, Labour Inspectorate, Zagreb, Croatia</p>
15:20 PM - 15:50 PM	Razprava / Discussion
15:50 PM - 16:00 PM	Zaključek konference / Conference closing

Moderatorka / Moderator: Nataša Rogelja, ZRC SAZU

// RESEARCH

MOBILITY, FLEXIBILITY AND VULNERABILITY

Nataša Rogelja¹, Kristina Toplak²

The papers contained in this booklet were presented at the transnational conference “Employment/Working Conditions, Occupational Safety and Health of Posted Workers” in Ljubljana, Slovenia (15 February 2017). The conference brought together experts (researchers and practitioners) from several European countries to discuss the existing and new challenges related to OSH (occupational safety and health), labour, and working conditions of posted workers. The conference served as the launch event of the POOSH project, financed by the European Commission (Programme EaSI PROGRESS) and led by Dr. Kristina Toplak from the Slovenian Migration Institute at ZRC SAZU. The booklet is covering the topic of the OSH of posted workers from several angles. The first part is framed around contributions given by researchers working in the field of labor mobility, with the focus on the occupational safety and health of posted workers. The second part contains contributions from practitioners working in NGOs, trade unions or Ministries of Labour who presented their work as well as discussed national and transnational legislations related to the OSH of posted workers. The aim of this paper, however, is to reflect on the variety of views set forth in the booklet that are related to the process of posting workers and OSH problems as well as to provide a general framework within which we can think mobility, flexibility, precariousness, and vulnerability. In other words, we would like to expand on what is meant by the condition of vulnerability, precariousness and flexibility in order to better understand the general conditions, under which we can think this specific case, namely, the OSH of posted workers.

Mobile, flexible, precarious and vulnerable: does it sound familiar?

Today's work practices include part-time jobs, contracted work, outsourced posted work, home-based work, self-employment, and can be, according to economist Freedman, called “contingent work” (Freedman, 1985). These practices, although not completely new, are linked in a new way to the changing employment environment in the context of the EU and elsewhere. The term contingent employment (Freedman, 1985) is used to describe flexible work arrangements (alternatives to traditional full-time work arrangements) through which individuals work. As stated by Copeland et al., contingent

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work covers flexible employment practices such as temporary work, employee leasing, self-employment, contracting and home-based work, as well as part-time work (1999: 3). Such flexible work practices imply changes in three traditional notions of employment: time, permanency, and social contract (Christensen, and Murphree, 1999 in Copeland et al., 1999: 3). This, in turn, influences the status of worker and his/her position within a specific institution. It has been noticed, for example, that employers often use a contingent or flexible workforce as a tactic to surround a core set of full-time workers (Copeland et al., 1999). While all these practices seem familiar and normalised to the point that one does not question his/her contingent work position (but instead performs research on the precarious position of others), the mobility and posting of workers add another dimension to vulnerability and as such, have to be examined in both ways; separately, as a specific administrative category with its practical consequences but also in the context of general change in employment environment. Even though posted workers are not necessarily in a contingent work position, it seems, according to the conference proceedings, as if most of them are.

Regarding the EU, to which the conference papers pertain, there are several specific legal frameworks that enable mobile and flexible work as well as affect the precarious and vulnerable position of workers. As defined in the Treaty on European Union (<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:C:2012:326:TOC>), the free movement of services is, along with the free movement of persons, goods and capital, one of the four basic freedoms necessary for the working of the EU internal market. The free movement of services means that a company or a self-employed person which fulfils the conditions to provide a certain service in their own country can provide this service anywhere within the EU and EEA Member States. An employer can post an employee (in most cases, these are employees hired for a limited period) to another country so that he/she can, within the frame of providing that service, do work for the employer there (posting of a worker to work in another country). Such a situation produces positive and negative effects, but in either way, it is also in relation with the increased use of flexible work arrangements and in some cases with the increased vulnerability. As stated by Amit and Rapport, many of today's mobile subjects travel and work without any safety-nets (2002), while the positive discourses on mobility tend to underscore the vulnerability of contemporary forms of mobility. In the context of contemporary "mobile Europe", posted workers are one of the most flexible and vulnerable subjects that should deserve more attention from researchers, practitioners, as well as decision-makers. The OSH of posted workers stands at the core of these problems.

Before reflecting on the works of the conferences presenters, let us sketch briefly the terms precarious work and one of its possible consequence, namely, the vulnerable worker in relation to OSH. As stated before, even though posted workers are not necessarily in a precarious work position, in reality, most of them are, so it seems reasonable to bring this context into discussion. Fabio Perocco, a researcher in the POOSH project, for example, wrote how immigration often provides a vector of spreading and increase of precarity (2017: 79). However, as Martina Ori and Malcolm Sargeant wrote, precarious work is not a new phenomenon as the term precarious work has been around for a long time in relation, for example, to the employment of dockworkers who were employed on a casual daily basis and to the seasonal and mobile nature of work in the agricultural sector (2013: x). In this context, described by Ori and Sargeant, precarious work was performed for more than one employer; it was not “full-time” but limited in duration. Nevertheless, the term (as well as the problems concerning this specific work position) is experiencing a revival in the context of neoliberal economy and in relation with the free movement of persons, goods and capital. What is different today? Following mobility scholars, we could say that today’s world is moving differently as well as in more dynamic, complex, and traceable ways than ever before (Sheller, 2011: 1). Multiple legal possibilities and obstacles have created a specific mobile-immobile context in which not everyone has equal access to (im)mobility and rights. Posted workers are thus usually highly mobile but without proper rights. Most of the problems related to this specific combination come to the surface through work accidents and problems arising from them, for instance, in terms of who covers the costs of injuries. While this seems to be legally clear, in practice it is not.

Martina Ori and Malcolm Sargeant furthermore wrote how the terms “vulnerable workers” or “vulnerable work” and “precarious workers” or “precarious work” are often used interchangeably and, while there is nothing wrong with this, the difference between vulnerability and precariousness is important when it comes to OSH issues (2013: iv). As Ori and Sargeant wrote:

“... a distinction should be made between the precariousness of work attributable to particular types of contractual relationships, and the vulnerability of the people carrying out the work. Although precarious work often leads to increased vulnerability for workers and the two terms are inextricably linked, it is important to distinguish between the two from an OHS perspective. There are clearly OHS concerns attached to all work with particular reference to some types of work which are less safe. The workers who

occupy these jobs can add to or, indeed, lessen OHS concerns as a result of being vulnerable workers” (2013: iv).

Ori and Sargeant also wrote how part-time work (as well as other forms of mobile work, posted work, work of limited duration, etc.) may be selected by the worker as meeting their needs at a particular time, but there is also strong evidence that the current recession has forced many people into this type of work because of the lack of full-time (or immobile) alternatives (2013). Studies also show a direct relation between precarious employment (what posted working in many cases is) and a negative indicator on occupational health and safety. Quinlan et al., for example, conclude that the growth of precarious employment commonly leads to more pressured work processes and more disorganised work settings, and in so doing creates challenges for which existing regulatory regimes are ill-prepared (Quinlan et al. in Ori and Sargeant, 2013: xii). Such examples urge researchers and practitioners to turn their attention to OSH issues related to mobile and contingent work positions of certain vulnerable groups such as posted workers. Needless to say, this debate should not be limited to the work equipment associated with work and practice-related risks, as Mojca Vah Jevšnik (this volume) rightly stated, but extended to also include less visible but often long-continued illnesses connected with psychological risks such as stress, anxiety, and isolation.

The conference papers have covered all these issues from the multisectoral as well as international perspective. The first part of the booklet contains five papers written by researchers from Slovenia, Italy, and Austria. Sonila Danaj from the European Centre for Social Welfare Policy and Research (Austria) presents health and safety implications of posted work on the basis of her research related to the British construction sector. Her research focuses on two case studies in the engineering construction sector in the UK, which receives the highest number of posted workers in the country. She identifies OSH risks of migrant workers using the ‘layers of vulnerability’ theoretical framework proposed by Sargeant and Tucker (2009). Rossana Cillo from Ca’ Foscari University of Venice (Italy), too, spoke about the posting of workers in the construction sector and gave a European overview of this phenomenon. Drawing on the statistics of A1 documents, she elucidated how the composition of the countries of origin and destination highlights that receiving countries are mainly old Member States, while the majority of sending countries are new Member States that have joined the European Union since 2004. Mojca Vah Jevšnik from the Slovenian Migration Institute at ZRC SAZU focuses on the core issue of the conference and outlines a specific research

niche on the health and wellbeing of posted workers. The last contribution contained in the second part of this booklet, is made by Klemen Podjed from the Productivity Institute (Slovenia) and brings to the fore practical ideas related to improving the OSH of posted workers. In his paper “Workplace Health Promotion: Is There an Economic Case?”, Podjed discusses the idea of how workplace health promotion is beneficial and highly profitable for employers. While this is true and the author approaches the problem from another perspective, namely, from the neoliberal context of the game of “gain and loss”, in which people are treated as numbers, we should not lose the focus on human beings and their rights, both as humans and as workers.

In the second part, we can read about the work carried out by practitioners, mostly trade unions, NGOs, and also Ministries of Labour. Goran Lukič, from the Counselling Office for Workers (Slovenia), the keynote speaker, always speaks from his rich practical experience, and his lecture contained in this booklet is no exception. He presents the working conditions of posted workers from Slovenia, with a special emphasis on OSH, introducing the topic of the conference through a case study. As he states at the beginning of his lecture, it is not only the work accident as such that deals a heavy blow on the posted worker, but also the chain of subsequent events which pushes the same worker in an even more precarious position. His paper is followed by the presentation of Magdalena Bernaciak and Viktor Kempa from the European Trade Union Institute ETUI (Belgium), providing an overview of the ETUI research agenda related to posted workers. Similarly, Mercedes Landolfi from the International Department FILLEA CGIL (Italy) presents the role and intervention of trade unions in Europe with a special emphasis on their work in Italy. Describing the active role of trade unions in the field of posted workers, Mercedes Landolfi concludes her presentation with a strong thought that, apart from the free movement of people, we should also assure the free movement of rights. The final two papers are contributed by actors within Ministries of Labour. Miro Babić from the Labour Inspectorate at the Ministry of Labour and Pension System of the Republic of Croatia, focuses on the occupational health and safety of posted workers in the Republic of Croatia and Karl Van Damme from the Belgian Federal Public Service, Employment, Labour and Social Dialogue reflects on some more general issues with regard to legal and practical considerations concerning the enforcement of OSH regulations for posted workers.

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HEALTH AND SAFETY IMPLICATIONS OF POSTED WORK: THE EXAMPLE OF BRITISH ENGINEERING CONSTRUCTION

Sonila Danaj³

Multiple-employer workplaces have become common in the recent decades as a result of the fragmentation of work and the outsourcing of most or all work to more specialised but often smaller companies, thus creating a long subcontracting chain in which there are both native and foreign providers (Marchington et al., 2005). Within the European Union, many subcontractors post their workers from other EU countries under the Posting of Workers Directive (Directive 96/71/EC). Subcontracting as a key feature in the restructuring of employment relationships has brought about multiple shifts between contingent and direct employment, and between contingent forms of labour (Forde et al., 2009), uneven terms and conditions among workers employed by different contractors (Lillie, 2012), lack of clarity on where to address grievances (Fudge, 2012; Marchington et al., 2005), and the need for mechanisms for auditing, reporting, as well as communicating information between contracting partners (MacKenzie, 2000) and between workers and the employer(s).

Furthermore, posted workers are exposed to risks related to occupational health and safety (OSH) as a result of their status as migrants. Sargeant and Tucker (2009) propose a 'layers of vulnerability' framework for identifying OSH risks migrant workers in general face. They identify three sets of factors. The first set includes migration factors, namely, the migration status of workers and the conditions of their recruitment. The second set includes the characteristics of migrant workers themselves, such as the socio-economic conditions in the home country, their education and skills level, and their language skills. The final set includes the receiving country conditions, i.e., the characteristics of employment and sector, access to collective representation, access to regulatory protection, and particular problems of social exclusion and isolation. This framework is useful because it encompasses different dimensions of migrant work and how they affect workers' OSH vulnerabilities.

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The research at hand focuses on two case studies in the Engineering Construction sector in the UK, which is a local project-based industry with an internationalised labour market, with a contingent workforce and the highest number of posted workers in the country (Clark, 2012). The research questions are: What are the Occupational Safety and Health issues faced in multinational construction workplaces where part of workforce is posted from other EU countries? And how have these issues been dealt with in the UK? The findings are drawn from thirty qualitative interviews with posted workers (16), trade union officials and shop stewards (10), and managers (4), conducted during 2014 with follow-ups in 2015. Both case studies were large power station construction sites in remote areas, which in their peak time had twenty-seven companies. The workforce was composed of workers hired locally and via posting (20%). The posted workers interviewed were from Spain, Poland, Ireland, Slovenia, and Slovakia. Both projects operated under the National Agreement for the Engineering Construction Industry (NAECI), meaning that there were two senior shop stewards and several stewards at both sites.

The findings from the case studies indicate that work intensification and overtime were common at both sites. Inter-language communication also presented a challenge in terms of occupational health and safety issues. Furthermore, working in a transnational workplace, issues of skills mismatch and inappropriate allocation of tasks to posted workers were raised as concerns with direct implications for health and safety in the workplace. Specifically, because of the differences in training, sometimes certain workers were hired to perform tasks they were not really trained to do, which, combined with different work practices between the host and sending countries tended increase health and safety risks. Unions and workers alike raised concerns about posted workers being asked to perform tasks beyond the scope of their trade, to expedite the work process by supervisors/foremen. As one senior shop steward put it:

... [W]e experience problems on other projects, the workers are – they do a bit of one trade, they do a bit of welding, a bit of pipefitting, a bit of electrical work, a bit of erection work, do lots of different things. Within our agreement, it's trade specific, if we have a welder comes, he will weld, he's a specialist, and if we have an electrician come, only the electrician can do that type of work. The pipefitters, everybody has basically got a task to do and it's trade-specific, but outside NAECI, they exploit all the workers, and they will be told to do various other tasks. Sometimes they are not capable of doing them, but they will be told to do them and if they don't do that, they will move them on.

However, they would deny responsibility if caught by OSH representatives or other supervisors on site, which put the workers in a difficult position:

A rigger has a special training and knows how to do specific things without danger. If a Spanish supervisor asks you to do something a rear is meant to do, he will not have to hire a qualified rear. You just do it however you can and if something happens, the supervisor washes his hands and blames you. You know? (Cervantes, welder)

Nevertheless, there were no accidents severe enough to interrupt the work process in the two cases covered by this research. There is a set of mechanisms that cover the occupational safety and health aspects in the workplace in the UK, which have a direct impact on the level of risk posted workers are exposed to. So, there is the National Joint Council Guide to Health, Safety and Welfare, which is cross-referenced in NAECI. Furthermore, each construction site has its own Project Health and Safety Plan and safety representatives on site, whose mandate is regulated under the Safety Representatives and Safety Committees Regulations 1977 (SRSCR). They are appointed by the unions and notified to the employer(s), who have (has) to pay them even for the time spent dealing with OSH issues on site. Workers are familiarised with the Project Health and Safety Plan during the induction process, right before they start working on site. In the case of posted workers, the induction was conducted either directly in their native language or through translation. Monthly incident reports are submitted to the External Audit and the Project Joint Council. Furthermore, OSH representatives and union representatives monitor the workplace and, whenever appropriate, have the so-called 'toolbox talk', a meeting in which workers or contractors found in violation of OSH regulation are re-introduced to the regulation and informed about the consequences. In cases of accidents or other OSH related issues, a four-stage grievance procedure is set to help workers address their concerns. The way OSH mechanisms operate indicates the importance of unions at British construction sites in terms of health and safety. As one senior shop steward put it:

And it's a safer site as well – where there's trade unions involved, they will always elect safety reps as well as shop stewards. And they're afforded the same facilities as the shop stewards are because their job is just as important as the stewards from a safety point of view. ... We set up safety committees who run concurrently with ... [the employers team] so they all have a weekly meeting. And they do walks out on the job, out on a site, having a walk round and having a look to see if they can spot any potential problems, or stuff that can be improved, or equipment that can be improved.

Another important aspect is the language of communication between people from different countries. The NJC Guide addresses the issue specifically:

Training and information for non-English speaking employees. Training and information required for an English-speaking employee to be able to work safely and without risk to health must also be provided to a non-English speaking one carrying out the same work in the same circumstances. The employer must ensure that the non-English speaker is provided with the necessary information and training in a form that he can understand' (p. 5).

As a result, at both sites, information was provided on leaflets in several different languages, and at bilingual sites, leaflets as well as health and safety notices were provided in both languages spoken by the workers appointed there. Furthermore, professional or peer-to-peer translation is provided during the induction process or in other communication occurrences on site.

In conclusion, we can say that posted workers are vulnerable to OSH risks that stem from: their status as temporary and mobile workers, professional skills, knowledge of the local OSH regulations, language skills, and access to representation, as well as specific workplace OSH practices. While the host country regulations might provide occupational safety and health protection measures and mechanisms, the issue becomes about access to such protection and enforcement of OSH regulations.

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POSTING OF WORKERS IN THE CONSTRUCTION SECTOR: A EUROPEAN OVERVIEW

Rossana Cillo⁴

Introduction

Construction is the business relying the most on the posting of workers, with 43.7% of the 1.92 million A1 Portable Documents issued in 2014 by reporting Member States (Pacolet and De Wispelaere, 2015: 8). Construction, upkeep and repair, alteration and demolition, excavation and earthmoving: posted workers are scattered across each and every construction branch.

Within construction, subcontracting firms take full advantage of workers posted through temporary employment agencies. In-company posting is rare indeed, involving a handful of skilled workers. Partly making up for the lack of statistics on companies employing posted workers, field research shows that the latter work in both private and public building sites. Furthermore, companies receiving posted workers are more likely to be large multinational corporations, whereas sending companies are usually SMEs providing services along the subcontracting chain (FGB and COWI, 2016; Idea Consult and Ecorys Netherlands, 2011; IS-MERI Europa, 2012). Subcontracting and the resulting work organisation allow multinational corporations to “exploit the advantages in terms of increased allocative efficiency and of filling labour and skill gaps. Furthermore, large firms can often exert high competitive pressure on small firms, by virtue of using posted workers with lower wage levels and lower social security contributions obligations” (FGB and COWI, 2016: 52).

Poland, Slovenia and Portugal send most of posted workers, with respectively 124,472, 52,754 and 43,823 PDs A1, while posted workers’ main destinations are Germany, France and Belgium, receiving respectively 131,066, 54,691, 53,601 PDs A1. More particularly, Slovenia, Croatia, Hungary, Poland, Czech Republic, Estonia, Lithuania and Portugal specialise on sending workers to be employed in construction and this very sector absorbs more than half of the workers posted to Belgium, Luxembourg, Liechtenstein, Austria, Slovenia, Finland, Sweden and Latvia (Pacolet and De Wispelaere, 2015: 38–39).

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In short, receiving countries are essentially old Member States, whereas most sending countries are the states that joined the EU in 2004. Such distribution between sending and receiving countries mirrors the division of labour that neoliberal globalisation and EU labour market liberalisation have gradually determined in the EU over the last thirty years, which, incidentally, has boosted long-term labour migrations besides the temporary posting of workers. Globalisation and EU labour market liberalisation have brought about deep social polarisation, which, in turn, has made eastern European countries specialise in supplying cheap labour to both companies relocating in eastern Europe and western Europe firms employing immigrant and posted workers (Altreiter et alii, 2015; Wagner and Lillie, 2014).

Working conditions

Research on posted workers in construction shows that the wide divergence in occupational, safety and health conditions affecting the sector stem from both an “appropriate use” of the posting of workers and the violation of national and European regulations.

As for the “appropriate use”, construction employers benefit from the posting of workers in terms of cost savings in social security contributions and income taxes, as they significantly differ between sending and receiving countries with variations of up to 25–30% of the gross salary (Bernaciak, 2015; Berntsen and Lillie, 2015; Cremers, 2011; Voss et al., 2016). For instance, a Portuguese temporary staffing firm recently posted Polish workers to the Netherlands under a Portuguese contract allowing it to save up to 19% compared to Dutch contracts, and 13% compared to Polish contracts (Berntsen and Lillie, 2015).

More cost advantages derive from the “minimum standard rule”. It consists of paying posted workers minimum rather than prevailing wages in effect in receiving countries, thereby eluding local or in-company collective agreements generally applied to people working in national firms. Despite the lack of statistics on posted workers’ real wages, field research has shown that posted workers earn less than local workers, particularly when it comes to labour intensive sectors such as construction, transport, tourism or care work (Berntsen and Lillie, 2015; Voss et al., 2016).

This is particularly true of construction industry. In the Netherlands, posted workers' salaries in construction were sometimes below the universal minimum wage, trade unionists have documented (FGB and COWI, 2016). A survey by employers' organisations shows that in Denmark "posted workers on average earn 10–15 per cent less than local workers" (FGB and COWI, 2016: 81). A comparison between minimum legally set wages and the actual ones shows that in Germany "the average hourly gross salary in the building sector – EUR 17,11 (Federal Statistical Office) – is 32% higher than the minimum wage for skilled workers and 56% higher than the minimum wage of unskilled workers in West Germany" (ISMERI, 2012: 43-44).

As mentioned above, employers can also cut labour costs by breaking European and national regulations, that is to say, by unlawfully worsening posted workers' occupational, safety and health conditions. Such harsh deterioration of working conditions clearly appears to be boosting labour market increasing stratification at national and transnational levels.

Posted construction workers mostly perform labour-intensive low-skilled tasks and therefore have to work longer hours for lower wages compared to receiving countries' averages. Their health and safety are more likely to be at risk and they do not receive any training. Additionally, despite being generally skilful and experienced, posted workers often have to sign contracts designed for low-skilled work, which allows employers to cut salaries. In many cases, outsourcing in construction entails a multi-levelled subcontracting system involving posted workers who come from a range of different countries and therefore find it hard to communicate with each other on the building site (Cremers, 2011; Idea Consult and Ecorys Netherlands, 2011; Ouali, 2012; Thörnqvist and Bernhardsson, 2015). Finally, posted workers appear to have little awareness of their rights, mostly because of the lack of union representation and their isolation in receiving countries (Wagner and Lillie, 2014).

Briefly, the disregard for decent working conditions is typical of both large and small construction sites, no matter whether they are run by private or public companies. According to a comparative research funded by the European Institute for Construction Labour Research, the disrespect of labour standards specifically involves:

- “Wages: Wages were not corresponding with the working hours or the skill level. Unlawful deductions and systematic refunding after the return home. The cheapest collective bargaining framework was chosen. Unpaid overtime.
- Working hours: Long working hours. Workers sign for 40 hours and are paid accordingly, but actually work 60 hours a week. Non-respect of daily and weekly rest periods.
- Health and safety: Higher risks as a result of fatigue, no training provided, no translation of health and safety rules, lack of the necessary protective equipment. Inferior work environment.
- Housing and transport: Living in barges for Hilton prices. Deductions for housing and food in breach of the provisions of the posting rules. Kept away from the local population and the colleagues” (Cremers, 2010, p. 41).

Several studies found out more practices for reducing labour costs. For instance, often subcontractors do not pay social contributions in sending countries, or they use either the letterbox company system or the bogus self-employment scheme. Thus, they illegally shrink labour costs exploiting the gaps between Member States’ social contribution systems (Cremers, 2010, Ouali, 2012).

Conclusions

Last 14 February 2017, the POOSH project joint visit in Ljubljana confirmed that the posting of workers should be analysed in the light of broader labour market and work organisation changes. Worsening working conditions in construction industry, along with increasing labour market stratification, result from the diffusion, among other things, of undeclared work, temporary employment contracts, dependent self-employment and, last but not least, the posting of workers. Such are the factors that are increasing precarity and lowering workers’ conditions everywhere: within countries and at transnational level. As highlighted by a Belgian labour inspector, such working conditions will not remain confined to only posted workers or construction industry, as they will most likely spread across other sectors affecting hitherto protected workers.

In order to stop the race to the bottom, we need to improve working conditions within and across nations by strengthening the cooperation among unions, NGOs and labour inspectorates in sending and receiving countries, and by promoting international solidarity among workers.

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HEALTH AND WELLBEING OF POSTED WORKERS: OUTLINING A RESEARCH NICHE

Mojca Vah Jevšnik⁵

Research on the occupational safety, health (OSH) and wellbeing of workers posted abroad to provide services is scarce and fragmented. A growing body of literature on posting of workers tends to focus on issues related to irregularities and violations of relevant national laws and the Directives on posting⁶ (i.e., undeclared work, fictitious postings, social benefit frauds) or the implications of differentiated rules on wages that give competitive advantages to posting companies supplying cheaper labour at the expense of local companies. Such ongoing tensions between liberalisation of the service sector and preserving national labour and social standards have indeed come to reveal deep political-economic tensions between new and old Member States, and have earned more scholarly attention (c.f. Vah Jevšnik and Cukut Krilić, 2016). The overlooked aspect of assuring decent working conditions⁷, safe and healthy working environment, and workplace wellbeing in general is therefore yet to be explored.

The aim of OSH is to prevent occupational risks by promoting the highest degree of safety and health at workspaces. But it is important to acknowledge that OSH is not only concerned with the necessity of adopting such straightforward measures as providing sector-specific safe equipment and protective clothing, but also about ensuring workers' overall physical, mental and social wellbeing (International Labour Organisation). OSH, therefore, is concerned with eliminating hazards that can lead to work accidents and hazards that can lead to poor health and hinder wellbeing⁸. Psychosocial hazards such as work-related stress, anxiety, isolation and mobbing should by all means not be dismissed as irrelevant or obscure. The 2016 ILO campaign World Day for Safety and

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⁶ Directive 96/71/EC and Enforcement Directive 2014/67/EU.

⁷ A notable exception is the work by Jan Cremers (2011).

⁸ Examples of hazards that can lead to work accidents are work equipment related (unguarded machinery, machine movement, walking on slippery surfaces), work practices related (heavy lifting, working at heights, tasks involving awkward movement or posture), and use of electricity related (overhead electric lines, electrically operated equipment with bad insulation). Hazards that can lead to poor health include handling chemical substances (inhalation, ingestion and skin absorption of a material hazardous for health), exposure to physical agents (noise, extreme temperatures, electromagnetic radiation), exposure to biological agents (viruses, bacteria, fungi), inadequate ergonomic conditions (awkward postures, fast paced work, repetitive tasks, insufficient rest period), psychosocial hazardous situations (stressful tasks, job insecurity, isolation, mobbing) (OSHwiki).

Work, for example, has drawn attention to the changing nature of work and increasing pressure to meet the demands of modern working life, which is inextricably connected with the emergence of psychosocial risks such as increased competition, higher expectations on performance and longer working hours – these lead to an increase in work-related stress and have a significant effect on the health and wellbeing of workers.

In the case of posting of workers, OSH and posted workers' overall workplace wellbeing is inextricably connected to the general employment conditions and this nexus should be kept in consideration. Serious infringements in matters of OSH go hand in hand with factors such as undeclared work, underpayment, excessive working time, lack of rest periods, and non-compliance with regulations concerning social security and health insurance. Work-related accidents and ill health can therefore also be attributed to stress-related conditions which may occur as a result of irregularities in the posting procedure, fatigue due to long working hours, the failure to provide OSH training, failure to provide translations of health and safety rules and lack of necessary working equipment. This leads to a higher rate of work-related accidents, especially in high-risk, hazardous sectors, and can have short-term and long-term effects (i.e., burnout, development of, chronic conditions and a variety of disabilities) on the health of posted workers. Since posted workers predominantly provide services in hazardous sectors such as agriculture, construction and mining, and/or are exposed to hazardous agents such as chemical substances or radiation, they are particularly vulnerable to accidents and occupational diseases (c.f. Vah Jevšnik and Cukut Krilić)⁹.

It should be noted that due to the significant wage disparities in the EU Member States, workers from lower-income countries tend to intentionally ignore or downplay irregularities concerning their legal status and are reluctant to report OSH-related violations for fear of losing their jobs. They are often willing to work long hours and in substandard working conditions, in some cases at the expense of experiencing work-related stress and injuries, developing acute and chronic illnesses and temporary or life-long disabilities. No-questions-asked dependence on the employer, especially in cases of fictitious postings or undeclared work, generates precariousness that involves “instability, lack of protection, insecurity and social or economic vulnerability” (Rodgers and Rodgers in Berntsen, 2015: 377). The effects relating to the precarious nature of

⁹ According to ILO and EU-OSHA studies, OSH is of special importance for migrant workers for similar reasons: high employment rates of migrant workers in high-risk sectors, language and cultural barriers which require specific OSH communication, instructions and training approaches, and frequent overtime work, which makes them more prone to occupational diseases and injuries (ILO 2004, European Agency for Safety and Health at Work 2007).

postings merit further research.

Of particular concern are also the challenges concerning OSH in ethnically diverse workplaces. Posted workers are usually less likely to have received OSH training or instructions. Due to their inability to speak the language of the host employer, they are also unable to fully understand instructions, read warning signs, communicate concerns and learn about regulatory protection in place in order to make complaints or voice their concerns regarding safety and health. Some UK studies on OSH of migrant workers stress the lack of understandable training and argue that “risk assessments bearing in mind migrant workers (cultural differences and language barriers) are hardly done” (European Agency for Safety and Health at Work, 2007: 29). This is important because the inability to communicate at work can also interfere with establishing supportive relations at work, which in itself can adversely affect workers’ wellbeing (Premji et al. 2008).

One possible approach to researching a complex variety of OSH-related issues in the context of posting is the ‘layer of vulnerability framework’ (Sargeant and Tucker, 2009). This framework has been used in the research of OSH of migrant workers in general, but can be utilized for posted workers as well. It is particularly useful because it recognises the heterogeneity of migrant workers and facilitates the ability to focus on populations that are most likely to be at risk (Boyd et al. in Sargeant and Tucker, 2009: 1). It outlines three different groups of OSH risks faced by migrant workers: migration factors, characteristics related to migrants and their country of origin, and receiving country conditions. Migration status and the conditions of recruitment can be a significant OSH risk factor, especially when workers are involved in undeclared work and/or are subject to social frauds. Characteristics of migrant workers such as education, skill levels and language skills are an important variable too, as are the socio-economic conditions in workers’ countries of origin. For workers coming from poor countries, the cost of losing their jobs is higher than for those workers who can return home to jobs that are comparable, and this can inhibit the workers’ willingness to enforce their rights. For these reasons, workers may also seek to maximise their income in the short term by agreeing to work long hours, thereby increasing their risk of injury, illness or disablement (Richardson et al. in Sargeant and Tucker, 2009: 3). Finally, the receiving country conditions, such as the characteristics of employment and sector, access to collective representation, access to regulatory protection and issue of social exclusion/social isolation, should be included in the analysis of migrant and posted workers’ vulnerabilities.

To sum up, new body of literature on OSH-related vulnerabilities of posted workers needs to be multi-sectoral, multi-level, multidisciplinary, and should include inputs from all relevant stakeholders in order to provide quality evidence base to inform policy debates in the EU. It should focus not only on work-equipment related and work practice-related risks, but also psychological risks, such as stress, anxiety and isolation. It should address work accidents and hazards that can lead to poor health and those that hinder wellbeing in general (for example, exploring work-life balance of workers who are regularly posted abroad). Finally, effective preventive measures need to be outlined, brought to attention and utilized in practice.

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WORKPLACE HEALTH PROMOTION: IS THERE AN ECONOMIC CASE?

Klemen Podjed¹⁰

According to the Health Insurance Institute of Slovenia, almost 40,000 persons are absent daily due to illness or injury, and the cost of wage compensation during temporary absence from work amounts to around €450 million per year. The cost of work-related accidents and diseases in the EU amounts to 3% of gross domestic product, which corresponds to around €1,650 per Slovenian employee per year or approximately one average monthly Slovenian gross salary. Since the illness and injury costs are high, it makes sense to evaluate and manage them, which presents a significant challenge for most employers. Foremost, it is important to estimate: the types and amounts of the costs of illness, injury and employee ill-being on the one hand and savings and the indicators of the economic viability of workplace health promotion measures on the other.

Cost estimation

Three main types of costs related to the health and wellbeing of employees are the costs of absenteeism, presenteeism and staff turnover. The most frequently used method to assess the cost of absenteeism in Slovenia – and many other EU countries – is the Human Capital Approach. It has several shortcomings, but the advantage is that it is easy to calculate, since it derives data from the labour cost. The presenteeism cost resulting from reduced effectiveness of present employees due to medical or psychological reasons is much more difficult to estimate. Even though presenteeism appears to be favourable for employers, most findings show that it costs more than sick leave, twice as much according to conservative estimates. The cost of staff turnover associated with the health and wellbeing of employees is also significant because employees mental problems are supposed to cause 5–20% of staff turnover (the total percentage for all health reasons is even higher).

Savings and ROI of workplace health promotion

Workplace health promotion programmes tend to improve long-term organisational performance, productivity, and contribute to brand image, enhance employees'

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commitment and stress resistance, reduce the costs of absenteeism, presenteeism, staff turnover, decrease number of work-related accidents, and contribute to positive working environment.

The expected benefits of workplace health promotion programs are:

1. Reduced cost of absenteeism (on average 12%–36% in 3–5 years) (KIMDPŠ, 2012),
2. Reduced cost of presenteeism,
3. High return on investment (ROI); (EUR 2.5 to 4.8 per invested EUR in 3–5 years) (EU-OSHA, 2010),
4. Increased productivity by 20% (Eurofound, 2011),
5. Better health and wellbeing of workers and management.

Employers that implement workplace health promotion in accordance with the best practice in this field can expect an average 12%–36% reduction in sick leave in 3–5 years (KIMDPŠ 2012 UHLE and Treier, 2013). Health promotion programmes have a positive impact on the lifestyle of employees as well. The European Agency on Safety and Health at Work reports about high ROI – 2.5 to 4.8 per invested EUR (EU-OSHA, 2010). Although all the studies reviewed do not always show positive ROI of all executed workplace health promotion programmes, the overwhelming majority of studies do, including e.g. the study of PricewaterhouseCoopers (PWC), which systematically reviews fifty-five studies on the profitability of health promotion (PWC, 2008). The conservative Swiss SWING survey also notes that it pays off to invest in the management of psychosocial workload and stress (e.g., 25% of the participants of the SWING project had reduced levels of stress and increased productivity) (Shulte-Abel, Weber, 2011).

Cost and profitability calculator KALDOZ

Economic viability is most often the key factor in business decision making. With that in mind, the KALDOZ calculator was developed. KALDOZ is an openly accessible tool which enables employers to calculate the costs of absenteeism, presenteeism and staff turnover, as well as estimate the expected savings and ROIs of workplace health

promotion programmes. The tool can be found on the websites www.produktivnost.si and www.opsa.si.

The results of the use of KALDOZ show that the employer in an average Slovenian organisation with 100 employees, taking into account some typical baseline estimates and workplace health promotion investment in the amount of €75 per employee per year, can expect net savings of around €61,000 in five years, or an average of 12,200 per year. The estimated profitability is approximately 160% or €2.6 per euro invested in five years period.

Workplace health promotion pays off, but...

Workplace health promotion is beneficial and highly profitable, but only if it is implemented correctly. In Slovenia, this is unfortunately still quite rare, since too often a sloppy and unprofessional approach is taken. However, it pays off to evaluate the costs and profitability of workplace health promotion and actively support health promotion measures, as this will contribute not only to lower costs and greater business success, but also to increased wellbeing of employees, including management and other key people in an organisation.

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// EXAMPLES FROM PRACTICE

WORKING CONDITIONS OF POSTED WORKERS

– CASE STUDY

Goran Lukič¹¹

In its daily work, the Counselling Office for Workers (previously: the Counselling Office for Migrants) has encountered several cases of serious work accidents among posted workers. However, it is not the work accident alone that deals a heavy blow to the posted worker, but also the chain of subsequent events which pushes the same worker in an even more precarious position. Such is also the case of Zehrudin Čosić.

First information

In July 2016, we received a request for assistance from a social worker at the SOČA University Rehabilitation Institute. The matter concerned the patient Zehrudin Čosić, who was undergoing a rehabilitation treatment at the aforementioned institute after suffering a serious spinal injury as a result of a work accident that occurred at a construction site in Antwerp, Belgium.

What happened?

Mr. Čosić worked in Belgium as a construction worker for the Slovenian company Sova Tri, based in Radlje ob Dravi. The work accident occurred on 9 March 2016. The roof of the building broke under Mr. Čosić, who sustained a roughly five-meter fall and suffered life-threatening spinal injuries. He was taken to a hospital in Antwerp where he was admitted on the date of the accident, i.e., 9 March 2016, and remained until 30 May 2016, when his condition was stable enough for him to be transported from Belgium to Slovenia. The transport was made by ambulance to the University Medical Centre Ljubljana, and on 6 June 2016, Mr. Čosić began to undergo treatment at the SOČA Rehabilitation Institute. As already stated, the injury sustained in the work accident left Mr. Čosić a paraplegic.

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What is the social situation of Mr. Ćosić?

During the first months, when Mr. Ćosić was still undergoing treatment in Belgium and even later on, he did not receive any wage compensation from the employer. We filed the case to the Labour Inspectorate of Slovenia. In August 2016, we launched a public campaign with which we were able to raise approximately €3.000 to cover his basic life needs. All the money was spent on the architectural adaptation of his housing to allow the use of wheelchair, for the transport to home care in BiH after September 2016, and for the transport to Ljubljana, where he had a control visit scheduled in October 2016.

In September 2016, Mr. Ćosić received an invoice for the hospital services in Belgium, amounting to €2,950. We immediately asked the Health institute of Slovenia whether there was any possibility of direct refund of that money from them. We filed all the accompanying documentation. On 2 October 2016, we received an official response from ZZZS that a direct refund was not possible.

What now?

To help Mr. Ćosić, we turned to the competent social work centre, which approved 450.00 EUR of targeted assistance for the repayment of medical expenses, which Mr. Ćosić transferred to the Belgian hospital in full.

At the moment, however, he still has an outstanding debt of €2,500.00 to the Belgian hospital. This is an amount that Mr. Ćosić alone cannot pay and really needs financial assistance.

Mr. Ćosić's plight is multi-layered: medical, psychological, and social. After sustaining a serious injury as a result of an accident at the workplace, he is now a paraplegic, afflicted by severe pain and other problems; he is also unable to work, and partly in need of care and assistance in performing various basic activities. Currently, he is still on sick leave.

Mr. Ćosić only receives a salary compensation measured from the minimum wage and his wife has no income. He does not receive the compensation regularly, nor does he receive the statutory amount. We have succeeded in ensuring that he will obtain the compensation directly through the Health Insurance Institute of Slovenia (HII). The latest information: Zehrudin Ćosić had an evaluation before an invalidity commission on 5 June 2017. We expect him to receive disability pension by the end of 2017.

What is behind the story of Mr. Čosić?

If a posted worker remains in their home social security system, they will need to complete an A1 form. While in 2005, 1.149 A1 forms were issued in Slovenia, their number rose to 126.185 in 2015. The reason for such a sharp increase is the fact that the institution responsible for issuing the A1 form (Health Insurance Institute of Slovenia) does not check the employer that posts workers and asks for the A1 form. Furthermore, in parallel to this wildly unregulated rise in issued A1 forms, lie numerous violations related to working conditions, pay, and returning of posted workers to Slovenia – a situation with which Mr. Čosić is all too familiar.

P.S.

On 1 January 2018, the Transnational Provision of Services Act will come into force, which is envisaged to prevent A1 forms from being issued to dishonest employers. However, let us wait and see the real effects.

LABOUR MOBILITY AND WORKER PROTECTION IN THE EU: AN OVERVIEW OF ETUI RESEARCH AGENDA

Magdalena Bernaciak¹² and Viktor Kempa¹³

Historical overview

The term 'worker protection' may refer as much to issues concerning the regulation of wage and non-wage aspects of the employment relationship as to occupational safety and health (OSH). At the European Trade Union Institute (ETUI), these two areas are covered respectively by the Economic, Employment and Social Policies Unit and the Health and Safety, Working Conditions Unit (HESA).

During the talk, several research projects conducted by ETUI researchers in relation to the issues of migrant and posted workers' working conditions were presented:

1) The project 'Intra-EU labour migration in times of the crisis: does it contribute to better labour allocation in Europe?', coordinated by ETUI Senior Researcher Bela Galgóczi, analysed trends in east-west EU labour mobility during the crisis. The project specifically looked at employment/ unemployment patterns among labour migrants from new EU member states, their sectoral distribution, as well as the issues of skills/occupation match. The evidence gathered during the project showed that during the recent economic crisis, CEE labour migrants served as a labour market buffer in destination countries; they were more affected by the crisis than host country nationals. The evidence also pointed to high and enduring overqualification of EU10 labour migrants, which suggested that even though the free movement of labour was generally beneficial, the underutilisation of human resources in the case of east-west migration remained a major challenge.

2) The project 'Social dumping in the enlarged EU: concepts, challenges and policy options', coordinated by ETUI Senior Researcher Magdalena Bernaciak, sought to conceptualise social dumping and identify mechanisms behind it. It focused on three areas: a. intra-EU migration and employee posting; b. manufacturing sectors; c. national and EU-level policy measures. The project conceptualised social dumping as the practice of undermining or evading existing social regulations that was undertaken

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by self-interested market participants to gain a competitive advantage. It also showed that rule circumvention took different forms in different regulatory settings. Last, but not least, it showed that social dumping was not an exclusive domain of low-wage country actors and that, in fact, it might not even be a cross-border phenomenon.

3) The project 'Company decision-making across borders: the outsourcing challenge', coordinated by ETUI Senior Researcher Jan Drahokoupil, analysed outsourcing trends in the EU and their impact on working conditions and union organising strategies in outsourcing-prone areas. The project's findings related to employee migration and posting showed that subcontracting to transnational service providers was often used by companies to contest host-country regulations and exploit differences between national regulatory systems. They also testified to the enduring enforcement problems in the area of migrant and posted workers' employment standards. Finally, the project identified several factors that might facilitate the recruitment of mobile posted workers, pointing to the importance of unions' accessibility, their pro-active approach, and the role of trust and coalition-building with other civic society organisations active within migrant and posted workers' communities.

4) The upcoming project 'Posting in the EU: an interdisciplinary study', jointly coordinated by ETUI researchers Magdalena Bernaciak and Zane Rasnača, will analyse posting-related case law in ten EU Member States to identify problems that emerge in the application of the posting regulations for workers as well as for posting companies in different political economic/industrial relations settings. By juxtaposing legal data and political-economic concepts and approaches, the project will provide an interdisciplinary perspective on posting. At the same time, the data gathered in the course of the project will be extremely valuable, given the scattered and incomplete character of information on employee posting and the problematic aspects of its regulation (especially as seen from the 'bottom-up' perspective of individual EU Member States).

5) The current work of ETUI's Health and Safety, Working Conditions (HESA) Unit is focused on a variety of topics, such as:

- EU policies and EU legislation;
- prevention systems;
- worker representation in OSH;

- work organisation/precarious work;
- psychosocial risks, including stress, and violence in the workplace;
- MSD;
- chemicals, asbestos, and nanotechnologies;
- work equipment safety/CEN.

To carry out work in the fields listed above, the Unit's researchers prepare OSH-related publications; run networks of external experts on specific topics; organise workshops, trainings, and conferences; provide expert input to ETUC work; and represent ETUC in the course of negotiations at EU tripartite bodies.

At present, the Unit does not run any specific project related to labour migration and posting. On the other hand, in view of their multiple vulnerabilities, these categories of workers are indirectly the subject of ETUI HESA researchers' work. Moreover, in the past, ETUI senior researcher Viktor Kempa took part in the preparation of external publication 'The Hidden Face of Migration: Double Standards in the Workplace', which examined migrant workers' working conditions and unions' efforts to assist this category of employees.

ROLE AND INTERVENTION OF TRADE UNIONS IN EUROPE AND IN ITALY

Mercedes Landolfi¹⁴ and Emanuele Verrocchi¹⁵

Fillea CGIL is a trade union federation which represents workers of the construction industry in Italy. In this branch, foreign workers account for nearly half of the total labour force and an increasing number of posted workers in the EU has been recorded over the last few years as a legal (or illegal) way to take on foreign workers, especially those coming from eastern Europe. Using posted workers is clearly cheaper than signing a regular Italian labour contract, particularly since it can be an easy way to cover illegal or irregular employment, namely, the form of hiring non-compliant with the national collective agreement, which is currently ruling the construction industry.

For years, we have been driving forward control systems of EU posted working, we have been trying to train and apprise workers of their rights and implications of posted work contracts; however, it is not easy to find and reach them, since they often work and live isolated from Italian or foreign employees who are not posted workers. We have printed informative material, leaflets and brochures in Romanian and arranged training courses for our delegates and officials, as posted work is often hardly recognisable and the matter can be very tricky even for trade unionists.

We have been taking action for some time now at the European level as well, with initiatives supported by the European Federation of Building and Woodworkers (EFBWW), aimed at monitoring the cases of false posted work in every country and at putting pressure on the European Commission in order to obtain the adoption of real resolutions (such as the last modification of the directive still under discussion) that will not be to workers' detriment. We have recently taken part in two different European projects: RIDER and ECMIN 2.0. With the former, we have created a network among trade unions from different European countries and solved many concrete cases; and with the latter, which is still underway, we aim to develop a website where it will be possible to obtain information regarding agreements, rights and wages in twenty-

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eight European countries and in twenty-four different languages. Furthermore, in order to assist workers in distress in each country, the contacts of all trade unions will be available and the provided staff will be capable of communicating in several different languages.

Let me now focus on the actual situation that migrant posted workers are currently facing in Italy.

First of all, I would like to make quite a strong statement. As I said yesterday, in many cases, posted workers do not even know they are fitting that description and are, therefore, totally unaware of their situation. Unlike Italian employees, posted workers know nothing about their relevant legislation, the amount of a fair wage, rights that they should have access to, and whether or not their social security contributions are actually being paid by their employers in their home countries. I would like to stress that, unlike other countries, foreign workers in Italy have the same contractual service as Italian workers, regardless of whether they are posted or permanent employees. Wages, working hours, safety standards, accommodations, and vocational training are equal for every worker of the same industry.

But how many such workers are there and what are the conditions they live in? More than two million in Europe and more than 50,000 in Italy, 50% of whom work in construction, are workers who, under the fake regularity of the European legislation on posted workers, move from one European country to another, organised by brokerage houses and recruited in Romania, Poland, Bulgaria, as well as Slovenia, Lithuania and Latvia, with contracts that are sometimes apparently regular and sometimes totally irregular. They work up to twenty-six days per month, ten to twelve hours per day, with pitiful wages, €5,00 per hour, run-down and unsanitary housing, unpaid contributions, and no health insurance – European workers in every regard but that of their rights.

This is the apparently legal situation which faces not only many foreign construction workers, but also workers in other sectors such as transportation and agriculture; this is the reality which conceals an area of substantial exploitation and social dumping, situations often unknown or kept well hidden and which not even trade unions are capable to reach except in extreme cases of serious injuries at work.

Eastern European companies are clearly very attracted to the highly fragmented and structurally weak Italian market, which allows them to provide cheaper services than Italian companies because of lower labour costs that still characterise these countries. You can import workers into our country without too many controls and then easily incorporate them into the thousand meshes of subcontracting and a thousand steps in the construction industry, as well as hide them from the labour inspection, revenue authorities, and even trade unions.

Some companies offer with impunity groups of up to fifty workers as goods on sale, at a very low cost, with no food and no accommodation, willing to sleep in containers with no toilets. They are the new slaves, a new form of export of arms, often already resident in Italy, sometimes rented in bulk, whole teams, with no social assistance, often unaware of their rights. This is the new face of illegal hiring the “caporalato”, the one seemingly clean and which, even if discovered, is very difficult to punish. If a worker is posted to another European country, he should receive the same remuneration as well as contractual and regulatory coverage of the host country, while the contributions remain in the country of origin. But who can check whether this is really the case?

In Italy, these controls are extremely difficult and rare. There is no European contributions database, no European coordination of inspection services, and the rules governing the EU posting are difficult to interpret even for the lawyers or judges, who only rarely come into contact with court cases of false posting, illegal hiring or labor brokerage. It is often difficult to distinguish these crimes, as they are intertwined with each other, some are criminal offenses and others civil ones. In the case of posting without requirements, the penalty is a simple fine of €50.00, which often results in the entire procedure being nullified. More than once, we found ourselves dealing with cases that were clearly crimes in our opinion, yet skillful lawyers and the vulnerability of the same workers, who were victims of exploitation and often blackmailed, have prevented the prosecution from going through with it. There are plenty of such cases.

The interpretation and analysis of the international posting phenomenon in Italy is extremely difficult because of the lack of official data or reliable estimates that can be destroyed by productive sectors. The impact of the phenomenon of posting in the construction sector in Italy still does not seem to be particularly relevant and, in any case, being geographically highly localised, it is almost exclusively present in the northern regions and the capital. However, in the case of companies (often Italian-

owned) with regional offices in the new EU Member States, in particular Romania and Poland, their presence seems to trigger competitive mechanisms that lead to a clear and obvious lowering of working conditions.

The necessary documents are easily forged and, above all, do not allow a constant check of the maintenance of the regularity or maintenance of employment in the country of origin. This is also demonstrated by the difficulties encountered by the Inspectorate in trying to obtain concrete information tools for monitoring and verifying the employment conditions of workers who are active in their area, but employed by companies established in other countries.

The strategies for monitoring and controlling this phenomenon and, in the event of irregularities, to take action, have a strong international connotation and require large investments in terms of continued collaboration between institutions and labour organisations in different countries. The collaboration strategy should be pursued through closer cooperation and a more formal cooperation through the establishment of formal protocols.

Different parties essentially perceive posting in two ways: through the prism of posting Italian workers abroad and through the prism of receiving workers from the new EU Member States who are employed in Italy via the posting mechanism, because they “cost less”. In general, the Posted Workers Directive seems to be taken more as a regulation that enables companies, particularly those in eastern Europe, to be more competitive by means of a normal mechanism, as competition in the housing market, at this time, seems to consist of having the lowest possible cost, in particular as regards the labour force.

The current economic crisis has produced a sudden increase in the construction sector of undeclared or even completely illegal labour. In a sector where the presence of these phenomena is structural, the crisis has even further exacerbated these trends, the exploitation of foreign workers has increased exponentially, and foreigners seconded by another country are the weakest link, the victims mostly affected by wage, social, existential dumping. The phenomenon of dumping and exploitation linked to the secondment, the illegal hiring “caporalato”, and exploitation in construction is widespread throughout Europe, but in Italy the percentages are very high and alarming.

In conclusion, we are at war and have to fight together, because no one – no institution, trade union, worker or NGO – is self-sufficient. Problems can only be resolved through mutual collaboration. Wherever I go, I say one thing: while Europe is marked by the free movement of companies, money, and persons, it has yet to establish the free movement of rights. These are our new frontiers.

OCCUPATIONAL HEALTH AND SAFETY OF POSTED WORKERS IN THE REPUBLIC OF CROATIA

Miro Babić¹⁶

The occupational health and safety system in the Republic of Croatia, in particular the national policy and activities, general principles of prevention and occupational health, safety regulations, employer's obligations, rights and obligations of employees and of employees' commissioner for occupational health and safety, activities in relation to occupational health and safety, as well as supervision and misdemeanour liability are regulated by the Occupational Health and Safety Act (Official Gazette No. 71/14, 118/14 and 154/14, hereinafter: the Act). By this Act, the EU Directives 89/391/EEC, 2007/30/EC, 91/383/EEC, 92/85/EEC, and 94/33/EC are transposed into the national legislation of the Republic of Croatia.

The provisions of the Act apply to all activities in which employees perform work for the employer. The provisions of the Act shall also apply to the investor, building owner, concessionaire or any other person that has contracted the execution of the works in accordance with special regulations. However, it should be noted that for performing specific jobs, where the general principle of prevention and avoidance of risk (such as activities of the Croatian Armed Forces, police activities, protection and rescue activities, protection of persons and property and activities of firefighters and deminers, and other specific jobs) cannot be fully applied, occupational health and safety are regulated by special regulations.

The employer is responsible for the organisation and implementation of occupational health and safety of employees in all segments of the organisation of work and in all work processes (Article 19). The employer covers the costs of occupational health and safety implementation, i.e., employees shall not be charged for its implementation (Article 17).

The provisions of the Act in the Republic of Croatia apply to all employees and persons at work (apprentices, students, students to practice, people performing seasonal work,

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etc.). Moreover, the provision of Article 54 of the Act stipulates that all foreign employees should, under the conditions set out by special regulations, meet the conditions prescribed by the provisions of the Act and the regulations adopted in pursuance thereof. All regulations are available on the internet portal of the Ministry of Labour and Pension System, at: <http://www.mrms.hr/katalog-zakona-i-propisa/>.

The Act stipulates that for performing tasks that involve specific risks, the employee, in addition to the general conditions of employment, should meet the prescribed special conditions relating to age, professional qualification and health status or mental ability. What is more, the Ordinance on jobs with special working conditions set out in the Annex (Official Gazette No. 5/84) stipulates what kind of jobs are jobs with special working conditions as well as what specific professional qualifications, health and mental abilities should be met by the employee, including intervals of periodical health check-ups.

In accordance with Article 62 of the Act, the employer shall ensure that the employee is provided with:

1. Risk assessments for the workplace and tasks to be performed in that workplace;
2. Instructions for safe working practices in the workplace and tasks to be performed there;
3. A written document as evidence that the employee has been trained in safe working practices;
4. A written document demonstrating that the employee fulfils the requirements to perform tasks under special working conditions;
5. A record of checks carried out on the work equipment, installations, and work environment.

The same Article proscribes that risk assessment, documents and records need not be kept at the site where work is scheduled to last no longer than thirty days, but must be made available within a period specified by a competent inspector.

Accordingly to stated, when a Slovenian employer posts workers to the Republic of Croatia, the latter must fulfil all prescribed requirements in the field of occupational health and safety. Listed below are some of the requirements for ensuring safety at work and the ways of demonstrating compliance with these requirements.

Everyone who perform work for the employer must be trained in safe operating procedures for their jobs, both in theory and practice. The report on the assessment of employees' ability to work in a safe manner must be drafted and signed by the direct supervisor of the trained employee, the employee himself, and the occupational health and safety specialist who conducted the training.

Workers from an EU Member State who have completed training in safe operating procedures for their jobs and have proof in accordance with the valid regulations in that Member State need not undergo the same training in Croatia. It is sufficient to assess, in the prescribed manner, the persons' competence in safe operating procedures in their workplace in the Republic of Croatia (only the practical part). The assessment should be carried out by an authorised company for safety at work in the Republic of Croatia. Workers who are not trained in safe operating procedures for their jobs should work under the supervision of an employee who has completed such training, but this should last no longer than sixty days.

If workers perform jobs with special working conditions, e.g., crane operator, signalman, forklift operator, excavator operator, etc., in accordance with the Ordinance on Jobs with Special Working Conditions ("Official Gazette" No. 5/84,) they must fulfil vocational competences and adequate health status. The employer must not allow the performance of jobs with special working conditions to workers who do not meet the conditions prescribed in the above mentioned Ordinance or in the special provision for those activities (Article 36 of the Act).

A worker who is qualified to perform certain tasks in accordance with the regulations of the home country and has a valid document meets the requirement of qualification to perform such activities in the Republic of Croatia if these jobs are prescribed in Croatia as jobs with special working conditions that require special skills and if there is no special regulation in Croatia that would prescribe other specific conditions, methods, contents and duration of training. A document demonstrating the professional competence of

workers in jobs with special conditions must be issued in the Croatian language and Latin script or translated into the Croatian language by a certified translator, regardless of the place of issue. For certain activities, professional qualifications require an appropriate level of education, in which case proof must be furnished in accordance with special regulations on the recognition of foreign qualifications.

Medical ability to work in the Republic of Croatia is determined by a specialist in occupational medicine (or a specialist in occupational and sports medicine). The Republic of Croatia recognises medical confirmation (certificate) issued by the medical institution or doctor's office in another EU Member State, indicating the types of jobs with special conditions it covers (work at height, manual lifting, driving, etc.)

As stated above, the worker should receive adequate instructions for safe work (in a language that he understands) and the work equipment inspection certificate. In regard to 'foreign work equipment' which has not been disassembled (and reassembled) before being put to use in Croatia and for which the employer has a valid certificate of testing performed in the EU, it is not necessary to perform such testing in Croatia.

In addition to the above, the worker must have available installation inspection certificates (and in specific cases working environment test certificates). In regard to risk assessment, the findings must be available to workers on construction sites where work is scheduled to last longer than thirty days. If a contractor is from Slovenia or any other EU Member State, the risk assessment for jobs that employees temporarily perform in Croatia can be made in the EU; however, it has to be updated in the workplace in the Republic of Croatia, in accordance with the Ordinance on Risk Assessment (Official Gazette No. 112/14) and correspond to existing risks, harms and exertions.

In terms of language, the use of language and alphabet is regulated by the provisions of Article 12 of the Constitution. All documents mentioned above must be available in the Croatian language and translated by a court interpreter. Besides these, documents that were originally issued in one of the languages of the EU will be recognised in Croatia if the employer at the workplace in Croatia has 'originals' as well as stamped and signed documents of the same issuer in the Croatian language.

Inspection of the implementation of provisions of safety and health at work is carried out by labour inspectors, unless stipulated otherwise by a separate act. In accordance with the provisions of Article 91 of the Act, in conducting the inspection of occupational health and safety matters, an inspector shall, by means of an oral decision, order the employer to suspend the following activities until such time as the identified deficiency has been remedied:

1. use means of work and personal protective equipment, or a building or its components, premises, plants, devices and other work equipment which are defective or for which the employer is unable to provide documentation stipulated by this Act and other regulations (Articles 41 and 42);
2. carry out working procedures contrary to this Act and other regulations, without the use of prescribed personal protective equipment, and otherwise behave and act in a manner that is not in compliance with the provisions of this Act and other regulations (Articles 41, 43, 44, 48, and 49);
3. use physical, chemical, biological and other hazards, unless the employee has been provided with information about the risks involved or for which no documentation, stipulated by this Act and other regulations, has been provided in the workplace (Articles 45, 46, 47, 48, 49, and 50).

In conducting an inspection of occupational health and safety, an inspector shall, by means of an oral decision and until such time as the identified deficiency has been remedied, order the employer to do the following:

1. remove from the workplace any employee for whom it fails to provide evidence showing that the employee concerned meets all the requirements prescribed by this Act and other regulations (Articles 28, 36, 38, 39, 40, and 54).
2. suspend from work any employee suspected on reasonable grounds of being under the influence of alcohol or other addictive substances (Articles 58 and 59).

In respect of violations of rules on occupational safety and health, fines are prescribed by the provisions of Articles 94 to 100 of the Act. Penalties range from HRK 10,000 to 120,000 for legal persons, and from HRK 3,000 to HRK 6,000 for the accountable legal entity and for the employer as the natural person. In the event of a repeating infringement, the person who has committed the offence shall have to pay double the amount of the former fine. These Articles also stipulate which fines may be imposed on the site where the offence occurred.

Further information relevant to the posting of workers in the Republic of Croatia can be found on the website of the Ministry of Labour and Pension System, at <http://www.mrms.hr/posting/>.

SOME LEGAL AND PRACTICAL CONSIDERATIONS ON ENFORCEMENT OF OSH REGULATION FOR POSTED WORKERS

Karel Van Damme¹⁷

From an OSH perspective, a distinction can be made between non-problematic and problematic posting situations. Problematic situations are often part of what is called the precarious side of the labour market. For such workers, the protection of occupational health and safety is a major challenge.

We are confronted with a dualistic labour world that can roughly be described as follows.

On the positive side, we do have: Employees with well-developed skills and diplomas, stable working conditions, limited exposure to health and safety risks, a considerable mental workload, the possibility and perspective of career planning as well as the possibility of returning to good living conditions and a good living environment after working hours, good trade union representation and, if needed, good health surveillance.

On the negative side, we do see: Workers with poor or no training, regularly changing working conditions and environment (if there is work), considerable exposure or possible exposure to multiple and variable risks, a high physical workload, not having the luxury of not accepting a job offer. At the end of the working day, they return to rather poor living conditions and environment. They have no trade union representation and access to poor or no health surveillance.

Of course, the above is a simplified bipolar representation of a much more variable reality. However, the model should allow not only to understand the main evolution of the labour market nowadays, but also to identify possible levers for shifting workers and their jobs from the negative to the positive side.

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Nowadays, we are more often confronted in our country with problematic posting situations in which workers are definitely at the negative side of our model.

The posting of workers often coincides with outsourcing and problematic subcontracting practices. This enhances several risk factors related to posting, such as being involved in jobs under circumstances which workers are not familiar with and are thus more susceptible to accidents, or the lack of the right skills to do a job in a proper way.

The outsourcing of jobs that are not part of the so-called core-business and substituting these for subcontracting has become an inevitable part of modern management strategy. The said strategy is the consequence of the globalised domination of the financial world and the issuing possibility for shareholders to seek worldwide for the highest possible profit at every point in time. This puts tremendous pressure on companies to reduce the cost of production, with significant short-term results.

Among outsourced activities, there are jobs that may enhance considerable exposure to risks: Maintenance of all kinds, heavy jobs in construction industry, agriculture, meat industry, etc. Many of these jobs were done beforehand by big companies' regular employees. These companies have high-level experts in occupational health and safety, who have contributed considerably to better working conditions for all employees. Now, it looks as if the risks are often outsourced, but the awareness of those risks and the knowledge on how to control these risks are often missing in companies that work in a subcontracting context.

From an OSH perspective, outsourcing of tasks is not a problem if the work is, for instance, entrusted to highly specialised companies that respect all regulations, do have experienced workers, as well as a sound knowledge on how to control possible risks and the willingness to do so.

The increase in outsourcing and subcontracting strategies has also led to the increase in unfair competition between companies operating in the same market of contractors. Social fraud is one way to reach that goal as, for instance, with non-declared work, bogus posting, underpayment, non-payment of social security in the home country, non-compliance with all social clauses of collective agreements and regulations in the

work country, and bad housing for posted workers.

However, non-compliance with OSH regulations, especially in risky jobs, may be a considerable instrument for reducing production costs as well. It is the impression of labour inspectors that posting has led to a significant increase in the practices of social dumping and non-compliance with OSH prevention.

Stopping social fraud and unacceptable working conditions is a must for authorities, as the failure to do so launches a vicious circle: people in need or in socially insecure situations are ready to accept dangerous working conditions or are not aware of these working conditions being dangerous. In both cases, such workers have de facto accepted dangerous conditions. In case they are not aware of it, the reason is clear. In other cases, interiorising distorted norms on occupational safety and health prevention, and thus considering those distortions as a normal practice, is a mental defense mechanism that may help to accept one's situation when it is too hard or when there is no willingness or possibility to oppose bad working conditions. In contrast, not interiorising may make it mentally very difficult, if not intolerable, to continue to work under such conditions. The consequence of interiorising is a situation of the worker's de facto (albeit unconscious) complicity in undermining labour regulations. Unconscious in the sense of not being aware that the acceptance of such a situation may have consequences for third persons. If this process is not stopped, the inevitable consequence is that more enterprises will adopt the strategy of surviving in an economic context of unfair competition to the detriment of the protection of workers. Low-cost workers that de facto accept possible risks will get the jobs. Those who want a decent job will have a limited access to new jobs. Low- or unskilled posted workers are an important part in the initiation of this vicious circle.

Regulatory and other measures should be taken to tackle this challenge. The most important regulatory measures probably are not possible restrictions on posting as such (although some measures can be helpful), but regulations imposing joint and several liability in subcontracting.

National legislations in EU Member States should not allow any of the actors in the entire subcontracting chain to withdraw from responsibilities regarding OSH protection of both their own workers and any other workers present at the same site.

So, contractual arrangements, for instance, between two companies resulting in a transfer of responsibilities, under which the contracting party cannot be held accountable for the contractor's major shortcomings, should not be blessed or covered by national legislation. This principle of joint and several liability could go in either upward or downward direction along the subcontracting chain, from the initial commissioner to the bottom of the contracting cascade.

Such a regulatory principle is a pre-condition to guarantee that all actors in a subcontracting chain will take their responsibility rather than investing their energy in escaping their legal accountability. This does not prevent regulations or (contractual) agreements from identifying specific responsibilities of each actor. However, the responsibility for OSH is thereby not shifted but shared by all actors involved. The principle that each actor can always be held accountable in case of an accident or a disease will lead to better and more effective arrangements, as well as compliance with these arrangements and regulations.

The prohibition of outsourcing of very specific high risk jobs may be another part of effective policies and regulations that aim to protect workers. The abusive use of posting to the detriment of OSH protection can to a large extent be tackled in this way, leading to better protection of both posted and non-posted workers.

The papers contained in this booklet were presented at the transnational conference “Employment/Working Conditions, Occupational Safety and Health of Posted Workers” in Ljubljana, Slovenia (15 February 2017). The conference brought together experts (researchers and practitioners) from several European countries to discuss the existing and new challenges related to OSH (occupational safety and health), labour, and working conditions of posted workers. The conference served as the launch event of the POOSH project, financed by the European Commission (Programme EaSI PROGRESS).

The booklet is covering the topic of the OSH of posted workers from several angles. The first part is framed around contributions given by researchers working in the field of labor mobility, with the focus on the occupational safety and health of posted workers. The second part contains contributions from practitioners working in NGOs, trade unions or Ministries of Labour who presented their work as well as discussed national and transnational legislations related to the OSH of posted workers.

“In July 2016, we received a request for assistance from a social worker at the SOČA University Rehabilitation Institute. The matter concerned the patient Zehrudin Čosić, who was undergoing a rehabilitation treatment at the aforementioned institute after suffering a serious spinal injury as a result of a work accident that occurred at a construction site in Antwerp, Belgium. Mr. Čosić worked in Belgium as a construction worker for the Slovenian company Sova Tri, based in Radlje ob Dravi. The work accident occurred on 9 March 2016. The roof of the building broke under Mr. Čosić, who sustained a roughly five-meter fall and suffered life-threatening spinal injuries. He was taken to a hospital in Antwerp where he was admitted on the date of the accident, i.e., 9 March 2016, and remained until 30 May 2016, when his condition was stable enough for him to be transported from Belgium to Slovenia. The transport was made by ambulance to the University Medical Centre Ljubljana, and on 6 June 2016, Mr. Čosić began to undergo treatment at the SOČA Rehabilitation Institute. As already stated, the injury sustained in the work accident left Mr. Čosić a paraplegic.” (Goran Lukić)



**Research Centre of the Slovenian Academy
of Sciences and Arts, Slovenian Migration Institute**

