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POOSH – Occupational Safety and Health of Posted Workers: Depicting the existing and future challenges in assuring decent working conditions and wellbeing of workers in hazardous sectors (Project number VS/2016/0224; 2017 – 2018)

**Work Package 4
COMPARATIVE RESEARCH STUDY**

POOSH COUNTRY Report in Austria

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Executive Summary

- With a total of 108,627 of PDs A1 issued in 2015 for posted workers coming to Austria, the country ranked 4th in the EU after Germany, France and Belgium. This is an increase by 7.5% compared to 2014 and constitutes a share of 2.7% of workers in national employment. Slovenia, Germany, Hungary, Slovakia and Poland were the five main sending countries. Austria ranked highest in terms of postings received from neighboring Member States, which underscores the importance of geographical proximity in the dynamics of posting to Austria. In contrast to the incoming workers, only 64,373 PDs A1 were issued in Austria for outgoing workers.
- From a sending as well as from a receiving perspective the most relevant sector employing posted workers in Austria is the construction sector with around 51% of PDs A1 issued for Austrian workers posted to other countries and about 54% of foreign workers posted to Austria's construction sites.
- Although both sending and receiving perspectives were taken into consideration, this report provides mostly data on posted workers coming to Austria.
- The literature on the OSH of posted workers is lacking in Austria, same as in other EU countries. Academic articles and other reports deal with these two matters separately. Therefore, empirical data was collected through semi-structured individual interviews with 14 respondents from different (institutional) backgrounds to investigate the OSH-related vulnerabilities of posted workers in Austria.
- National competent authorities and agencies have made great attempts early on after the transposition of the Posting of Workers Directive (96/71/EC) to protect posted workers from increased OSH-related risks. Yet, data from our research suggest that vulnerabilities still persist.
- The temporary migration status affects their situation in multiple ways: firstly, employers pay less attention in terms of OSH training towards them; secondly, their temporary status marks them as workers who are easier to exploit and pressure to accept unsatisfactory working/OSH conditions; thirdly, it also influences posted workers' behavior in so far as due to their short-termed stay, they tend not to inform themselves sufficiently about their rights and the regulations in Austria. The last point is caused by a lack of integration and a feeling of not belonging of posted workers themselves into the Austrian system, which are caused by the temporariness of their stay.
- In view of their temporary migration status, posted workers in low-skilled sectors from lower-income countries are highly dependent on the income they receive in Austria. Third-country nationals are in an even more vulnerable situation. Their stay in the European Union depends on a valid work visa, often from the sending country, so they become particularly dependent on their employers.
- Due to low wage levels or limited job opportunities in sending countries, posted workers often consent to working more than the legally permitted working hours per day, per week or per month. Often, they do not report dangerous working conditions or go back to work too early after sickness or injury.

- The lack of necessary language skills is a major factor causing OSH risks. It increases workers' vulnerabilities and impedes the work of labour inspectors, trade unions and other actors who aim at securing a safe and healthy workplace for all workers, including posted workers.
- In the case of OSH-related grievances, posted workers, trade union representatives and labour inspectors highlight how weak posted workers' position to assert their rights is. Due to a lack of information in general and in their language in particular, on grievance procedures and support structures, the workers are often exposed to exploitation.
- OSH and posting are two matters that are often handled by different authorities in Austria. This structural separation hampers the well-functioning of protective mechanisms. The main stakeholders involved in OSH-related matters in Austria are The Federal Ministries of Labour, Social Affairs, Health and Consumer Protection (Bundesministerium für Arbeit, Soziales, Gesundheit und Konsumentenschutz, BMASGK), the Labour Inspectorate as an enforcement Authority, the Austrian social security institutions and the Austrian Workers' Compensation Board (AUVA) together with the social partners, i.e. the Economic Chamber (Wirtschaftskammer Österreich, WKO), the Chamber of Labour (Arbeiterkammer, AK), the Chamber of Agriculture (Landwirtschaftskammer, LK), the Trade Union Federation (Österreichischer Gewerkschaftsbund, ÖGB), as well as the Federation of Austrian Industries (Industriellenvereinigung, IV). In particular, the great importance of the AUVA, a special insurance institution dedicated fully to all matters surrounding (work and non-work) accidents and their prevention, has been highlighted. It has been characterised as a good practice example by other Member States.
- On the national level, there is a close cooperation network of all OSH actors in Austria. Furthermore, special thematic working groups have been initiated to foster exchange with authorities and stakeholders on matters that have overlaps with different institutions, such as posting. There is a non-institutionalised knowledge exchange between representatives of OSH authorities and representatives from the financial police, the competence centre "Lohn- und Sozialdumping Bekämpfung (LSDB)" (Fight against wage and social dumping) at the Vienna Regional Health Insurance Fund (Wiener Gebietskrankenkasse, WGKK) or, for the construction sector, the Construction Workers' Annual Leave and Severance Pay Fund (BUAK).
- On the transnational level, establishing closer cooperation remains difficult. Although the authorities are obliged to use the IMI-system since 2017, there are matters related to posting/OSH grievances that cannot be resolved through the system. The possibilities to monitor foreign employers are still very limited for Austrian authorities.

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1. Introduction

1.1. A quick overview of OSH and posted work in the country

With almost 109,000 PDs A1 (PDs A1) issued for posted workers coming to Austria in 2015, the country ranks 4th in terms of the number of incoming posted workers. This is an increase by 7.5% compared to 2014 and constitutes a share of 2.7% of posted workers in the national workforce. The most recent European Commission country factsheet indicates that the increase has continued in 2016 with 120,150 workers posted to Austria and 75,132 workers posted from Austria. Posting is therefore a non-negligible part of the Austrian labour market. Around half of the posted workers in Austria are employed in the construction sector followed by the service sector (25%) and other industrial activities (20%) (Pacolet & De Wispelaere, 2016). Since the labour market was opened for workers from the new Member States in 2011 postings from these states have gained importance (Schmatz & Wetzel, 2014). Around 62% of posted workers have been sent through companies with a place of principal undertaking in an EU-8 country compared to around 25% before the liberalisation of the Austrian labour market. Interesting to note is that 59% of posted workers are posted for a period shorter than a month (Schmatz & Wetzel, 2014). In contrast to the incoming workers, only 64,373 PDs A1 were issued in Austria for outgoing workers. Compared to 2014 this accounts for an increase of posted workers outside of Austria by around 35% and by around 113% compared to 2010. The number of postings from Austria has increased by 189.4% since 2010 and the country is currently tenth per number of posted workers to other Member States.

The most problematic issues connected with posting of workers to Austria are wage dumping and incorrect or missing working time documentation. Moreover, posted workers are more likely to be employed in hazardous sectors and face increased Occupational Safety and Health (OSH) risks.

The main stakeholders involved in OSH-related matters in Austria are the Federal Ministries of Labour, Social Affairs, Health and Consumer Protection (Bundesministerium für Arbeit, Soziales, Gesundheit und Konsumentenschutz, BMASSGK), the Labour Inspectorate as an enforcement Authority, the Austrian social security institutions and the Austrian Workers' Compensation Board (AUVA) together with the social partners, i.e. the Economic Chamber (Wirtschaftskammer Österreich, WKÖ), the Chamber of Labour (Arbeiterkammer, AK), the Chamber of Agriculture (Landwirtschaftskammer, LK), the Trade Union Federation (Österreichischer Gewerkschaftsbund, ÖGB), as well as the Federation of Austrian Industries (Industriellenvereinigung, IV)¹. All national OSH regulations are specified in the Health and Safety at Work Act published in 1994 (ArbeitnehmerInnenschutzgesetz, also sometimes translated as "Employee Protection Act").

Even though OSH authorities in Austria pay special attention to the increased vulnerabilities of posted workers in terms of OSH, there is little documentation and research on this matter. This study aims to close this knowledge gap by providing a first mapping of the OSH situation of posted workers in Austria. We look at how their (working) lives in transnational workplaces are affected by the relevant EU and national OSH and posting regulations. The main research question we pose therefore is: How does the

¹ Not a social partner in the stricter sense.

interplay of EU-regulation and national OSH systems affect the health and safety of (posted) workers in a transnational workplace? To answer this question, we use the following sub-questions:

- How do national and transnational OSH and employment regulation interact in transnational workplaces within the EU common market?
- What are the OSH-related vulnerabilities of posted workers stemming from the existing systems? (Access, quality of service and protection, ...)
- How do OSH preventative practices manifest in transnational workplaces?
- How are OSH-related grievances addressed in transnational workplaces?
- What are the legal and health care mechanisms and practices in case of work-related accidents in which posted workers are involved?
- How are language and cultural barriers managed in transnational workplaces, in terms of prevention as well as grievance management?
- What measures can be developed at the systemic and workplace level to reduce OSH-related vulnerabilities?

Apart from (the scarce) grey and academic literature which is available on the issue of OSH of posted workers, or more general on OSH and posting, we use semi-structured interviews to gather data for our research. This empirical data is then analysed using thematic analysis.

1.2. Main Findings

Although Austrian authorities have undertaken substantial efforts to reduce the vulnerabilities of posted workers, some issues remain. They persist both in terms of OSH and other aspects of posting, such as working time or remuneration.

Lack of appropriate training and language skills have been identified as major factors increasing vulnerabilities of posted workers. Furthermore, the awareness of temporariness of the posting assignment, both from the employers' and workers' side, contributes to making workers easier to exploit and decreases their incentives to inform themselves about their rights and the relevant regulations in Austria. High dependence on income from posting jobs lowers the probability to report grievances related to OSH. Third-country nationals' dependence on their employers is particularly high because their visa and work permit for the EU depend on them.

1.3. Structure of the country report

This introduction is followed by a description of the country context in Austria regarding OSH and posting in section 2. Section 3 then presents the methodology used to gather empirical data for our investigation. The results of our research are presented in section 4, followed by a synthesis and some conclusions in section 5. Some tentative policy implications and recommendations are outlined in the final section.

2. Country Context

2.1. Socio-economic overview

Austria has an overall population of 8.7 million people (Eurostat, 2018). In 2016, 4.22 million of these were gainfully employed, out of which 3.68 million were in salaried employment. Compared to 2015 this figure increased by 74,300 persons. The number of self-employed and unpaid family members, however, remained on the same level with 473,200 and 63,700 respectively (Statistik Austria, 2017). The overall employment rate amongst people aged 15 to 64 was at 71.5%. Employment rates amongst women and men are 68.2% and 76.2% respectively (Statistik Austria, 2018a). About a quarter of the Austrian workforce was employed part-time (28.7%) with women making up for a considerably higher share of part-time contracts (47.8% of all working women) than men (11.8%). Overall part-time work has seen a rising trend in the last 10 years whereas the number of the full-time employed has been fluctuating since 2006 and was almost on the same level in 2016 (Statistik Austria, 2017). The largest share of the Austrian workforce was engaged in the service sector with 70.1%, followed by 25.6% working in the industry and another 4.3% in agriculture (Statistik Austria, 2017). Furthermore, there is a visible trend towards academic education amongst people working in Austria. While only 13.6% of the labour force attended academic education in 2006 this share increased to 18.3% in 2016. At the same time the figure of people who only attended compulsory education decreased from 16.5% in 2006 to 12.6% in 2016 (Statistik Austria, 2018b). Unemployment amongst women (5.0%) was markedly lower than amongst men (5.9%) (Statistik Austria, 2018c). However, there was an average of 72.800 open jobs in 2016, mainly in the service industry or as shop vendors (25.4%). Another 17.2% were technical jobs followed by craftsmen (15.5%) and academic jobs (14.2%). About 7.9% of the open jobs were ancillary activities (Statistik Austria, 2017).

The share of foreign citizens in the Austrian workforce has also seen a strong increase in the past ten years. While it was at 9.5% in 2006, foreign citizens accounted for 14.4% of the Austrian workforce in 2016 (Statistik Austria, 2017). On the other hand, the unemployment rate was at 5.5% with an absolute number of 247,900 people out of work on average throughout the year 2017 (Statistik Austria, 2018b). Foreign citizens have markedly more unstable employment and significantly higher risk of unemployment compared with Austrian citizens. Terminated employments involving non-Austrian citizens were on average shorter (2016: 281 days) than those of Austrian citizens (721 days). The unemployment rate of non-Austrian citizens in 2016 amounted to 12.1% (Austrians: 4.9%) (AMS, 2017; Statistik Austria, 2018b).

2.2. OSH and posting in the country

The following section provides a brief overview of the legal framework for OSH before introducing the main stakeholders in OSH and posting in Austria. Finally, it presents an overview of the data available on posting in Austria. Findings presented in section 4 will add to this information.

2.2.1 OSH legal framework

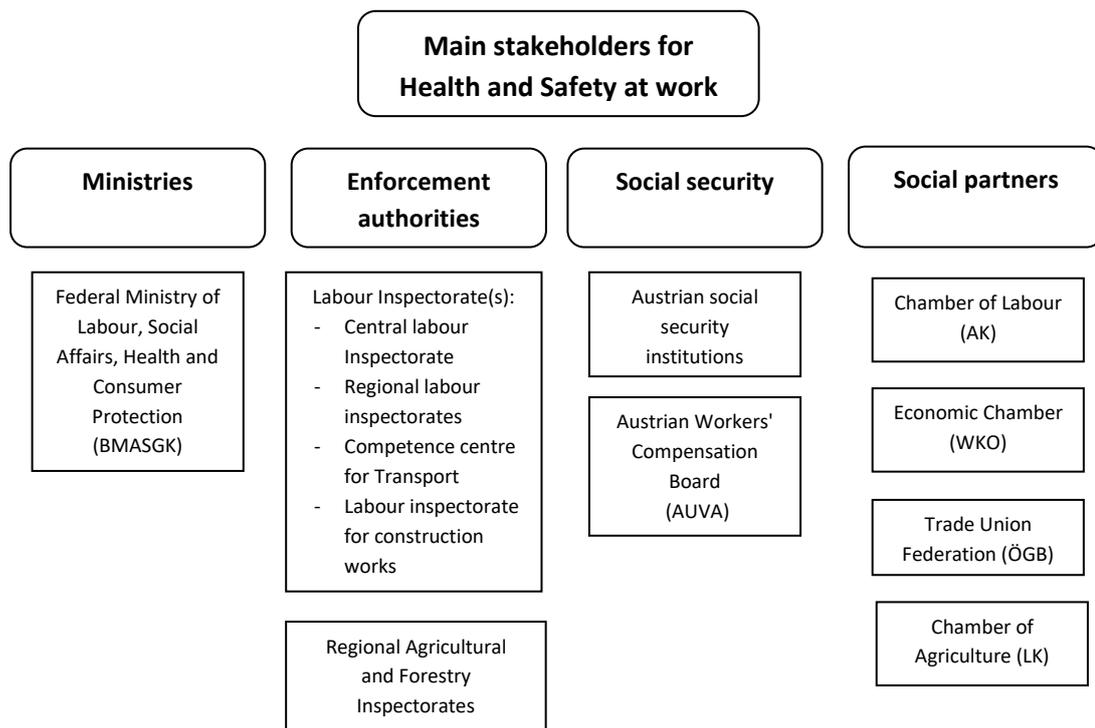
In Austria, the European Framework Directive on Safety and Health at Work (Directive 89/391 EEC) serves to “complete and refine existing national legislation” (Leka & Jain, 2014). All national OSH regulations are specified in the Health and Safety at Work Act passed in 1994 (ArbeitnehmerInnenschutzgesetz, also sometimes translated as “Employee Protection Act”). Amongst other regulations, this Act (by § 91) calls for the appointment of the Occupational Safety and Health

Advisory Board (Arbeitnehmerschutzbeirat). This tripartite² body advises the Federal Ministry of Labour, Social Affairs, Health and Consumer Protection on all matters related to OSH (Prammer et al., 2016; Krenn, 2010). Members of the board are two representatives from each of the social partners (as specified in Figure 1 below) together with experts from the Chamber of Engineers, the Chamber of Medical Doctors and the Austrian Workers' Compensation Board (AUVA) (Prammer et al., 2016; Krenn, 2010). Currently, the advisory board has been commissioned to lay down the Occupational Safety and Health Strategy for Austria for the period 2013-2020 and to support its implementation. The strategy aims at reducing further work-related health risks and accidents at work, improving risk assessment and support via preventive experts, strengthening of awareness of OSH and providing school- and university-level education and training on OSH (Kerschhagl & Kaida, 2016). Similar to the tripartite system of the OSH Advisory Board, the work on this strategy, and therefore on OSH policies in Austria is carried out in close cooperation between the various OSH stakeholders (Arbeitsinspektion, 2017b; Kerschhagl & Kaida, 2016; Krenn, 2010).

2.3 OSH and Posting Stakeholders

There is a number of institutions involved in one aspect or another of either occupational health and safety or posted work in Austria. A visual representation of the main stakeholders for health and safety at work in Austria is presented in Figure 1.

Figure 1: OSH framework in Austria



Source: Adapted from Prammer et al. 2016

² Austria has a strong corporatist structure, which is underscored by the key role of social partnership. At all levels – the cross-sectoral, sectoral, and the company level – social partnership is deeply embedded – and often highly institutionalized – in policy-making (Zayzon et al., n.d.).

The Austrian labour inspectorate is the main OSH authority in Austria. The primary function of the labour inspectorate is to protect the lives and health of employees by monitoring compliance with OSH regulation and the adherence to working time regulation (incl. keeping of correct rest periods). The examination of employment contracts, prevention of wage and social dumping, as well as illegal employment are the responsibility of other authorities (Arbeitsinspektion, 2017c, d). The central labour inspectorate is located at the Federal Ministry of Labour, Social Affairs, Health and Consumer Protection. It is organized into one central labour inspectorate and 17 regional offices, one special labour inspectorate for the construction sector for Vienna and Lower Austria and one labour inspectorate (“competence centre”) for the transport industry.

Another important public body in the field of OSH in Austria is the Austrian Workers' Compensation Board³ (Allgemeine Unfallversicherungsanstalt, AUVA, also translated as the “Austrian Social Insurance for Occupational Risks”) where more than 4.8 million people (employees, workers, self-employed, pupils and students) are insured against occupational risks. The main aims are prevention of occupational accidents and treatment, rehabilitation, and financial compensation after accidents (AUVA, 2015). Since all companies are required to evaluate and remove occupational risks as well as document the measures undertaken by the Health and Safety at Work Act, the AUVA also offers support to companies who need assistance with this task (AUVA, 2015). Special focus is given to small- and medium-sized enterprises (SMEs), since OSH regulation is often neglected in this segment (due to costs, lack of knowledge, among others) and the implementation of the Framework Directive 89/391 was slow (Krenn, 2010). Two additional aims targeting specifically SMEs are: the provision of safety-related and occupational medical care, as well as the payment of allowances for continued remuneration, in the event of an occupational accident or disease (AUVA, 2015). There are nine regional and local centres across Austria (set up in 1999) that offer prevention services and training (for free) especially for SMEs (less than 51 employees; AUVA, 2015).

At the company level, the Health and Safety at Work Act requires companies with more than 100 employees, or – for those with 75% desk jobs – with more than 250 employees, to set up an OSH Committee (Krenn, 2010). This is organized as a social partnership body, chaired by the employer/management, including an OSH expert, an occupational health physician, a safety representative and the works council. The committee meets twice a year or whenever one third of its members call for a meeting. Apart from ensuring cooperation between all OSH agents within the firm, the main task of the committee is to promote and enhance OSH (Krenn, 2010). Representing the interest of the workers, safety representatives (Sicherheitsvertrauensperson) have an important function. They are appointed for a four-year period by the employers, with the approval of the works council, who can also call for their replacement (Krenn, 2010). Every company with more than 10 employees is obliged to appoint a safety representative (two, if it has between 51 and 100 workers, three if there are <300 workers). A notification of the appointment must be made to the labour inspectorate.

As stated above, the two main authorities concerning posting are the competence centre “Lohn- und Sozialdumping Bekämpfung (LSDB)” (Fight against wage and social dumping) at the Vienna Regional Health Insurance Fund (Wiener Gebietskrankenkasse, WGKK) and the Financial Police (Finanzpolizei,

³ There are 28 social insurance institutions in Austria across regions and occupational groups, out of which 19 are sickness insurance funds, five are pension insurance funds and four are accident insurance funds; among the latter the AUVA is the biggest institution (Prammer et al., 2016).

FinPol). In the construction sector, the Construction Workers' Annual Leave and Severance Pay Fund (BUAK) also has a mandate to enforce compliance with the regulations on posting. The legislative basis for its work is the "Austrian Act to Fight Wage and Social Dumping" (LSD-BG), which was adopted on 1st of January 2017. It replaced the former "Austrian Act to Fight Wage and Social Dumping" (LSDB-G), which was part of the Act on labour contracts (Arbeitsvertragsrechts-Anpassungsgesetz, AVRAG), enacted on May 1st, 2011 (WGKK, 2017). The new one is a stand-alone Act which is meant to facilitate the enforcement of anti-wage-dumping and specifies penalty fees in the range of €500-20,000 for omitting notifications of postings to the Austrian authorities, for thwarting wage controls, for not keeping wage documents available and for underpaying workers. Additionally, the Act introduces chain liability in the construction sector, although this does not cover occupational health and safety (Austrian Act to Fight Wage and Social Dumping, 2016).

The competence centre LSDB (Fight against wage and social dumping) at the WGKK plays a key role in the fight against wage and social dumping for posted workers (WGKK, 2017). In the case of investigations taken up by the financial police (Finanzpolizei, FinPol), the LSDB will carry out the inspections of underpayment for workers who are not subject to the Austrian General Social Security Act (Allgemeines Sozialversicherungsgesetz, ASVG), i.e. posted workers. Also, the LSDB is responsible for the database of administrative prosecutions which are initiated in case of violations of the LSD-BG. Public contractors are obliged to gather information on whether an employer is being or was prosecuted under the LSD-BG (WGKK, 2017). It is not clear whether they can nevertheless contract them even in the case of prosecution.

2.3.1 Data on posting

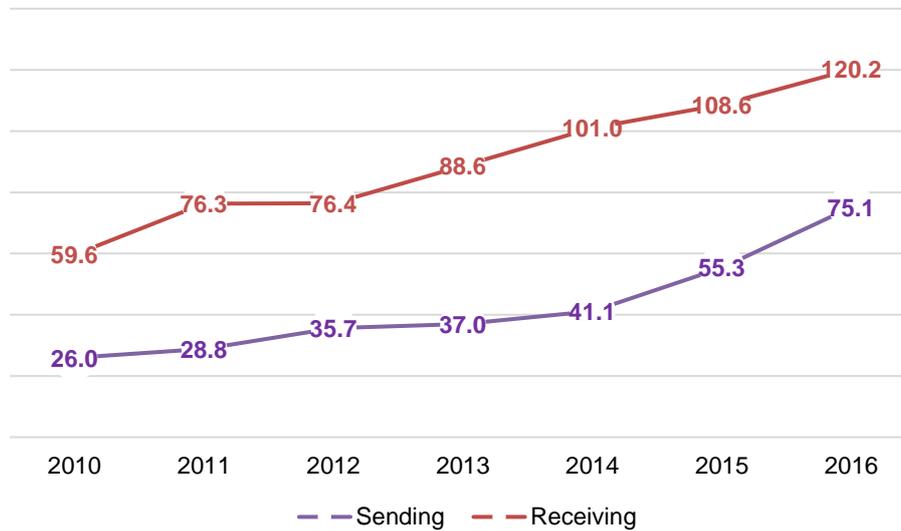
From a sending perspective, 64,373 PDs A1 were issued in Austria in 2015, out of which 55,320 (85.9%) were issued to posted employed and self-employed persons and 8,137 (12.6%) to persons posted to two or more Member States (Pacolet & De Wispelaere, 2016). The remaining 916 (1.4%) were issued to persons, who were either posted as civil servants or fall under Article 16 of Regulation (EC) No. 883/2004, which allows for exceptions to regular types of posting in certain cases. Compared to 2014, the number of PDs A1 issued to posted employed and self-employed workers increased by around 35% and by around 113% compared to 2010 (Pacolet & De Wispelaere, 2016: 22). The most recent European Commission country factsheet (2018) indicates a further increase with 75,132 PDs A1 issued for workers posted from Austria in 2016.

These numbers do not necessarily coincide with the total number of individual posted workers, since a person might be issued multiple PDs A1 during a year. While Austria did not provide figures on the number of individual persons posted, estimates from other Member States suggest that the number of individual posted workers lies at around 54% of the number of PDs A1 issued (Pacolet & De Wispelaere, 2016). The number of PDs A1 issued for persons active in two or more Member States has been increasing in Austria as well: a total of 8,137 such forms were issued in 2015, which is an increase of around 27% compared to 2014.

From a receiving perspective the total of PDs A1 issued for posted workers coming to Austria in 2015 was 108,627, which is an increase by 7.5% compared to 2014 and constitutes a share of 2.7% of posted workers in national employment. The trends continued in 2016, when the number of PD A1 for workers posted to Austria reached a new peak of 120,150 (see Figure 2). This makes Austria rank fourth in Europe after Germany, France and Belgium (Pacolet & De Wispelaere, 2016). Austria also ranks highest in terms of postings received from a neighboring Member State, with around 87% (Pacolet & De

Wispelaere, 2016: 21) underscoring the importance of geographical proximity in the dynamics of posting to Austria. So, in concrete numbers, out of the overall number of A1 documents issued in 2015, 34,981 were issued in Slovenia, 31,644 in Germany, 11,245 in Hungary, 10,798 in Slovakia, and 6,241 in Poland (Pacolet & De Wispelaere, 2016).

Figure 2: Posting to and from Austria (in thousands), 2010-2016



Source: Pacolet & De Wispelaere, 2016, European Commission, 2018.

In their study, Schmatz and Wetzel (2014) evaluated the mandatory notifications of postings to the Central Coordination Office (ZKO) at the Austrian Ministry of Finance and found an increasing importance of postings from EU-8 countries after the opening of the labour market for workers from these new Member States in 2011. By 2013, around 62% of posted workers were sent through companies with a place of principal undertaking in an EU-8 country, mainly Hungary and Slovenia, while their share before the liberalisation of the Austrian labour market in 2011 was around 25%. Until then, the main sending country for posted workers was Germany. Schmatz & Wetzel (2014) argue that, to some extent, companies in EU-8 countries posting workers to Austria might actually be branches set up by Austrian companies abroad to take advantage of lower wage standards by posting workers instead of employing them directly in Austria. With the increase of posting from EU-8 countries, there has also been a strong increase in posting to Austrian border regions, such as Burgenland, Lower Austria, Upper Austria, Styria, Carinthia, and the area surrounding Vienna.

Another noticeable trend since 2011, has been an increase in posting for short periods with 59% of posted workers posted for a period shorter than one month. This group is followed by workers posted for a duration between three to six months (17%). The posting duration in the construction sector, however, is above average and around 88 days (Schmatz & Wetzel, 2014).

2.3.2 Sector(s) characteristics

From a sending as well as from a receiving perspective the most relevant sector related to posting in Austria is the construction sector with around 51% of PDs A1 issued for Austrian workers posted to other countries and about 54% of foreign workers posted to Austria operating in construction. Second comes the service sector with 26% and 25% of PDs A1 issued respectively and other industrial activities with 22% and 20% of PDs A1 issued respectively. Agriculture, hunting and fishing play a minor role for

Austrian workers posted to other countries (1.4%) as well as for foreign workers posted to Austria (0.4%) (Pacolet & De Wispelaere, 2016).

2.3.3 *Specific issues for migrant and posted workers*

No specific reports or academic studies exist investigating OSH of migrant or, more specifically, posted workers. The results presented in section 4 provide a first assessment of their situation and the implication of OSH regulation on this particularly vulnerable group of workers.

There is little literature on the topic of posted workers in Austria, generally, and the most problematic issue already identified in the literature is wage dumping, followed by incorrect (or missing) working time documentation, both of which are closely related (Schmatz & Wetzel, 2014: 38ff). Many posted workers in Austria are not being paid correctly for the hours worked. Furthermore, controlling bodies have difficulties assessing the correct pay due to missing or insufficient working time documentation. Even if wages are paid correctly formally there are cases in which workers have to pay back parts of the salary they received to the employer.

In addition, bogus companies, sub-contracting-chains and bogus self-employments, which further obscure the payment procedures (alongside, of course, illegal employment) have been identified as problematic in Austria (Schmatz & Wetzel, 2014: 40). The most salient issues in relation to underpayment are: 1) Incorrect or omitted payment of allowances, supplements and special payments; 2) disregard of minimum wages and applicable collective agreements concerning wage and salary levels of posted workers; 3) use of home country's legal framework for setting pay rates; 4) parts of the initially correctly paid salary reclaimed by employers often when they return home; and 5) salary deductions on rent of accommodation provided and other expenses. The most prominent fraudulent practices in terms of working time documentation are feigning minor employment or part-time work upon registration with social insurance providers. In both cases workers tend to work longer hours, usually full-time or above. Presumably, they receive the remaining part of their salary in an undeclared manner. These practices serve to circumvent the Austrian regulations on overtime pay and other supplements (Schmatz & Wetzel, 2014).

3. Methodology

3.1. Data collection

Same as in other EU countries, there is no literature on OSH of posted workers in Austria. Academic articles and other reports deal with OSH or posting separately. Therefore, this report, firstly, builds on these sources, and goes one step further by interlinking and contrasting them. Secondly, it uses primary empirical data collected through semi-structured individual interviews with 14 respondents of different (institutional) backgrounds including three posted workers.

Respondents include:

- Representative from the central labour inspectorate at the Ministry of Labour, Social Affairs, Health and Consumer Protection (1)
- Representative of the labour inspectorate for construction works (1)
- Representatives of trade unions at the central and regional level, and from different trade unions (5)
- Representatives of an NGO for undocumented workers (2)
- Representative of the Austrian Workers' Compensation Board (AUVA; 1)
- Representative of the Construction Workers' Annual Leave and Severance Pay Fund (BUAK; 1)
- Posted workers employed in Austria; one from Hungary, one from Germany and one from Bosnia and Herzegovina, posted to Austria from Slovenia (3)

Interviews were carried out mainly during the period August-December 2017, with the exception of one interview with a posted worker, which was conducted in March 2018. All expert interviews and one interview with a posted worker from Germany were conducted in German. The interview with the posted worker from Hungary was conducted by a Hungarian colleague, Eszter Zólyomi, and the one with the worker from Bosnia and Herzegovina was conducted with the invaluable help of a translator, Marica Guldemann. All other interviews were done by Katarina Hollan.

3.2. Analysis

The data collected was analysed using thematic analysis. Codes emerged from the preceding literature review and the focus points of the research, mainly OSH-related vulnerabilities of posted workers, OSH institutional framework, including actors' roles and national/transnational interactions, OSH practices in transnational workplaces, as well as the dimension of language and cultural barriers. Sargeant and Tucker's (2009) layered framework was used to assess the OSH vulnerabilities of this particular category of migrant workers. Through the thematic analysis, we could identify the facets of OSH-related vulnerabilities of posted workers in transnational workplaces.

3.3. Challenges and limitations

The main challenge during the fieldwork and the subsequent analysis was to find respondents who would bring together the two spheres of OSH and posting. Mostly, experts deal with either one or the other. However, in the end, most of them had (at least) some understanding of the respective other issue and could therefore point at some relevant overarching links.

Despite an effort to look into posting in Austria from both a sending and a receiving perspective, our data were predominantly about posted workers coming to Austria. Throughout the text we indicate whether the findings are referring to sent or received posted workers.

Another challenge was the difficulty of approaching posted workers, due to language barriers and their hyper-mobility. Only with the help of translators and trade unions, through networks, was it possible to approach them.

The main limitation of this research is that it is not representative. We interviewed a limited number of posted workers and therefore we can only illustrate their situation, without any claim to capturing the whole picture.

4. Results

4.1. OSH-related vulnerabilities of migrant and posted workers

National competent authorities and agencies in Austria have made great attempts early on after the transposition of the Posting of Workers Directive (96/71/EC) to protect posted workers from increased OSH-related risks. Yet, data from our research suggest that vulnerabilities still persist. The results are grouped following the layers of vulnerability framework for assessing OSH-related risks for migrant workers presented by Sargeant and Tucker (2009). The first layer consists of migration factors, the second captures characteristics of migrants themselves, and the third is determined by receiving country conditions (Sargeant & Tucker 2009).

Migration status and the conditions of recruitment of migrant workers represent the first layer of vulnerability for posted/migrant workers. From the interviews it became evident that the temporary migration status affects their situation in multiple ways: firstly, employers direct less attention in terms of OSH training towards them; secondly, their temporary status marks them as workers who are easier to exploit and pressure to accept unsatisfactory working/OSH conditions; thirdly, it also influences posted workers' behavior in so far as due to their short-termed stay, they tend not to inform themselves sufficiently about their rights and the regulations in Austria.

In view of their temporary migration status, posted workers in low-skilled sectors from lower-income countries are highly dependent on the income they receive in Austria. Third-country nationals are in an even more vulnerable situation. Their stay in the European Union depends on a valid work visa and so they become particularly dependent on their employers. One such case of exploitation and pressuring of workers was reported during the fieldwork by a posted worker, a third-country national from Bosnia and Herzegovina, who obtained a working visa in Slovenia and was then posted from there to Austria to work in the construction sector. He was part of a team responsible to demount a formwork for a concrete wall. During this work he was hit on his leg by a 20-30 kg heavy bar loosened by a co-worker who could not hold it. He was hospitalized and underwent surgery. The recovery process, however, has been lengthy and the worker necessitates further treatment. He is still unable to return to work and requires another surgery. Soon after he got out of the hospital, a middleman of the employer started to visit him at his accommodation and contact him over the phone, asking him to sign a medical form stating that he wishes no further treatment in Austria. The middleman tried to persuade him that treatment would be of higher quality in Slovenia and that the health insurance company there was asking for him to return. Unconvinced, the worker inquired at the health insurance company, where they told him no such request had been made by them. The worker is thus put in a difficult situation. He depends financially on the sickness allowance provided here in Austria, but also on the extension of his work visa which is due in a couple of months and for which he needs to stay employed with the current employer. In this particular case, the worker managed to get legal support through a workers' organization which was recommended to him by the Bosnian community. The issue remains unresolved at the moment of writing this report.

Another vulnerability is the fact that posted workers do not always have an employment history with a company over a longer period of time before being posted. They are often recruited for the sole purpose of being posted to another EU country right away, thereby breaching the posting of workers directive (96/71/EC). Under these circumstances, workers do not receive sufficient information about

their workplace abroad before being posted, which again exposes them to higher OSH-related risks. Cases have been reported where workers did not know which company exactly they were working for, in particular in cases when the company had set up a chain of letter-box companies and/or branches throughout Europe. In these cases, they are usually hired through a middleman (sometimes pretending to be the employer) of a company and never meet the actual employer. A representative of the regional trade union office reports: “The people who worked there did not know what company they were working for. Company A, company B, company C. What is the difference? – they asked. That was of no interest to them”.

In other cases, the very transnational nature of employment creates situations in which health insurance is neglected by companies who exploit the challenges of cross-border communication between health insurance institutions in the home and host country. For example, the Hungarian posted worker told us that when he was injured, he was expected to be paid sick leave from the Austrian company he worked for when he got injured. However, as the company went bankrupt he found out that they had never reported his injury to the authorities and therefore did not receive sick leave pay as he should have:

I was at home in Hungary for 2 months on sick leave because I had a work accident in Vienna. I had a torn ligament. I had to stay at home here in Hungary, recovering from this injury (I had to stay in bed basically) and waiting for the payment for the sick pay, but it never arrived. I heard then that the company is going bankrupt and will close down. I went to the Hungarian social insurance to ask about my sick pay, but they informed me that the company never submitted the form to them that I was on sick leave.

Characteristics of migrant workers themselves, such as their socio-economic situation in the home country, their education and skill level, and their language skills constitute the second layer of vulnerability. They become evident when due to low wage levels or limited job opportunities in sending countries, workers consent, for example, to working more than the legally permitted working hours per day, per week or per month, when they do not report dangerous working conditions, or when they do not look out for themselves and go back to work too early after being sick/injured or even work when they are sick or injured. Thereby, workers become consciously or unconsciously complicit in their own exploitation and cover up OSH risks. The pressure of not wanting to lose a job where the pay in Austria is much higher than in the home country fuels this situation. A representative of the labour inspectorate recounts cases where workers at first did not report an injury as a work accident to the hospital staff:

There is a number of unreported cases [of work accidents], one can assume for sure, yes. Because that's again about not wanting to lose the job. If you [= the worker] don't say anything then you can continue to work and then you say, yes, that you fell on the way, or somewhere and not on the construction site.

(Representative of the labour inspectorate)

Differences in understanding of safety concepts are another factor influencing OSH-related vulnerabilities of posted workers. The representative of the labour inspectorate shares experiences of posted or migrant workers having a different awareness/mindset about OSH-related risks:

One notices it during administrative prosecutions, when we question witnesses, or in court. They say it is this way quite bluntly, because they don't see the danger in those situations. 'What should happen, if I fall seven, eight meters? It is this way, yes, but I work here and get money for it.' That they would have the right to personal protective equipment, safe scaffolds, or currently one of our most important topics, psychological stress on construction sites, that is not within their field of awareness. [...] Also, there is no understanding that their rights encompass social spaces, where they can heat up their food or keep it refrigerated. There are rules determining how the recreation rooms have to be equipped. The workers are surprised that there is a container for them, that there are washing facilities, toilets. That's because that was not how it usually was or because the situation is different in the home country.

(Representative of the labour inspectorate)

Lack of language skills and therefore appropriate training of posted workers in combination with the fact that they are oftentimes posted to carry out more dangerous tasks than locally-hired workers constitutes another source of major risks for OSH. Incoming posted workers often do not speak German and have to rely on 'contact persons' within the company to get relevant information on OSH, but also regarding their pay and other agreements, such as paid sick leave. A representative of the Austrian trade unions states that workers are asked to sign documents in German without understanding the language:

During sickness? Oh yes. The workers are asked to sign a consensual termination of their contract. The health insurance company would then pay the sickness allowance, but that's much lower than the sickness allowance from the employer. That's also being exploited. Language, language.

(Representative of trade unions)

Furthermore, posted workers from different countries often work together, which leads to communication difficulties. In relation to OSH, for example on work sites, this can lead to risky situations, since people cannot communicate dangers well enough or fast enough, as reported by one of the posted workers interviewed.

The situation in the receiving country, such as the characteristics of employment and sector, access to collective representation, access to regulatory protection, and patterns of social exclusion/social isolation, constitutes the third layer of vulnerability for posted/migrant workers (Sargeant and Tucker 2009). While posted workers cannot be thought of as a homogenous group – for example there are great differences in skill levels ranging from low to high among posted workers; differences in sectors to which workers are posted; differences in the duration of posting – a tendency can be observed to disproportionately recruit a higher share of posted workers in hazardous sectors, such as the construction sector, where OSH-related risks are higher.

One trade union representative notes that posted workers are not well informed about the system in the receiving country and summarises their vulnerability in these words: "This [lack of knowledge] is being exploited. That's why they hire Hungarians. They don't know their rights, they don't know their duties, they don't speak the language. Therefore, it's so easy to treat them badly." Workers also do

not consider themselves as part of the Austrian workforce, therefore they do not join Austrian trade unions during their posting assignment. This limits their access to collective representation and protection, since legal representation from the side of trade unions is only available after six months of membership, for example.

The lack of integration and feeling of not belonging of posted workers into the Austrian system and society was highlighted by the report of a posted worker from Germany. He recounts stories of work accidents after which he went to get treatment only once he was back in Germany. He prefers to have the treatment and other checks done back home. His short explanation was: "I simply know more people in Germany." This signals that even though a worker, as in this case, has been in Austria on a regular basis over the years and might even speak the same language, the notion of being an outsider persists. Due to this perception, workers do not assert their rights or do so only when they return to their home country.

The Hungarian posted worker interviewed also reported how, because of his lack of knowledge of procedures in Austria, he was told by a colleague complicit with the employer to leave the site and go back to the accommodation as he was not so seriously injured. He later returned to Hungary to recover, where, as we already discussed above, he found out the company had not reported his injury to the authorities, and when they went bankrupt, he never received any sick leave pay. In his own words, had he known better, he would have made sure his injury was properly reported to the authorities:

Normally, there should be some kind of protocol when accidents at work happen, like the site manager and the lead mechanic needs to be informed and a report has to be written, signed and filed, but in my case, nothing like this happened. I was only told to leave the site and go back to the accommodation. It was the lead mechanic, who is actually my colleague, who told me this. I also thought at the time that the injury was not so serious, I could still walk on it a bit. If I knew that it was so serious, that I had a torn ligament in my leg, I would have probably done differently, I would have asked for an ambulance, for instance. Also, being a work accident, they pay for this there in Austria, but unfortunately, I was not smart enough then. Next time I will be smarter.

Despite the different background of all three posted workers interviewed, we notice that their temporary transnational employment has often a deterring effect on their OSH protection. Whether rules and procedures are unknown or deliberately ignored, the result is often exposure of posted workers to elevated OSH risks.

4.2. OSH Institutional Framework

4.2.1. Actors' roles

Employers are obliged by the Health and Safety at Work Act (ArbeitnehmerInnenschutzgesetz, AschG) of 1994 to guarantee the health and safety of their employees/workers on work sites. They must undertake all relevant measures to protect their workers from occupational accidents and assess all health risks at the workplace (Health and Safety at Work Act §3(1)). Furthermore, all employees need to have been informed about occupational health and safety risks at the workplace. Employers are obliged to provide proof that this information has been shared and understood. In particular, if a

worker does not have sufficient command of German, the employer has to ensure that the information is translated into a language s/he understands (Health and Safety at Work Act §14).

The safety representative is the main OSH actor at the workplace. Employers must appoint a sufficient number of safety representatives according to the Health and Safety at Work Act (§10). Small firms with more than 10 and less than 50 employees are required to have one safety representative; the necessary number of safety representatives is specified by law and grows proportionally with the number of employees. In addition, depending on the size of the company, either a trained safety officer has to be employed by the company or, if the company has less than 50 employees, the services of an external safety officer (from the accident insurance agency) can be used (BMASK, 2017). As described during the interviews with labour inspectors, their main task is to foster prevention of OSH risks and to advise the employer, employees, safety representative(s) and employee representative bodies on all OSH-related matters, to support employers in fulfilling their OSH-related obligations and to contribute to the risk assessment of OSH risks at the workplace. A representative of the labour inspectorate further mentioned that larger firms, for example in the construction sector, have established separate safety departments, which allows them to have well-trained OSH experts in-house. In contrast, smaller construction firms often struggle with the lack of necessary resources for this function. They can, however, obtain assistance from the labour inspectorate in addition to the services offered by external safety officers.

As mentioned above, the main agency responsible for the enforcement of the Austrian OSH regulations is the central labour inspectorate located at the Ministry of Labour, Social Affairs, Health and Consumer Protection. The mandate of the central labour inspectorate is to monitor, regulate and coordinate 17 regional labour inspectorates (20 until 1st of May 2017, before some regional districts were united) across the nine federal states, one separate labour inspectorate for construction work and one labour inspectorate (“competence centre”) for the transport industry, both of them based in Vienna (BMASGK 2018). The main mission of labour inspection in Austria is the prevention of accidents and work-related illness, the enhancement of safety and health at work, and the contribution towards an increased acceptance of OSH by society (BMASGK 2018). This is achieved through controls on work sites and through consultancy activities⁴.

The legal mandate for the labour inspectorate is the Labour Inspection Act (Arbeitsinspektionsgesetz, ArbIG) of 1993, which specifies the enforcement of the Health and Safety at Work Act by the labour inspectorate. The sole focus of the labour inspectorate is to ensure workers' health and safety. Wage controls and controls related to social insurance payments are carried out by the financial police (Finanzpolizei), the regional health insurance fund in Vienna (Wiener Gebietskrankenkasse, WGKK), and/or the Construction Workers' Annual Leave and Severance Pay Fund (Bauarbeiter-Urlaubs- und Abfertigungskasse, BUAK). In addition, a separate labour inspectorate for construction has been set up in view of the increased hazards on construction sites. This entity is responsible for all construction sites in and around Vienna. This specific emphasis on OSH is perceived as a strength of the Austrian labour inspection system:

We know from other European labour inspectorates, that they carry out wage controls but also that this issue then receives much more attention than the

⁴ The third main task of the labour inspectorate is to oversee compliance with OSH regulation in the process of business licensing.

standard issue of occupational health and safety. Because as soon as money becomes an issue everything else gets sidelined a bit. That's why we're actually happy that we don't have that within our mandate.

(Representative of the labour inspectorate)

The Health and Safety at Work Act applies to all workers working in Austria, i.e. also posted workers, as has been frequently mentioned during the interviews. Furthermore, there is a separate Safety Regulation for Construction Workers (Bauarbeiterschutzzverordnung, BauV) in place, which specifies the construction sector obligations, including OSH rules, and applies to all workers working on Austrian construction sites.

Trade unions have their own OSH departments, and a cross-union platform "healthy work – solutions for safety and health at work" ("Gesunde Arbeit – Lösungswelt zur Sicherheit und Gesundheit in der Arbeit") provided by the Austrian Trade Union Federation (ÖGB). Unions are in contact with works councils and support them, among others, on OSH-related matters. The Union of Construction and Woodworkers (Gewerkschaft Bau-Holz) has a team of OSH experts who conduct their own controls on construction sites, usually on behalf of the works councils. In some rare cases, they involve the labour inspectorate or even conduct joint inspections. The aim is to represent the workers' side in OSH-related disputes/matters with employers.

The Austrian Workers' Compensation Board (Allgemeine Unfallversicherungsanstalt, AUVA) is another major actor in the field of OSH in Austria. Its mandate is given by the General Social Security Act (Allgemeines Sozialversicherungsgesetz, ASVG) of 1955, and includes prevention of occupational accidents and diseases, first aid for occupational accidents, occupational medical care, rehabilitation, financial compensation, research and the occupational safety advisory for small- and medium-sized enterprises. All workers – including posted workers – are insured against occupational risks with this insurance body. In particular, the great importance of the AUVA, as a special insurance institution dedicated fully to all matters surrounding (work and non-work) accidents and their prevention, has been highlighted. It has been characterised as a good practice example by representatives of organizations in other Member States as well (e.g. Slovak Trade Union Representative interviewed in 2018).

4.2.2. Mechanisms and procedures at different levels

The Austrian labour inspectorate carries out controls without prior notice. The initiative for these controls comes either from complaints or work injuries/accidents. A work accident that leads to a more than three-day long sick-leave has to be reported to the AUVA and the AUVA then forwards these reports to the labour inspectorate. Depending on the severity of the case, labour inspectors decide which work sites to control. There are around 300 labour inspectors and around 50,000 work sites in the database of the labour inspectorate. It is therefore impossible to check every work site every year. Yearly workplans are made to decide where the focus will be laid on.

In the case of a severe breach of OSH legislation, the labour inspectorate can file criminal charges against the employer with the district administrative authority (Bezirksverwaltungsbehörde). If a foreign employer is involved, the district administrative authority transmits these charges through the IMI system (established in January 2017) to the respective Member State, where the employer is registered. Criminal charges are, however, the last measure taken; the first steps are information and

formal requests to remove OSH risks. The IMI system includes some basic translation tools to bridge the language gaps. However, it is too early to tell whether the IMI system will indeed improve the cooperation. Before the IMI system became available the labour inspectorate used to send e-mails to foreign employers (if such e-mail addresses were available), even though this was in the grey area with respect to sovereign administration.

Sometimes joint controls between the labour inspectorate, the trade authority, the financial police or the police are undertaken. Especially, the financial police together with the competence centre “Lohn- und Sozialdumping Bekämpfung (LSDB)” at the Regional Health Insurance Fund (WGKK) is responsible for checking whether all legal/administrative matters related to posting, such as work permits/PD A1 forms, wages, working time and social insurance contributions, are done in a correct way. These authorities, however, have diverging interests: The labour inspectorate always addresses the employer and acts on behalf of the safety of the workers. The financial police investigate the employees, too. It is hard to communicate and reconcile these different aims. One representative of the labour inspectorate notes: “As said, the approach is different. The financial police ask for the IDs of the employees and we would then be standing behind them, saying ‘Yes, we’re the ones protecting you.’” Therefore, joint visits are not undertaken on a regular basis.

In the construction sector, the Construction Workers’ Annual Leave and Severance Pay Act (Bauarbeiter-Urlaubs- und Abfertigungsgesetz, BUAG) requires that employers make contributions to the Construction Workers’ Annual Leave and Severance Pay Fund (BUAK) on behalf of their workers. At the same time, the Act provides the BUAK with a mandate to enforce these contributions and payments, which are paid to employees directly from the Fund. This is done through controls of relevant working time documentation which are required to be made available on construction sites. This Act also applies for foreign employers posting workers to Austria. In 2005, with the transposition of the Posting of Workers Directive, BUAK became responsible to administer these payments for posted workers as well. With the new Act to Fight Wage and Social Dumping of 2011 BUAK received further enforcement competencies and the possibility to file charges against employers if (a suspicion of) wage-dumping has been detected.

4.2.3. National and transnational actor interaction and/or cooperation

On the national level, there is a close cooperation network of all OSH actors in Austria. Cooperation is fostered between the Ministry of Labour, Social Affairs, Health and Consumer Protection, the Labour Inspectorate, social partners, in particular trade unions, but also with the AUVA and the police. There are regular meetings of some of these partners on the national OSH-strategy; four thematic working groups meet two to three times per year. The topics are workplace evaluation, prevention of accidents, prevention of diseases and education.

On a yearly basis, the AUVA organises a “Forum on Prevention” (Forum Prävention), where OSH experts and stakeholders, among them AUVA safety experts, labour inspectors, trade union representatives, works council representatives, safety officers, safety representatives, managers, and representatives from companies providing safety equipment discuss the most recent developments, inform about new regulations and present new OSH campaigns (AUVA, 2018). This is the most important event to exchange knowledge and information on OSH matters. Workshops, expert lectures and visits are organised for all participants, as well as for special thematic sub-groups, such as construction, electrical engineering or hospitals. In addition, the AUVA is organised following the principles of self-government, meaning that social partners send their delegates to the board to foster

solidarity between employer and employee representatives in the organisational structure. Given this structure, the AUVA is in regular contact with both, the chamber of labour and the economic chamber. In addition to the organisational exchange, there is regular exchange with the relevant departments, in particular those involved in preparing the OSH agenda, at the chamber of labour and the economic chamber.

On the transnational level, there are great difficulties, although the IMI system is being taken up by more and more authorities. A representative of the labour inspectorate mentioned some cooperation with Slovenian colleagues (every two years a joint conference is organised). Labour inspectors from the easternmost region have also established cross-border cooperation with their Hungarian colleagues at the labour inspectorate, with whom they organize joint round tables together with employers and employees. Furthermore, the Austrian Trade Union Federation (ÖGB) is currently running the “Fairwork” Project, a three-year Interreg-financed project between Austria and Hungary, which aims at identifying and overcoming the challenges in cross-border cooperation between agencies to improve workers’ situation in the field of labour law, tax law and social security regulations by simplifying administrative channels and building joint structures. Cooperation in OSH matters constitutes one of the various dimensions of the project. One trade union representative recounted the main driver for the project:

We have had cases where a Hungarian worker got injured here [in Austria], was brought to Hungary, because he was not registered here [for health insurance] and then died in Hungary, because he arrived too late at the hospital. And these are the cases that we absolutely want to avoid.

(Representative of trade unions)

The different agency structures – e.g. different mandates of labour inspectorates – across EU Member States remain as the main obstacle for smooth cross-border cooperation. The EU departments of labour inspectorates have different agendas and mostly deal with macro-level topics, such as strategies and campaigns. At the micro-level, i.e. at the operational level of regional labour inspectorates there is a strong need for increased cooperation. Cross-border thematic exchange in the construction sector has been reported by a representative of the labour inspectorate to be firmly established with German and Italian colleagues at the labour inspectorate, but is missing with other countries, especially where it would be most needed, i.e. the other countries sharing a border with Austria. There are cross-border exchange programmes for labour inspectors, where labour inspectors can come/go from one country to another and join controls here/there, but these opportunities are not commonly taken up. As soon as labour inspectors from different countries meet at joint events, there is an improvement in cooperation, due to the fact that the contact is established in person, but such events do not happen regularly enough to establish a broad network.

4.3. OSH in practice in transnational workplaces

4.3.1. Preventative practices in transnational workplaces

The Austrian OSH regulations apply for all workers working in Austria, i.e. posted workers should receive the same OSH protection as local workers. One representative of the labour inspectorate puts

it simply: “Who works in Austria is protected by the Austrian OSH regulations.” Employers posting their workers to Austria have to provide all the information, training, personal protective equipment (such as adequate safety gear/clothing, glasses, boots, gloves, helmets etc.) and fall protective devices that are required by Austrian law/regulations. As will be discussed in more detail in section 4.4, language barriers constitute a major obstacle to guarantee adequate information and training in transnational workplaces. These become particularly salient when employers must prove – following the obligation to instruct (Unterweisungspflicht) – that they instructed their workers specifically on the tasks that they have to carry out. It must be verifiable that these instructions were done and understood. The law, however, does not specify precisely in what way they must be carried out. Furthermore, due to language barriers it is often difficult for labour inspectors to check whether workers received all necessary instructions.

Especially in transnational workplaces, labour inspectors find that posted workers sometimes are unaware of the dangers they are exposed to or, if they do, they perceive the relatively higher wage they receive as a compensation for the risks faced (AT_EXP01). This applies in particular to the personal protective equipment and fall protective equipment: Even though they are provided with the necessary equipment they neglect wearing it constantly (e.g. helmets or gloves) or making sure it is in place (for fall protection).

The workers aren't actually amused, if one tells them: 'here should be a scaffolding', or 'you have to wear safety boots', or 'here you have to wear a helmet, because something could happen to you.' – [They ask:] 'What should be the problem?'

(Representative of the labour inspectorate)

Monitoring of foreign employers is hard to do; labour inspectors are limited by what information they find at the workplace in Austria since they have no possibility to check the conditions with employers or the work sites abroad. Some possibilities are emerging through the IMI system; however, these are not applicable ad-hoc, during an actual control.

4.3.2. (Migrant and/or Posted) Worker Representation and Protection

4.3.2.1. OSH Representatives

Safety supervisors and officers are also responsible for representing and overseeing OSH for posted workers in the same way as for local workers. Their roles were discussed in detail above (section 4.2.1). No data was collected on whether or not posted workers actually approach these representatives in practice.

4.3.2.2. Trade Unions

The Austrian Trade Union Federation (ÖGB) offers legal advice to all workers, including in selected foreign languages, such as Arabic, Bulgarian, Hungarian (in the province bordering with Hungary), Kurdish, Romanian and Turkish. The advice focuses on issues related to labour law and the ÖGB does not offer direct assistance with OSH related matters. However, they can refer workers with grievances to the relevant institutions and offer some important initial information.

Furthermore, the Drop-in Center for Undocumented Workers (Anlaufstelle zur gewerkschaftlichen Unterstützung UNDOkumentiert Arbeitender, UNDOk) is bridging the gap between trade unions, NGOs, self-organised migrant organisations and anti-racist activists to provide support for workers without secure residence permit (UNDOk, 2015). Since posting of workers has been found to be often correlated with unclear or insufficient work documentation, posted workers – although they are not the core target group – receive assistance in asserting their rights and entitlements, including OSH-related benefits.

4.3.3. OSH-related grievance procedures in transnational workplaces

4.3.3.1. Legal and health care mechanisms and practices for accidents involving migrants and posted workers

In the case of a work accident – depending on the severity of the accident – different actors become involved: the accident insurance agency, the labour inspectorate, the ambulance, the fire department and, in the case of severe or fatal work accidents, the police. This is regardless of the nationality and type of employment contract of the worker. When a severe or fatal work accident occurs, the employer is obliged to notify the police and/or the labour inspectorate. If the police are notified, they will automatically notify the labour inspectorate, too. In these cases, the responsible labour inspectorate will immediately come to the work site to assess whether any direct measures need to be taken, such as a stop order or filing a report with the public prosecutor. If the work accident occurred on a construction site in or around Vienna, the separate labour inspectorate for construction is responsible for the investigation of the accident. They have a round-the-clock on-call duty to be able to document work accidents immediately. In other cases, a work accident which leads to a more than three-day long sick-leave needs to be reported to the accident insurance agency, usually the AUVA. These notifications are then forwarded to the labour inspectorate, which in turn decides in which cases they can exert their prevention activities to avoid future work accidents.

The specific legal problem related to OSH grievances in transnational workplaces occurs due to the fact that many of the administrators at the responsible agencies (e.g. health insurance agencies) often lack sufficient knowledge of the legal framework in the transnational context. As one representative of the trade unions reported: “The administrators, those that deal with the cross-border cases, they won’t read the foreign regulations”. They demand costly translations of medical findings, a range of forms so that the workers “are partially send around in circles” (reported by the same representative).

4.3.3.2. Liability

The main contractor liability in Austria does not apply for OSH, only for wages and social insurance contributions⁵. For OSH-related grievances, the labour inspectorate needs to know who the actual employer is. If there are doubts about this – especially in cases of secondment or self-employment – the labour inspectorate uses a set of criteria to investigate whether the worker is really self-employed such as, is s/he in a position to make autonomous decisions, using her/his own equipment and machines, who gives the orders. The legal basis for this is the Personnel Leasing Act (Arbeitskräfteüberlassungsgesetz, AÜG).

⁵ The amount of liability for the main contractor is 5% of the wages together with 20% for all the social insurance contributions to be paid by subcontractors.

4.4. Language and cultural barriers in transnational workplaces

4.4.1. Prevention

The lack of necessary language skills of posted workers increases their vulnerability and impedes the work of labour inspectors, trade unions and other actors who aim at securing a safe and healthy workplace for all workers, including posted workers. Representatives of the labour inspectorate highlighted this factor on numerous occasions:

Speaking at the workplace it happened repeatedly, that the one I'm talking to understands a little German and then when I'm about to leave I realize, that he's doing something entirely differently. It's extremely difficult for us to transmit our instructions [...].

(Representative of labour inspectorate)

During their controls or advisory activities, labour inspectors rely on a basic understanding of German in order to successfully carry out their instruction activities and to inform about potential dangers. In transnational workplaces this has been described as a challenging task.

For construction works, the AUVA provides "Safety on the construction site" (Sicherheit am Bau) folders. These translate the legal regulations into pictograms, diagrams and images. Furthermore, the labour inspectors request that a German-speaking supervisor (Aufsichtsperson) is present on each construction site. The function of the supervisor is legally called for in the Safety Regulation for Construction Workers (Bauarbeiterschutzzverordnung, BauV). This person has to have the necessary practical and theoretical knowledge for all work-related issues and of all OSH-related regulations and has to be able to understand and translate labour inspectors' instructions. So far, it has not always been the case that this person speaks German. The language skills are often missing, and labour inspectors have to wait until the employer arrives as quasi-translator or they try to use "creative" workarounds, such as drawing diagrams, to convey the information in this way.

Additionally, labour inspectors have translated a set of questions into the most commonly spoken languages and carry these questionnaires with them on their control visits. However, these are of little use if a lengthy answer is given. Some labour inspectors also speak different languages and most recently, they are experimenting with using a language app.

The idea of using pictograms has also been taken up by some companies providing equipment/material, e.g. for construction sites: instead of translating the instructions for use into a limited range of languages, they use how-to and how-not-to pictures to show the right use of their products as a prevention measure.

4.4.2. Grievance management

In the case of OSH-related grievances, posted workers, trade union representatives and labour inspectors highlight how weak posted workers' position to assert their rights is. Due to lack of information in general and in their language in particular, on grievance procedures and support structures, the workers are often exposed to exploitation by their employers. Different cases have been reported: In one case, reported by a trade union representative, a posted worker has been

deregistered from social insurance as soon as it became evident that his illness would keep him out of work for an indefinite amount of time. He was posted from Austria to Slovakia, his home country. His situation deteriorated, and he died in hospital in Slovakia. After his death, his wife received a bill of the hospital costs and this is how she found out that he had been deregistered from the social insurance in Austria. In the case of a posted worker, the usual period of six weeks of subsequent insurance after the termination of social insurance contributions, does not apply.

5. Synthesis and Conclusions

Posted workers face increased OSH risks in transnational workplaces in Austria. This research identified OSH-related vulnerabilities of posted workers and how these are addressed by the OSH institutional framework. Although substantial attempts have been made by Austrian authorities and other stakeholders to decrease posted workers' vulnerabilities, problems persist.

This research highlighted different dimensions of vulnerabilities of posted workers in terms of OSH. Although there is a legal obligation to instruct ("Unterweisungspflicht") and inform every worker on a work site about the OSH risks, posted workers often receive less training on OSH issues because they are perceived as outsiders to the staff on the work site in Austria. Some workers, especially in Eastern and South-Eastern EU Member States, are only hired to be posted to Austria (or elsewhere) and never actually have had a "standard" working relationship with their employers in the home country prior to the posting. This is another factor decreasing the extent of OSH training received.

Apart from the lack of training, different risk perceptions of posted workers have been reported. Some posted workers are unaware of the dangers associated with their job. Others perceive them as part of the work and the pay they receive as compensation for the risks. This highlights also their dependence on the job or rather the income it generates. Since posted workers are predominantly sent from lower-income countries to higher-income countries, workers (and their families) highly rely on the earnings from posting assignments. Therefore, although they might notice OSH-related risks or grievances workers often refrain from reporting them out of fear of losing their job. They become consciously or unconsciously complicit in their own exploitation and cover up OSH risks.

Posted third-country nationals have been identified as a particularly vulnerable group. Their dependence on the employers that provide a better-paid job in Austria is even greater. Their work permit and visa for the EU is conditional upon an employment relationship and therefore they often accept to work under poor and hazardous working conditions.

The temporariness of the work relationship makes posted workers more vulnerable to exploitation. At the same time, their own perception of the work is affected by the temporariness: they demand less information about their rights and the relevant regulations in place. Their willingness to gather details about grievance procedures or support centres is also lower. Nevertheless, support possibilities exist. Although not specifically OSH-related, some Austrian institutions, such as trade unions or drop-in centres for migrant/undocumented workers, provide (legal) assistance to migrant (posted) workers. These are often the first point of contact for all workers with work-related grievances.

The findings of this research also demonstrate that lack of appropriate language skills remains a prevalent hindrance for posted workers in gaining access to all information about their rights, the regulations and potential support possibilities in case of need. They have to rely on middlemen or contact persons to receive relevant details and information. In combination with temporariness, these factors lead to a self-perception of being "outsiders" to the system in Austria and to avoiding making use of the services (e.g. health care, accident insurance) they are entitled to (in the case of regular posting).

OSH and posting are two matters that are often handled by different authorities in Austria. This structural separation hampers the well-functioning of protective mechanisms. The main stakeholders

involved in OSH-related matters in Austria are the Federal Ministries of Labour, Social Affairs, Health and Consumer Protection (Bundesministerium für Arbeit, Soziales, Gesundheit und Konsumentenschutz, BMASGK), the Labour Inspectorate as an enforcement Authority, the Austrian social security institutions and the Austrian Workers' Compensation Board (AUVA) together with the social partners, i.e. the Economic Chamber (Wirtschaftskammer Österreich, WKO), the Chamber of Labour (Arbeiterkammer, AK), the Chamber of Agriculture (Landwirtschaftskammer, LK), the Trade Union Federation (Österreichischer Gewerkschaftsbund, ÖGB), as well as the Federation of Austrian Industries (Industriellenvereinigung, IV). All national OSH regulations are specified in the Health and Safety at Work Act published in 1994 (ArbeitnehmerInnenschutzgesetz, also sometimes translated as "Employee Protection Act").

On the national level, there is a close cooperation network of all OSH actors in Austria. Furthermore, special thematic working groups have been initiated to foster exchange among authorities and stakeholders on overlapping matters, such as posting. There is a non-institutionalised knowledge exchange between representatives of OSH authorities with representatives from the financial police, the competence centre "Lohn- und Sozialdumping Bekämpfung (LSDB)" (Fight against wage and social dumping) at the Vienna Regional Health Insurance Fund (Wiener Gebietskrankenkasse, WGKK) or, for the construction sector, the Construction Workers' Annual Leave and Severance Pay Fund (BUAK).

On the transnational level, establishing closer cooperation remains difficult. Although authorities are obliged to use the IMI system since 2017, there are matters related to posting/OSH grievances which cannot be resolved through the system. Different structures and variations in the sharing of responsibilities of the relevant authorities across countries cause difficulties when identifying the responsible recipient of specific information. Together with the fact that responsible administrators of grievances in transnational contexts often lack knowledge about legal frameworks in other countries, the possibilities to monitor foreign employers are still very limited for Austrian authorities.

6. Policy Implications and Recommendations

Posting in Austria is a topic that has drawn attention in particular in terms of issues related to social dumping and fraudulent employment practices. This report highlights the equally important and related issue of the occupational safety and health of posted workers. As the findings suggest, the most vulnerable workers are those whose employment is irregular, which means that it remains important for public authorities in Austria to address the issue of irregular employment. However, attention must be paid not to criminalize the workers, who if they perceive their employment and livelihood threatened, might be less forthcoming to collaborate with the authorities. In this sense, a more worker-friendly approach could benefit all in order to identify, prevent and rectify any dubious employment practices that leave workers outside the purview of formal employment contracts, and therefore expose them to elevated OSH risks.

The second policy implication is the need for a better understanding of this type of employment even when employment is regular. Posting is by definition temporary and transnational, often cross-border in the case of Austria, which receives most posted workers from its neighbours. It is also out-sourced employment with posted workers usually located at the very end of the subcontracting chain. All three factors have a deterring effect on the OSH protection of the posted workers. Whether OSH rules and procedures are unknown or deliberately ignored by both employers and workers, the result is often exposure of posted workers to elevated OSH risks, sometimes with irreparable consequences. New measures to prevent OSH risks should be informed by the characteristics of employment via posting, in order to provide appropriate and tailored responses.

Furthermore, the transnational nature of posting requires a stronger collaboration among sending and receiving countries and at the EU level. The structure of the collaboration should cover all levels, not just central offices, in order for any exchange to be useful and any potential intervention to be timely and meaningful.

Below we present a few more detailed recommendations for the different levels involved:

At the workplace level

- Findings from the Austrian experience with posting suggest that one major improvement would be to increase the level of information on OSH for posted workers. This could be started in the sending country and followed up in the receiving country before they start working. In order to guarantee that the information and the training are received, mandatory measures could be put in place. Knowledge of their rights prior to the initiation of their posting assignment would help to decrease their vulnerability created by language and other potential barriers.
- Increasing the number of inspections would also serve as a deterring factor, which can be achieved if the number of labour inspectors increases.
- Language barriers have to be better addressed, even though a lot has already been done. Experimental methods, such as the use of translation applications, for example, can be extended to all inspectors. Hiring a number of inspectors with language skills in the languages spoken by the majority of posted workers and their deployment in transnational workplaces with migrant and/or posted workers might help improve the process of inspection.

At the industry level and the national level

- Monitoring of OSH risks, in particular in the most hazardous sectors, such as construction, could be improved by extending the main contractor's liability to include OSH.
- The establishment of institutionalized communication and collaboration between authorities and/or offices responsible for posting and those responsible for OSH might increase the efficiency of monitoring and control mechanisms. As this report finds, posted workers are more vulnerable to OSH risks than other colleagues, therefore collaboration between authorities which monitor and control posting and those that monitor and control OSH might be beneficial for a well-organized worker protection system in Austria.

At the EU level

- The transnational institutional exchange between authorities has to be strengthened further. This can be done by continuously improving the IMI system, but also by improving exchange possibilities in person.
- A central authority, such as the proposed European Labour Authority, could also serve as the transnational body to coordinate and facilitate the exchange among national authorities.
- Good practices should be continuously exchanged among national authorities across the European Union.

References

- AMS (2017). *Arbeitsmarktlage 2016*. Wien: AMS.
- Arbeiterkammer (2017). *Arbeitsunfall*. Retrieved April 27, 2017, from <https://wien.arbeiterkammer.at/beratung/arbeitsrecht/krankheitundpflege/unfall/Arbeitsunfall.html>
- Arbeitsinspektion (2017a). *Occupational Health and Safety in Austria*. Retrieved April 27, 2017, from http://www.arbeitsinspektion.gv.at/inspektorat/Information_in_English/OSH_in_Austria/
- Arbeitsinspektion (2017b). *ArbeitnehmerInnenschutzstrategie*. Retrieved April 26, 2017, from http://www.arbeitsinspektion.gv.at/inspektorat/Uebergreifende_Themen/ArbeitnehmerInnenschutzstrategie/
- Arbeitsinspektion (2017c). *Standorte und Zuständigkeiten*. Retrieved April 27, 2017, from http://www.arbeitsinspektion.gv.at/inspektorat/Kontakt_Service/Standorte_Zustaendigkeit/Standorte_und_Zustaendigkeiten
- Arbeitsinspektion (2017d). *The Labour Inspectorate*. Retrieved April 27, 2017, from http://www.arbeitsinspektion.gv.at/inspektorat/Information_in_English/The_Labour_Inspectorate/
- Austrian Act to Fight Wage and Social Dumping (Lohn- und Sozialdumping Bekämpfungsgesetz – LSD-BG), 44th Federal Law, announced on 13th of June 2016, available at: <https://www.ris.bka.gv.at/eli/bgbl/l/2016/44>
- Austrian Health and Safety at Work Act (ArbeitnehmerInnenschutzgesetz – AschG), <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008910>
- AUVA (2015). *Occupational accident insurance in Austria. AUVA's services*. Information brochure. Available at: <https://www.auva.at/cdscontent/load?contentid=10008.606022&version=1421838541>
- AUVA (2017). *Unfallmeldung*. Retrieved April 27, 2017, from <https://www.auva.at/portal27/auvaportal/content?contentid=10007.671003&portal:componentId=gtnf66bee59-5a85-492e-a6e2-48e1207efd19&viewmode=content>
- AUVA (2018). *Forum Prävention*. Retrieved March 12, 2018, from <https://www.auva.at/portal27/auvaportal/content?viewmode=content&contentid=10007.670899>
- BMASGK – Federal Ministry of Labour, Social Affairs, Health and Consumer Protection – Labour Inspectorate (2018). *Labour Inspection. Organisation, Rights and Obligations*. Retrieved March 22, 2018, from https://www.arbeitsinspektion.gv.at/cms/inspektorat/download.html?channel=CH3626&doc=CMS1449667645492&permalink=Alon_RechtePflichten
- BMASK – Federal Ministry of Labour, Social Affairs and Consumer Protection – Labour Inspectorate. (2017). *Occupational Safety. Safety-Related and Occupational Health-Related Supervision*. Retrieved March 22, 2018, from https://www.arbeitsinspektion.gv.at/cms/inspektorat/download.html?channel=CH3586&doc=CMS1449667470347&permalink=stz_amed-betreu_praevdienste
- Help.gv.at (2017a). *Wann liegt ein Arbeitsunfall vor?* Retrieved April 26, 2017, from <https://www.help.gv.at/Portal.Node/hlpd/public/content/289/Seite.2891100.html>
- Help.gv.at (2017b). *Meldung eines Arbeitsunfalls*. Retrieved April 26, 2017, from <https://www.help.gv.at/Portal.Node/hlpd/public/content/289/Seite.2891200.html>
- Eurofund (2017). *Living and Working in Austria*. Retrieved January 22, 2018, from <https://www.eurofound.europa.eu/country/austria>
- European Agency for Safety and Health at Work (n.d.). Austria – Safety and health at work – EU-OSHA. Retrieved April 26, 2017, from <https://osha.europa.eu/en/about-eu-osha/national-focal-points/austria>

- European Commission (2018). *Country factsheet: posted workers in Austria 2016*.
- Eurostat (2018). *Population on 1 January by age and sex (Code: demo_pjan)*. Retrieved April 16, 2018, from <http://ec.europa.eu/eurostat/web/population-demography-migration-projections/population-data/database>
- Fasching, M., Knittler, K. & Moser, C. (2017). *Arbeitsmarktstatistiken 2016. Ergebnisse der Mikrozensus-Arbeitskräfteerhebung und der Offenen-Stellen-Erhebung*. Vienna: Statistik Austria.
- Kerschhagl, J. & Kaida, G. (2016). *Occupational Safety and Health Strategy. Structures, processes and tasks*. Federal Ministry of Labour, Social Affairs and Consumer Protection, Vienna.
- Krenn, M. (2010). *Austria: EWCO comparative analytical report on information, consultation and participation of workers concerning health and safety (Rep.)*. EurWORK, Eurofound.
- Leka, S. & Jain, A. (2014). Policy Approaches to Occupational and Organizational Health. In G. F. Bauer & O. Hämmig (eds.), *Bridging Occupational, Organizational and Public Health. A Transdisciplinary Approach*. Dordrecht: Springer.
- Pacolet, J. & De Wispelaere, F. (2016). *Posting of workers. Report on A1 portable documents issued in 2015 (Rep.)*. Network Statistics FMSSFE, European Commission.
- Prammer, E., Eichmann, H. & Fries-Tersch, E. (2016). *Safer and healthier work at any age. Country Inventory: Austria*. European Agency for Safety and Health at Work (EU-OSHA).
- Sargeant, M. & Tucker, E. (2009). Layers of vulnerability in occupational safety and health for migrant workers: case studies from Canada and the UK. *Policy and practice in health and safety* 7/2, 51-73.
- Schatz, S. & Wetzels, P. (2014). *Entwicklungen im Bereich des Lohndumping [Developments related to wage dumping in Austria] (Rep.)*. Together with Sorger, C. & Danzer, L., L&R Sozialforschung.
- Statistik Austria (2018a). *Erwerbstätige*. Retrieved April 8, 2018, from http://www.statistik.at/web_de/statistiken/menschen_und_gesellschaft/arbeitsmarkt/erwerbstaetige/index.html
- Statistik Austria (2018b). *Arbeitslose, Arbeitssuchende*. Retrieved April 8, 2018, from https://www.statistik.at/web_de/statistiken/menschen_und_gesellschaft/arbeitsmarkt/arbeitslose_arbeitssuchende/index.html
- Statistik Austria (2018c). *Arbeitslose (internationale Definition)*. Retrieved April 8, 2018, from https://www.statistik.at/web_de/statistiken/menschen_und_gesellschaft/arbeitsmarkt/arbeitslose_arbeitssuchende/arbeitslose_internationale_definition/index.html
- Statistik Austria (2017). *Migration & Integration: Zahlen. Daten. Indikatoren 2017*. Wien: Austria.
- UNDOK – Drop-in Center for Undocumented Workers (2015). *UNDOK Drop-in center for Undocumented Workers* (information flyer). Retrieved February 21, 2018, from https://undok.at/wp-content/uploads/2014/06/undok_karte_e.pdf
- Wiener Gebietskrankenkasse (WGKK) (2017). *Lohn- und Sozialdumping Bekämpfung (LSDB)*. Retrieved May 2, 2017, from <http://dienstgeber.wgkk.at/portal27/wgkkdgportal/content?contentid=10007.724482&viewmode=content>
- Zayzon, R., Brück, C. & Salomon, Ch. (n.d). *OSH system at national level – Austria*. OSH WIKI, EU-OSHA. Retrieved April 17, 2017, from: https://oshwiki.eu/wiki/OSH_system_at_national_level_-_Austria