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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 SLOVENIA**

**Mojca Vah Jevšnik  
Research Centre of the Slovenian Academy of Sciences and Arts**

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## Executive Summary

The posting of workers from Slovenia has been continuously and significantly increasing. From 2010 to 2015, the number of postings increased by 419.4%, making Slovenia the fourth EU country per number of workers posted to other Member States. In 2015, Slovenia issued 126,902 A1 forms, amounting to 14.1% of the total employed persons in Slovenia. In relative terms, this ranked Slovenia as the second sending Member State. There is a significant body of literature addressing various aspects of OSH in Slovenia, but the OSH of posted workers has not yet been comprehensively analysed. There is no report/policy brief, statistics, and no scholarly literature that would focus exclusively on the OSH of posted workers in Slovenia. Against the backdrop of the lack of empirical research on the said issue, the aim of our case study was to analyse the legislation and regulation texts concerning the OSH and posting of workers, review the grey and academic literature on OSH in the context of migration, and collect data through semi-structured interviews with relevant stakeholders. In sum, the research agenda was twofold. First, we intended to map the trends in the posting of workers to and from Slovenia and the implications of national labour legislation in interaction with the EU-level legislation on the posting of workers within the framework of OSH and labour/working conditions. Second, we set out to assess OSH-related vulnerabilities of posted workers, who are disproportionately recruited into more hazardous working posts/sectors, and are exposed to work accidents and several health hazards.

We find that the most indicative interplay of vulnerabilities relating to posting can be linked to the temporariness of work abroad, which often results in turning a blind eye to OSH-related risks by employers and workers alike. Efforts to increase productivity, frequently working overtime to finish the job quickly, as well as fear of losing the job or endangering future business cooperation as a barrier to reporting irregularities and violations have all been continuously stressed. Efficient monitoring and enforcement of compliance with employment and OSH standards is crucial in this respect; however, more attention should also be attributed to the raising of awareness about possible long-term consequences of work accidents, occupational diseases, and development of psychosocial conditions. Language barriers also significantly contribute to increasing OSH-risks and lack of access to OSH material in a language workers understand makes them more vulnerable to accidents and health risks. But we found that there is clearly another dimension that needs further attention in this respect. Language barriers may also evoke feelings of loneliness, detachment, and social exclusion in workplace and beyond. Even though posting jobs are temporary and transient in nature, language seems to be an important tool for integration into workplace dynamics and the host society. Another finding that merits further research is that establishing work-life balance in employment that includes posting abroad is difficult and significantly hinders workers' wellbeing.

One particularity in the case of Slovenia that requires further attention is the recruitment of workers from the former Yugoslavian republics with the purpose of posting them abroad. This raises a number of pressing issues. In the context of OSH, such ad hoc recruitments may be problematic due to lack of appropriate training, medical examinations and poor communication between employers and workers. Workers are also more prone to turning a blind eye to irregularities in order to secure their employment and maintain their visa and work permit for the EU. In some cases, it was revealed, Slovenian employers sent injured workers back to their countries for recovery to avoid inspections and further investigations in Slovenia, especially if the workers were not registered and included in social security schemes. Poor knowledge about the Slovenian healthcare system, coupled with employers' misinformation about healthcare coverage in Slovenia, seemed to have encouraged workers to return to their home countries and seek medical treatment there. By doing so, they lost the right to paid sick leave, which they cannot claim retroactively. It is thus highly recommended that more attention is paid to the posting of third country nationals and, specifically, to enhance access to information about their rights and obligations before entering Slovenia. That can be done at the local employment offices, trade unions, and Slovenian embassies/consulates (the entry points to Slovenia).

Continuous transnational cooperation is required between the competent national authorities and other social partners, including employers' associations representing different business sectors, to share information, discuss risks, and jointly develop mechanisms to overcome them. Transnational meetings, conferences, working groups, and e-based communication platforms are some ways to encourage communication and exchange best practices. Employers too are in need of information and guidance on how to ensure safety and health of their workers when posting them to work abroad. It is strongly advised that (regional) capacity building seminars/workshops are provided on a regular basis.

## 1. Introduction

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

The posting of workers from Slovenia has been continuously and significantly increasing. From 2010 to 2015, the number of postings increased by 419.4%, making Slovenia the fourth EU country per number of workers posted to other Member States. In 2015, Slovenia issued 126,902 A1 forms,<sup>1</sup> amounting to 14.1% of the total employed persons in Slovenia. In relative terms, this ranked Slovenia as the second sending Member State, exceeded only by Luxembourg (24.7% of the total employed persons). More than 90% of the A1 forms filled in Slovenia were issued in relation to the posting of workers to one specific Member State. The main countries of destination in 2015 were Germany (48.3%, 60,976 A1 forms/postings), Austria (27.7%), Italy (5.1%), and Belgium (5.1%). The main employment sectors for posted workers were construction (50.3%), other industry (19.2%), and personal services (29.6%). 4 out of 10 employed persons in the Slovenian construction sector were posted abroad (Pacolet and DeWispelaere 2016, Posted Work Country Sheet Slovenia). In 2015, the number of workers posted to Slovenia was 5,685, marking an increase of 67.6% since 2010. This made Slovenia the 21st EU state per number of received posted workers. Most workers were posted from the neighbouring Croatia (45%), followed by Bulgaria (12.2%), Germany (11.9%), Austria (10.9%), and France (7%). The sectors of employment were construction (43.6%), other industry (23.7%), business (15.1%), personal services (8.5%), and agriculture (1.5%) (Pacolet and DeWispelaere 2016, Posted Work Country Sheet Slovenia).

There is a significant body of literature addressing various aspects of OSH in Slovenia, but the OSH of posted workers has not yet been comprehensively analysed. There is no report/policy brief and no scholarly literature that would focus exclusively on the OSH of posted workers in Slovenia. Attention to the OSH of posted workers has first been raised at the transnational conference *Employment/Working Conditions, Occupational Safety and Health of posted Workers*, which took place in Ljubljana on 15 February 2017. The conference was organised within the framework of the POOSH project and it brought together researchers, labour inspectors, and NGO staff in an effort to outline the specific areas that merit further attention and should be explored during the course of the project. Their contributions are documented in Conference proceedings (Rogelja and Toplak 2017).

Against the backdrop of the lack of empirical research on the said issue, the aim of our case study was to analyse the legislation and regulation texts concerning the OSH and posting of workers, review the grey and academic literature on OSH in the context of migration, and collect data through semi-structured interviews with relevant stakeholders. The main research question we posed for this study was as follows:

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<sup>1</sup> Data on received posted workers only include figures related to postings to single Member States.

*How does the interplay of EU-regulation and national OSH systems affect the health and safety of posted workers in a transnational workplace?*

To answer this question, a number of sub-questions were developed:

- *How do national and transnational OSH and employment regulations 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 healthcare 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?*

In sum, the research agenda was twofold. First, we intended to map the trends in the posting of workers to and from Slovenia and the implications of national labour legislation in interaction with EU-level legislation on the posting of workers within the framework of OSH and labour/working conditions. Second, we set out to assess the OSH-related vulnerabilities of posted workers, who are disproportionately recruited into more hazardous working posts/sectors and are exposed to work accidents and several health hazards. Both objectives are in line with the *Priorities for occupational safety and health research in Europe: 2013–2020*, issued by the European Agency for Safety and Health at Work in 2013. Sargeant and Tuckers' (2009) layered approach to assessing the OSH vulnerabilities of migrant workers was used to set the criteria for the analysis and evaluation of the findings.

## **1.2. Main Findings**

- More information sharing and awareness raising is needed to draw attention to the issue of occupational safety and health abroad. This should be done at all levels, including workplace, industry, national and the EU level.
- There is a pressing need for (regional) training seminars/capacity building workshops relating to OSH for employers who are posting workers abroad.

- There is lack of data on work-related injuries and occupational diseases encountered by posted workers.
- A high number of workers who are posted from Slovenia to work abroad are recruited from the former Yugoslavian republics. This raises many pressing issues and in some cases results in gross violations of workers' rights.
- More attention should be given not only to injuries sustained during the process of posting but also to acute and chronic occupational diseases that develop upon return.
- Psychosocial risks in the context of posting require further research. More information sharing and awareness raising is required to bring attention to this aspect. Easily accessible counselling services that provide psychosocial help to workers are required.
- Establishing work-life balance in employment that includes posting abroad is difficult and may hinder workers' wellbeing. The aspect of work-life balance in cases of posting has not been properly addressed and merits further research.

### **1.3. Structure of the country report**

The report first outlines the country context, including a general socio-economic overview, the OSH legal framework, posting stakeholders, data on posting, and sector characteristics. Next, the methodology chapter outlines data collection, the process of thematic analysis of the collected data, and challenges encountered during the fieldwork and analysis. The results of the study are presented in four sub-chapters. The first sub-chapter presents the analysis of OSH-related vulnerabilities posted workers are exposed to in Slovenia. The second sub-chapter is the analysis of the OSH institutional framework in Slovenia. It outlines the actors' roles, mechanisms and procedures at different levels and national/transnational stakeholder interaction and cooperation, with the aim of exploring how OSH institutional framework affects posted workers' vulnerabilities. The third sub-chapter explores OSH in practice in transnational workplaces, focusing on preventative practices, (posted) worker representation and protection, and OSH-related grievance procedures in transnational workplaces. The fourth chapter looks into the pressing issue of language and cultural barriers in transnational workplaces. In the final section of the report, a synthesis and an evaluation of the results are provided, followed by some policy implications of the findings and recommendations on how they could be addressed.

## 2. Country Context

### 2.1. Socio-economic overview

Slovenia is divided into two cohesion regions with significant socio-economic differences: East and West Slovenia. The western part of Slovenia – where the capital of Ljubljana is situated (statistical region of Central Slovenia) – is the strongest in terms of economic development and mostly service-oriented. Central Slovenia is the administrative, economic, cultural, and scientific centre of the country, hosting as many as one third of all Slovenian companies. In comparison with other regions, Central Slovenia stands out for its low share of people employed in industry and high share of people employed in professional, scientific, technical, and other business activities. The eastern part of Slovenia is more sparsely populated and mainly engaged in farming and industrial activity. The Mura region, which is situated in the north-east of the country, is predominantly focused on agriculture, as well as on wellness and spa tourism. Its industrial enterprises are mostly engaged in the food processing and metalworking industries, with civil engineering also more present than in other regions. Besides the Mura region, East Slovenia includes the second largest region in Slovenia – that of Drava, which borders on Austria (Steiermark) in the north and Croatia in the south. The Drava region is home to many enterprises active in processing activities, and the service sector has also undergone development. The region's development strengths include its geostrategic position, industrial tradition, transport infrastructure development, as well as integration of the research infrastructure of the University of Maribor and other educational institutions with the entrepreneurial sphere. The statistical region with the lowest registered unemployment rate is Upper Carniola. Predominately Alpine, it is one of Slovenia's tourism-focused regions (the Coastal-Karst region leading in this respect), but the highest employment rate by sector is in the processing industry. However, despite the increasing share taken by the services industry, industrial companies remain a major source of employment in Slovenia (EURES, The European Job Mobility Portal).

After several years under the effects of the financial crisis, the economic climate in Slovenia began to improve in 2014. GDP growth has strengthened in the last few years and the country has recorded very good economic results in 2017. According to the most recent data from the Statistical Office of the Republic of Slovenia, GDP grew by 4.4% in the second quarter of the year compared to the same period in 2016. This was largely due to an increase in exports, as well as to accelerated growth in private consumption and investment (EURES, The European Job Mobility Portal). In September 2017, the national registered unemployment rate was 8.7%. The overall unemployment rate has been declining year-on-year since July 2014. Nevertheless, a breakdown shows that the unemployment rate

among people aged 50 is as high as 39.1% and the unemployment rate among the youth, aged between 15 to 29, is 20.9% (EURES, The European Job Mobility Portal).

There is a mismatch between labour market needs and skills in Slovenia that can be attributed to a high number of young people enrolled in tertiary education and pursuing a career in sectors with limited vacancies. Slovenian economy has an increased demand especially for elementary occupations, craft and related workers, and service workers – in sum, predominantly less skilled workers or workers with very specific skills (Ignatovič 2011). For some professions, there is a continuous demand and the imbalances are often sought to be corrected by recruiting workers from abroad, especially the former Yugoslav countries. In the following years, mechanical and electrical engineers, specialist medical practitioners, nurses, IT professionals, cooks, waiters, construction workers, plumbers, welders, and heavy goods and lorry drivers will be among the most demanded professions (EURES, The European Job Mobility Portal). In 2017, 69,110 foreign workers were employed in Slovenia, 13,661 of whom were EU citizens. This is a slight increase from 2010, when the number of foreign workers reached 59,614 (Statistical office of the Republic of Slovenia). According to the Slovenian Statistical Office, the negative net migration of Slovenian citizens was recorded for the eighteenth consecutive year. In 2017, 6,583 more Slovenian citizens left the country than returned (ibid.).

## **2.2. OSH and posting in the country**

### ***2.2.1 OSH legal framework***

Occupational health and safety at work is covered by The Health and Safety at Work Act (in force since 2011) and the Rules adopted on the basis thereof. The Act transposes into Slovenian legislation the framework Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the health and safety of workers at work and Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market. The Act applies to every employer who employs at least one worker, to every person involved in the work process, to the private sector, and to public services. The major characteristic of this legislative Act is its emphasis on prevention, reduction, and better management of health and safety at work risks (OSH system at national level – Slovenia). Other main legislative acts that relate to OSH partially are:

- Worker Participation in Management Act
- Representativeness of Trade Unions Act
- Pension and Disability Insurance Act, which regulates compulsory pension insurance (for workers engaged in particularly difficult and harmful work and workers engaged in work that cannot be performed successfully after a certain age) and disability insurance that relates to OSH



- Employment Relationship Act, which establishes a minimum level of rights that should be provided to workers; it regulates working conditions such as workers breaks, rest periods, night work, overtime, special protection of certain categories of workers, etc.
- Civil Servants Act, which governs the specifics of employment as well as the rights and duties of civil servants
- Health Services Act and Health Care and Health Insurance Act, which regulate organisational aspects of health at work
- Inspection Act
- Labour Inspection Act

Furthermore, the “Resolution on the national programme for health and safety at work” was adopted in 2003 on the basis of Article 4 of the Occupational Health and Safety Act. The document provides a national strategy of development in the field of OSH, with key objectives being the protection of life, health and work ability of workers, and prevention from accidents at work, work related injuries and occupational diseases (OSH system at national level – Slovenia). The Slovenian OSH legal framework is universally applicable to all workers in Slovenia and does not specifically address posted or migrant workers.

### **2.2.2 OSH and Posting Stakeholders**

#### **Competent authorities**

- Ministry of Labour, Family, Social Affairs and Equal Opportunities  
<http://www.mddsz.gov.si/en/>
- Ministry of Health  
<http://www.mz.gov.si/en/>
- Labour Inspectorate of the Republic of Slovenia  
<http://www.id.gov.si/en/>
- The National Institute of Public Health  
<http://www.nijz.si/en>

#### **Social partners**

- Chamber of Commerce and Industry of Slovenia  
<https://eng.gzs.si/>
- Trade Union Confederation 90 of Slovenia  
<http://www.sindikats90.si/>
- Trade Union Confederation of Slovenia PERGAM

<http://www.sindikatsi.si/>

- Neodvisnost, New Trade Union Confederation of Slovenia  
<http://www.knss-neodvisnost.si/>
- Chamber of Craft and Small Businesses of Slovenia  
<http://www.ozs.si/ozseng/Aboutus.aspx>
- Association of Employers in Craft and Small Business of Slovenia  
<http://www.zdops.si/>
- Association of Employers of Slovenia  
<https://www.zds.si/>
- Association of Free Trade Unions of Slovenia  
<https://www.zsss.si/english/>

#### **Other stakeholders**

- Occupational Safety and Health Chamber  
<http://www.zbornica-vzd.si/>
- Slovene Association of Safety Engineers Societies  
<http://www.zveza-dvis.si/>
- Slovene National Network for Cooperation with EU-OSHA  
<http://www.osha.mddsz.gov.si/o-nas>
- University Medical Centre Ljubljana – Clinical Institute of Occupational, Traffic and Sports Medicine  
[https://www.kclj.si/index.php?dir=/divisions\\_departments/independent\\_units/institute\\_of\\_occupational\\_traffic\\_and\\_sports\\_medicine](https://www.kclj.si/index.php?dir=/divisions_departments/independent_units/institute_of_occupational_traffic_and_sports_medicine)
- The Health Insurance Institute of Slovenia  
<http://www.zzs.si/indexeng.html>
- Institute of Occupational Safety  
<http://www.zvd.si/en/>

### **2.2.3 Data on posting**

As stated in Chapter 1.1., the number of postings increased by 419.4% from 2010 to 2015. In 2015, Slovenia issued<sup>2</sup> 126,902 A1 forms, amounting to 14.1% of the total employed persons in Slovenia. More than 90% of the A1 forms issued by Slovenia were issued in relation to the posting of workers to one specific Member State. The main countries of destination in 2015 were Germany (48.3%, 60,976

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<sup>2</sup> A1 forms are issued by the Health Insurance Institute of Slovenia.

A1 forms/postings), Austria (27.7%), Italy (5.1%), and Belgium (5.1%). The main employment sectors for posted workers were construction (50.3%), other industry (19.2%), and personal services (29.6%). 4 out of 10 employed persons in the Slovenian construction sector were posted abroad (Pacolet and DeWispelaere 2016, Posted Work Country Sheet Slovenia). In 2015, the number of workers posted to Slovenia was 5,685,<sup>3</sup> marking an increase of 67.6% since 2010. Most workers were posted from the neighbouring Croatia (45%), followed by Bulgaria (12.2%), Germany (11.9%), Austria (10.9%), and France (7%). The sectors of employment were construction (43.6%), other industry (23.7%), business (15.1%), personal services (8.5%), and agriculture (1.5%) (Pacolet and DeWispelaere 2016, Posted Work Country Sheet Slovenia).

There is no specific data available on the OSH-related aspects of posting.

#### ***2.2.4 Sector characteristics***

In Slovenia, safety and health at work falls within the competence of the Ministry of Labour, Family, Social Affairs and Equal Opportunities and the Ministry of Health. These two ministries monitor and assess the situation in the aforementioned area and on this basis draw up regulations and solutions for the standardised regulation of safety and health at work. Control over the implementation of regulations in this area falls within the competence of the Slovenian Labour Inspectorate. Operating under the Ministry of Labour, Family, Social Affairs and Equal Opportunities, which performs the duties of the EU-OSHA national focal point, is a national network involving the cooperation of government representatives, representatives of unions and employers' organisations, as well as experts and researchers in the area of safety and health at work and occupational medicine (EU-OSHA, focal point Slovenia).

#### ***2.2.5 Specific issues for migrant and posted workers***

Rogelja and Mlekuž (2018) write that some of the most pressing problems relating to posting in Slovenia have been the establishment of letterbox companies, non-selective issuing of A1 forms, as well as lengthy and inefficient proceeding leading to sanctions. The newly adopted Transnational Provision of Services Act (ZČmIS, Ur.l. 10/17), which came into force in January 2018, however, has set out to eliminate such irregularities. While the effects of the Act remain to be analysed in the future, one of the measures introduced by the Health Insurance Institute of Slovenia and the Ministry of Labour can already be labelled as an example of good practice. Namely, the possibility to check the

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<sup>3</sup> Data on posting to Slovenia is collected by the Slovenian Employment Service.

validity of the issued A1 form online and thus make sure that the employer pays social security contributions.

What makes the case of Slovenia specific is the posting of third country nationals, primarily those immigrating to Slovenia from the former Yugoslavia. In 2016, 10,993 or 25% of all workers posted from Slovenia were citizens of Bosnia and Herzegovina, followed by citizens of Serbia (3,178 or 7.3%) and Croatia (1,768 or 4%). A range of infringements have occurred in connection with the posting of workers from those countries, many of whom are in a vulnerable socio-economic position (Rogelja and Mlekuž 2018). It frequently turns out in practice that Bosnian workers sign contracts they do not understand because of the language, or contracts that do not comply with Slovenian labour legislation (ibid.: 114). They are also more prone to turning a blind eye to irregularities not to jeopardise their employment.

### 3. Methodology

#### 3.1. Data collection

The data for this report was collected from the existing scholarly and grey literature on OSH in the context of migration and posting, relevant EU Directives, national legislation and regulations, and other available policy documents. The analysis of secondary sources was followed by empirical data collection, which took place in Slovenia from October to December 2017. Semi-structured interviews were conducted with 11 respondents, including:

- representatives of the Ministry of Labour, Family, Social Affairs and Equal Opportunities, sector for occupational safety and health (2)
- senior representative and head of the OSH department at the Labour Inspectorate of the Republic of Slovenia (1)
- representatives of the leading trade union (3)
- representative of the Chamber of Craft and Small Businesses of Slovenia in charge of business ventures abroad (1)
- representative of a non-governmental organisation offering counselling to workers (1)
- workers employed by Slovenian companies and posted abroad to provide services in labour intensive sectors in Germany and Austria, i.e., construction and industry (3); two of them are citizens of the former Yugoslav republics<sup>4</sup>

The consent forms, containing information about the project and data analysis (ensuring confidentiality and anonymity), were presented to respondents for signature. The interviews were recorded and transcribed.

#### 3.2. Analysis

A thematic analysis of the collected data was conducted to identify themes appearing in each interview. Codes were generated in accordance with the research questions and overarching topics pursued in the research, i.e., OSH-related vulnerabilities of posted workers, OSH institutional framework and its impact on posted workers' vulnerabilities, and OSH in transnational workplaces, including language and cultural barriers. Sargeant and Tucker's (2009) layered framework to assessing the OSH vulnerabilities of migrant workers was used to set the criteria of evaluation of the collected data.

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<sup>44</sup> The interviews were conducted by Kristina Toplak, Jernej Mlekuž, Nataša Rogelja and Goran Lukić.

### **3.3. Challenges and limitations**

One of the main challenges in the process of data collection was reluctance of the key stakeholders to participate in the research, stating lack of expertise on OSH within the framework of posting as the main reason. Posted workers were also a very difficult group to identify and approach. Those who did agree to participate in the research seemed uncomfortable verbalising their stories at length and in-depth. Their answers were mainly short and not as illustrative as expected. Recording may have had created an uncomfortable atmosphere that hindered sharing their stories in more detail. Nevertheless, we managed to collect both negative and positive aspects of their posting experiences.

## 4. Results

### 4.1. OSH-related vulnerabilities of posted workers

The vulnerability of posted workers is manifold, especially when working in hazardous and physically demanding sectors, which is where posted workers most often provide services (Pacolet, DeWispelaere 2016). It ranges from the migration status-related factors, migrant characteristics and social-economic conditions in the home country, to the receiving country conditions and the characteristics of employment (c.f. Sargeant, Tucker 2009). When identifying the OSH-related vulnerabilities of posted workers, the layered framework to assess vulnerability in occupational safety and health for migrant workers, developed by Sargeant and Tucker (2009), is most useful. Sargeant and Tucker define migrant workers as workers without a permanent status in the receiving countries, which is applicable also in the cases of posting. They argue that migrants are exposed to a multi-layered vulnerability that manifests itself in a variety of forms depending on a set of factors: migration factors, characteristics related to migrants and their country of origin, and receiving country conditions. The vulnerabilities pointed out by our interviewees closely correspond to this framework.

In the first layer of vulnerability, Sargeant and Tucker (2009) outline migration factors, such as the conditions of recruitment and the worker's migration status. If the conditions of recruitment are regular, meaning that suitable contracts are in place according to national laws and workers have applicable work permits, workers will be better protected. If employment is precarious, irregular and/or informal, migrants will be more vulnerable to OSH risks, with irregular migrants operating in the informal economy and being the most vulnerable of all. In the cases of posting, several cases of posted workers being sent to work abroad by letter-box companies<sup>5</sup> were described by the representatives of the Slovenian trade union and labour inspectorate. In such cases, medical bills for illnesses or accidents had to be paid by workers themselves, putting many of them in debt they could not repay in the foreseeable future. The representative of the trade union stressed that health insurance status for each worker can be checked online, that all workers should be properly informed on how to access this information, and that they should themselves take the responsibility to do so.

*Sometimes you think you are insured, but you are only insured for one day so that the employer can get the required permits, and then he cancels the insurance. And you don't even know you are basically moonlighting. (...) At the end of the day, the worker himself should check his insurance status. We always say to workers: look, it takes a few seconds, come on, just do it. (Representative of an NGO)*

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<sup>5</sup> Most often, the term letterbox company denotes businesses which exist via a mailing address only, with actual activities taking place elsewhere (i.e., in another Member State), and which are purposefully designed to circumvent legal obligations (Heinen et al. in Hastings, Cremers 2017: 2).

The representative of the trade union pointed to cases where posted workers who returned to Slovenia to undergo medical treatment after a work-related injury abroad had to cover the bills themselves if they did not have supplementary medical insurance.<sup>6</sup> Indeed, since many workers who are posted from Slovenia come from the former Yugoslav republics, they are often not aware of the characteristics of the Slovenian health system. Such lack of knowledge about rights and regulations and lack of proper information about the functioning of the Slovenian healthcare system also significantly shape workers' vulnerabilities.

*He was a truck driver. He suffered a brain stroke in Italy and was transported with an ambulance to Slovenia. His family immediately applied for the supplementary medical insurance, but it takes some time to get it activated, you know. So he was without it for a few weeks and the neurology clinic billed him about a thousand euros. There was no way of not paying for the treatment. They met him halfway in the sense that he could repay them with payments of 50 euros per month.*

*(Representative of the trade union)*

Furthermore, representatives of the trade union drew attention to the problem of the black market and posting in the absence of proper documentation and insurance that takes place with workers' consent. In many such cases, the payments are below national standards, lower than initially verbally agreed or not paid out at all.

*A worker comes to our office and says that he was working in the black market and didn't get paid. So he wants us to pursue the employer. Ok, we will look into it. And then we ask him: what are you going to do next? Oh, I already found some new employer, he says. But it's the same story all over again. A job in the black market. So how do we help them if they don't want to help themselves?*

*(Representative of the trade union)*

The second layer of vulnerability refers to the characteristics of migrants themselves, namely, the socio-economic conditions of their home country, education and skill levels, and language skills (Sargeant and Tucker 2009). For workers coming from poor countries, the cost of losing their jobs is higher than for those who can return home to jobs that are comparable, which may inhibit their willingness to enforce their rights. For these reasons, workers may also seek to maximise their income

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<sup>6</sup> In Slovenia, the basic compulsory medical insurance paid by the employer does not cover all medical services. Residents are strongly advised to purchase supplementary medical insurance on a monthly basis.



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). Such cases were reported by most of our interviewees, including posted workers themselves. The collected data shows that due to significant wage disparities in the EU Member States, workers from lower-income countries, including Slovenia, tend to intentionally ignore or downplay irregularities and are reluctant to report OSH-related violations for fear of losing their jobs. The representative of a Slovenian non-governmental organisation providing counselling to migrant workers informed us about how workers in construction are removing the protective equipment to be able to work faster and meet the deadlines despite being aware of the safety regulations and possible fines when not acting in compliance.

*We work [at the construction site] five days per week plus Saturday for 12, 14 hours. (...) It's not exactly according to regulations, but they do pay the overtime, just so you know.*

*(Posted worker)*

As regards the training of workers before posting them abroad, the practice varies across sectors and employers.<sup>7</sup> However, two interviewees noted that according to their experience, low-skilled jobs in construction usually come with less training as opposed to high-risk jobs in sectors such as chemical industry.

*Let's say chemical industries. I think that in that kind of high-risk jobs, they train them more because the risk is higher. They can't afford not to train them, for them to make mistakes. Where there is complete lack of control, like in the construction sector, they don't even have basic documentation.*

*(Representative of the trade union)*

*First, a medical check-up if they are healthy enough [to work with chemical agents], then safety and health training. They've got special protective clothes and masks and everything needed to work inside.*

*(Posted worker)*

*They are pressured into transporting dangerous substances without protective clothing or protective equipment. He is obliged to clean the truck later. With what? Chemical substances. In what? Flip-flops*

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<sup>7</sup> Our observation is that employers themselves need training on how to ensure the OSH of workers they send abroad. According to evaluation forms received by the POOSH team following the capacity building workshop for employers (Chamber of Craft and Small Businesses of Slovenia, June 12, 2018), such training is in high demand.

*and shorts. No protection provided [...] They are also often forced to get rid of dangerous waste somewhere on the way.*

*(Representative of the trade union)*

The third layer of vulnerability, Sargeant and Tucker (2009) argue, refers to the conditions in the receiving country, such as the characteristics of employment and the sector, access to collective representation, access to regulatory protection, and issues of social exclusion and social isolation. While access to trade unions is discussed below (section 4.3.2), in terms of sector, our findings indicate that posted workers are indeed employed in the most hazardous sectors such as construction, industry and transport. Apart from the lack of training, the issue of infringements in the transport sector was brought forth by a representative of the trade union. He pointed to long working hours and corresponding fatigue of cross-border drivers, continuous pressure to deliver goods within the agreed time, lack of rest and decent meals. In addition, he noted that in many cases, employers have been pressuring workers to use magnets to tamper with their tachograph readings so as to avoid possible fines. Also of concern is his observation that drivers are often exposed to inadequately labelled hazardous chemicals or biological materials or are not fully informed about the dangers associated with the load they carry.

As for the issue of social isolation, one of our interviewees noted that the absence of family and friends gradually became burdensome. While this specific lifestyle may be appealing for some period of time, the impact of continuously being away is not negligible, as one posted worker himself explained:

*For younger people it pays off, I say. For a young person straight from school, it pays off to go abroad. To earn some money and make savings. And see some of the world. But in the long run, this is not living. You are away, you cannot start a family. You have nothing from life, quite simply put. (...) You start missing things and you want to settle down.*

*(Posted Worker)*

## **4.2. OSH Institutional Framework**

### **4.2.1. Actors' roles**

Key OSH authorities (see Figure 1) are located within the Ministry of Labour, Family, Social Affairs and Equal Opportunities of the Republic of Slovenia and the Ministry of Health of the Republic of Slovenia. The main executive body under the Ministry of Labour, Family, Social Affairs and Equal Opportunities is the Directorate General of Labour Relations and Labour Rights and, within its scope, the Health and

Safety at Work Section. Other key bodies under the Ministry of Labour, Family, Social Affairs and Equal Opportunities are the Labour Inspectorate and the Council for Health and Safety at Work as the expert advisory body which considers and adopts the views and recommendations on innovation, strategy and implementation of integrated policies and priorities for health and safety at work. The task of the Health and Safety at Work Section of DG is monitoring and evaluating the state of health and safety at work in Slovenia and on this basis providing solutions for the regulation of health and safety at work. Other areas of activities are: preparing regulations, forming expert formal opinions, issuing work permits for operating professional tasks in the field and issuing authorisations for carrying out training for health and safety coordinators at construction sites. It is responsible for promoting health and safety at work, and international cooperation. In addition, the Health and Safety at Work Section is the National Focal Point for cooperation with the EU-OSHA (OSH system at national level – Slovenia).

The Slovenian Labour Inspectorate performs inspections in the field of labour relations, health and safety at work, and since 2004, also in the field of social welfare. The Labour Inspectorate supervises the implementation of the Health and Safety at Work Act, which also defines fines for violations of its provisions. When labour inspectors carry out regular inspections under this Act and detect a violation, they also launch accelerated proceedings as a First Instance authority. The First Instance authority means that there may be an appeal against the labour inspector's decision regarding the violation in the form of a request for judicial protection. Through its preventive and advisory role as Inspectorate, it provides expert help and advice to both employers and employees, companies and workers; it is involved in law-making and it informs the public of its findings, actions and consequences of violations of regulations in order to protect the rights of legal and natural persons (OSH system at national level – Slovenia). The Labour inspectorate is struggling with shortages of inspectors. According to its annual report, inspections in 2017 were carried out by a total of 77 inspectors who had to process around 6,500 reports of irregularities (IRSD 2018).

The Ministry of Health of the Republic of Slovenia deals with activities concerning health at work, which are carried out by occupational physicians. The drafting of regulations, the granting of concessions to occupational physicians, the coordination of health at work programmes as well as leading and coordinating activities concerning health promotion for managers and working population are within the competences of the Ministry itself. The Health Inspectorate of the Republic of Slovenia performs supervision over the implementation of laws and other regulations, with the objective of ensuring public health covering areas such as infectious diseases, food safety, drinking water, the medical profession, etc. (OSH system at national level – Slovenia).

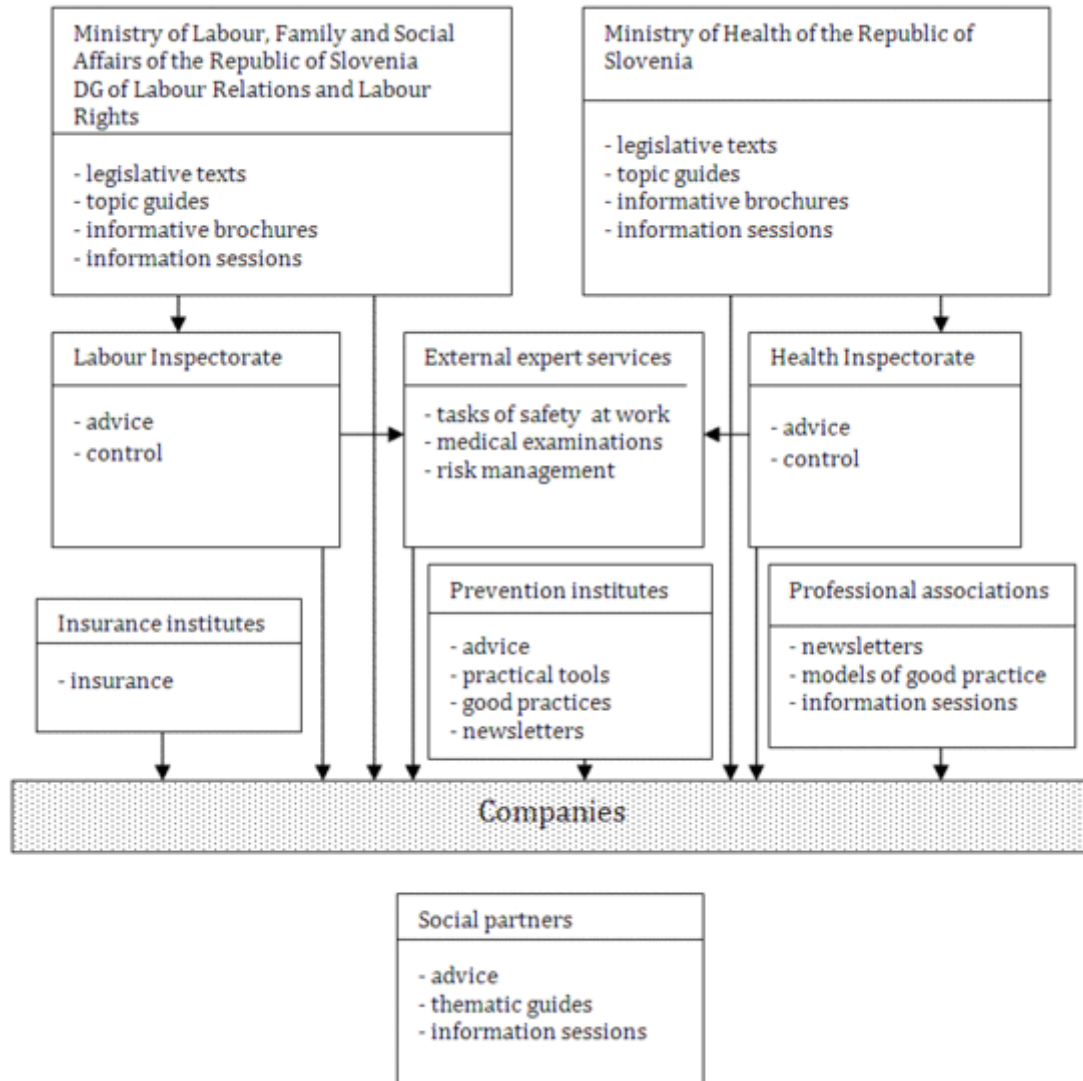


Figure 1: OSH infrastructure in Slovenia at implementation level

Source: OSH system at national level – Slovenia

The Chamber of Health and Safety at Work brings together safety practitioners and occupational physicians. Its most important tasks according to the provisions of the Act are raising the level of health and safety at work and participation in drafting legal acts (OSH system at national level – Slovenia).

The social dialogue partners are the trade union organisations and the employers’ associations. Sometimes, the Slovenian Government takes part in the social dialogue as the holder of coordination of the relations in the economic and social fields. Certain civil societies and other non-governmental organisations and associations have recently emerged as the fourth party to the social dialogue (OSH system at national level – Slovenia).

#### 4.2.2. Mechanisms and procedures at different levels

Workers posted to Slovenia are subject to the Slovenian OSH legislation, although the category of posted workers is not explicitly mentioned in the laws and regulations. Under Article 41 of the Safety and Health at Work Act (Ur.l. 43/2011), the employer must immediately notify the Labour Inspectorate of every fatal accident and every injury that results in the inability to work for more than three days, a collective accident, a dangerous occurrence or an identified occupational disease. In serious cases, the police and the District Attorney's office need to be informed as well. Workers can report irregularities to their supervisors or the Labour Inspectorate. They can contact the latter via e-mail, phone, e-form or in person. As regards accidents of workers posted abroad by Slovenian employers, the Labour Inspectorate has no data if the employer fails to report the accident or if foreign labour inspectorates fail to contact the Slovenian Inspectorate. They rarely investigate by default.

According to the labour inspector we interviewed, labour inspections concerning posted workers in transnational workplaces are complex because of language barriers, different (foreign) documentation that inspectors are not familiar with, and lengthy bureaucratic procedures in cases of identified irregularities (issuing fines to employers from outside Slovenia). The labour inspector also stated that it is difficult to monitor the living conditions of posted workers because inspectors are not allowed to enter private premises. According to our interviewee, most irregularities and violations are reported in relation to posted or migrant workers from the third countries, especially the former Yugoslav republics. They are usually less equipped and trained than workers from other Member States and therefore more prone to accidents and injuries. This renders transnational cooperation and communication even more difficult, since there is no IMI-style system in place and meetings between inspectors are less common.

*Injured workers are taken to a hospital and the next day they are gone, taken across the border. The doctors didn't even know about it. There are many stories. But this is again the case of Bosnia. Europe is not as problematic. Employers (from Europe) seem to be more aware of their obligations and we don't have any problem with them. Bosnia, Kosovo, Serbia, Macedonia. Those are the (problematic) ones. (Representative of the Labour Inspectorate)*

Support to workers is provided by many trade unions and NGOs and often includes information sharing, counselling and advocacy at court proceedings. However, according to Rogelja and Mlekuž, trade unions report on cases where the process of gathering evidence by the prosecutor's office can take up to four years. When the case reaches the court, they write, the employer can file a counter-claim which prolongs the procedure and makes it even more expensive (Rogelja and Mlekuž 2018:

108). The Association of Free Trade Unions of Slovenia (ZSSS) is currently involved in the EaSI-Progress project 'Fair Posting: European Trade Unions Network for fair working conditions for posted workers', which aims to set up counselling offices for posted workers.

#### **4.2.3. National and transnational actor interaction and/or cooperation**

The implementation and enforcement of the applicable laws and regulations is subject to national competent authorities. In the case of cross-border provision of services, transnational cooperation of those authorities, particularly labour inspectorates, is key to identifying and reacting to irregularities and violations. Many different channels of cooperation have been established, the use of the IMI system being one of them and cooperation between senior labour inspectors in the SLIC committee another. The latter established a working group on cross-border enforcement and published a handbook titled e-Handbook on cross-border enforcement on occupational safety and health by SLIC inspectorates (2016), with the aim of exchanging information and enhancing administrative support.

The Slovenian labour inspector we interviewed explained that the main problem in transnational cooperation between labour inspectorates is the exchange of information. In his opinion, the IMI system functions, but the exchange is often too slow. This may be attributed to lack of qualified staff and the short duration of posting jobs. Before verified information is received or sent out, he noted, the job is often finished and posted workers have already left the country. In 2017, the Labour Inspectorate received 286 requests for information and submission of documents in the cases of posting of workers and sent out 7 such requests (IRSD 2018).

### **4.3. OSH in practice in transnational workplaces**

#### **4.3.1. Preventative practices in transnational workplaces**

When discussing the vulnerabilities of posted workers and brainstorming about ways to overcome them, our interviewees singled out preventive measures, efficient information sharing and awareness raising as the mechanisms that may significantly contribute to reducing them. Representatives of trade unions noted, however, that posted workers mostly seek information about payment and social insurance and less about working conditions and occupational safety and health.

A representative of an NGO interviewed suggested that transnational sector agreements should be put in place with the aim of linking social partners to ensure decent treatment of posted workers. He noted that in the future the number of migrant workers in Slovenia will increase because of demographic trends and low salaries. They will mostly be recruited, he anticipates, from the former Yugoslav republics. It is therefore important to develop efficient mechanisms of informing about rights and obligations beyond Slovenian borders. The representative of the trade union suggested that

workers should be informed at the embassies and consulates in their countries of origin, as these are usually the entry points to Slovenia.

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

Posted workers may seek protection and representation from a variety of trade unions operating in Slovenia and abroad. Trade union representatives outlined a number of cases in which they were asked to provide support to posted workers, including cases in which posted workers were injured abroad. Many reported cases revolve around the issue of covering medical expenses in the absence of medical insurance.

#### **4.3.3. *OSH-related grievance procedures in transnational workplaces***

This aspect was not extensively addressed by the interviewees and was labelled as a pressing issue that needs to be explored on a case-by-case-basis. Based on the data collected, we may say that employers as well as workers themselves often do not have the knowledge and information about the possibilities of initiating a grievance procedure when working abroad or are reluctant to become involved in any procedures that may result in the termination of their (business or employment) contracts. The Labour Inspectorate, however, collects all notifications of irregularities and/or accidents or occupational diseases and acts in accordance with the applicable laws and regulations concerning labour inspection procedures relating to the issues of occupational safety and health. However, procedures following the identification of an infringement in Slovenia are lengthy (Rogelja and Mlekuž 2018).

### **4.4. Language and cultural barriers in transnational workplaces**

#### **4.4.1. Prevention**

Language and the ability to communicate is an important aspect that overwhelmingly singles out the migrant workforce as a particular type of vulnerable workforce (Dustman et al. in Sargeant and Tucker 2009). Lack of knowledge of the local language may mean that workers are unable to fully understand instructions, read warning signs, communicate concerns, and learn about regulatory protection in place in order to voice their concerns regarding safety and health. Some UK studies on the OSH of migrant workers also throw light on the issue of lack of understandable training and argue that “risk assessments bearing in mind migrant workers (language barriers and cultural differences) are hardly done” (European Agency for Safety and Health at Work 2007: 29). The language barrier is a pressing issue also because the inability to communicate at work can interfere with establishing supportive relations at work, which in itself can adversely affect workers’ wellbeing (Premji et al. 2008).

This point was raised by one of the interviewees who also pointed out that communication between colleagues who speak different languages can be compromised in cases of personal resentments.

*At the construction site we always have someone with us that is the leader and knows German. But the way he translates (...) if you're not on good terms with him (...) many left and they were good workers. This is workers' nightmare.*

*(Posted worker)*

One of the posted workers we interviewed pointed out that for him, the inability to speak German when he was posted to Germany was the most difficult barrier to overcome. Not so much in the workplace because, he explained, they communicated about the details of the work process with the use of drawings. For him, it was the inability to communicate outside work that was most burdensome. As previously argued, language barriers may significantly contribute to increasing the risk of injuries and lack of access to OSH material in a language workers understand makes them more vulnerable to accidents and health risks. But there is clearly yet another dimension here. Language barriers may also evoke feelings of loneliness, detachment and social exclusion in workplace and beyond. Ineffective communication and lack of support from management or colleagues are categorised by the EU-OSHA as psychosocial risks that may result in negative psychological, physical and social outcomes such as work-related stress, burnout or depression (EU-OSHA). Therefore, it should be noted that even though posting jobs are temporary and transient in nature, integration into workplace dynamics, as well as the host society, is something workers may strongly desire. Language plays an important role in this respect.

#### **4.4.2. Grievance management**

Language barriers may affect the chances of posted workers to voice a grievance. None of our interviewees, however, reported such an experience. In cases of complaints or reports on irregularities, trade unions or NGOs were contacted to guide workers through the procedures.



## 5. Synthesis and Conclusions

The posting of workers to and from Slovenia has been consistently increasing in the past few years. The aspect of occupational safety and health of posted workers, although mentioned frequently by stakeholders as a pressing issue that needs attention, has not yet been adequately addressed (c.f. Vah Jevšnik 2017). There is lack of data on work-related injuries and occupational diseases encountered by posted workers, and while some literature does cover exploitation of migrant workers in Slovenia from various angles,<sup>8</sup> OSH in the context of posting of workers still remains under researched.

As discussed in section 2.2.5, the representatives of labour inspectorates, trade unions and non-governmental organisations called for a strong evidence base in the light of the growing number of complaints and violations of workers' rights and challenges of imposing rules in transnational and multi-employer workplaces, which would be utilized for policymaking. They also called for continuous transnational cooperation between the competent national authorities and other social partners, including employers' associations representing different business sectors – to share information, discuss risks and jointly develop mechanisms to overcome them. Transnational meetings, conferences, working groups, capacity building seminars and e-based communication platforms are some ways of encouraging communication and exchange of best practices. Employers too expressed the need for information and guidance on how to ensure safety and health of their workers when posting them abroad. There have been no capacity building seminars/workshops on the topic of OSH and posting organised for Slovenian employers to date.

As regards the vulnerabilities of posted workers, the data collected reveals that they are manifold and in line with Sargeant and Tucker's (2009) layered approach. We found that the most indicative interplay of vulnerabilities relating to posting can be linked to the temporariness of work abroad, which often results in turning a blind eye to OSH-related risks by employers and workers alike. Efforts to increase productivity, frequently working overtime in order to finish the job quickly, and fear of losing the job or endangering future business cooperation if reporting irregularities and violations have all been continuously reported. Although efficient monitoring and enforcement of compliance with employment and OSH standards is crucial in this respect, more attention should also be attributed to awareness raising about possible long-term consequences of work accidents and occupational

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<sup>8</sup> See e.g. Medica, Lukić (2011). The research that addressed the OSH of 92 migrant workers in Slovenia is also of particular interest. The study showed that migrant workers live and work in harmful conditions that are hazardous to their health. Only a third of the respondents believe they are healthy, other reported a number of health-related conditions. The study also revealed that more than 30% of respondents do not wear any protective equipment at work site and that 39 of the 92 workers experienced injuries in workplace in the recent past (Draksler 2011).

diseases. Health-related, psychological and socio-economic consequences of work accidents should be made clearly evident to employers and workers in an effort to pay more attention to safety and health. Last but not least, in accordance with Aksorn and Hadikusumo (2008), we argue that leading by example – meaning that employers demonstrate determination to respect the safety standards no matter the cost or duration of employment – will encourage workers to follow their lead and will as such constitute an important preventative measure to be taken into consideration.

One peculiarity in the case of Slovenia that requires further attention is the recruitment of workers from the former Yugoslav republics with the purpose of posting them abroad, which gives rise to a number of pressing issues. In the context of OSH, such ad hoc recruitments are problematic due to lack of appropriate training, medical examinations, as well as poor communication between the employer and worker. Workers are also more prone to turning a blind eye to irregularities and tend to unconditionally rely on their employers for secure salary at any cost. In some cases, it was revealed, Slovenian employers sent injured workers back to their countries for recovery to avoid inspections and further investigations in Slovenia, especially if the workers were not registered and included in social security schemes. Poor knowledge about the Slovenian healthcare system, coupled with employers' misinformation about payment for healthcare in Slovenia, seemed to have encouraged workers to return to their home countries and seek medical treatment there. By doing so, they lost the right to paid sick leave, which they cannot claim retroactively. It is thus highly recommended that more attention is paid to posting of third country nationals and, specifically, to enhancing access to information about their rights and obligations before entering Slovenia. This can be done at local Employment offices, trade unions and Slovenian embassies/consulates (the entry points to Slovenia).

## 6. Policy Implications and Recommendations

Based on the data collected with the semi-structured interviews, we draw the following recommendations:

1. **More information sharing and awareness raising** is needed to draw attention to the issue of health and safety abroad. This should be done at all levels, including workplace, industry, national and the EU level. Currently, the issue of OSH in the context of posting is overlooked and marginalised.
2. Continuous **transnational cooperation** is required between the competent national authorities and other social partners, including individual business sectors – to share information, discuss risks and jointly develop mechanisms to overcome them. Transnational meetings, conferences, working groups, e-based communication platforms are some ways of encouraging communication.
3. **Training seminars/capacity building workshops** relating to OSH for employers who are posting workers abroad or are working with posted workers in Slovenia should be offered on a regular basis.
4. A high number of workers who are posted from Slovenia to work abroad are recruited from the former Yugoslav republics. Due to many reported violations concerning their health and safety when posted abroad, it is recommended that they **are informed about their rights and obligations before entering Slovenia**. This can be done at local Employment offices, trade unions and Slovenian embassies/consulates.
5. Posted workers should be encouraged to closely follow the rules and regulations concerning posting, including OSH. They should be informed about their rights and obligations and encouraged to monitor and report any violations. The role of trade union representatives on site is paramount in this respect. Workers should be informed not only about the immediate dangers but also possible long-term health effects and the impact of occupational diseases on the quality of life at old age. This might encourage them to follow the guidelines and regulations more closely and without exception.
6. More attention should be paid not only to injuries sustained during the process of posting, but also to **acute and chronic occupational diseases**. There is a problem of data collection in this respect, especially in the cases of posting.
7. The field of OSH also includes **psychosocial hazards** such as work-related stress, anxiety, isolation and mobbing in workplace. According to the EU-OSHA, when workers are facing excessive workload, conflicting demands, lack of role clarity, lack of involvement in making decisions that affect them, job insecurity, ineffective communication, lack of support, as well as workplace violence and harassment,

they are at risk of experiencing psychosocial risks that may lead to mental health and physical health problems (EU-OSHA). Psychosocial risks in the context of posting should be researched further. More information sharing and awareness raising is required to bring attention to this aspect. Easy accessible **counselling services** that provide psychosocial help to workers are required.

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