



Funded by  
the European Union



**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 ROMANIA**

**Ana Maria COSTEA  
Andreea FARCAȘ**

**NATIONAL UNIVERSITY OF POLITICAL STUDIES AND PUBLIC ADMINISTRATION**

**JULY 2018**

## Executive Summary

The present research is the result of both desk and field research activities like: literature review (centred on the case of Romania: the legal aspects regarding OSH, the socio-economic context) and 8 interviews that were conducted with 6 experts from different public and private institutions and 2 posted workers from one of the vulnerable industries: international road transport.

The desk research was conducted in the first part of 2017, whereas the interviews were conducted in the second part of the year.

In terms of the institutional framework, in the case of posting, several public bodies are engaged like: the Ministry of Labour, Family, Social Protection and Elderly (which provides legislation, informative sessions, transposes the EU legislation and directives); Labour Inspection (which provides legislation, conducts control actions regarding the legal obligations of employers, raises awareness campaigns); the National House of Public Pensions (works on the identification of the legislation for posted workers regarding social contributions for pensions, work accidents and professional diseases, health assurances); Trade Unions (provide advice, social dialogue according to Law no. 62/2011, legal debates, etc.); Employers' Associations (provide advice, social dialogue according to Law no. 62/2011, legal debates, etc.) and other NGOs with activity related to OSH and posting workers.

The main findings of the study are:

- Romania is mainly a sending state, not a receiving one, in terms of posted workers/migrants. The sectors in which the majority of the Romanian posted workers/migrants work are: agriculture, construction, transport, construction. According to the official data 46871 workers from Romania were posted in UE in 2015 (Romanian Labour Inspection, 2016 cit.in Novac, 2017). According to the European Parliament Overview (2018) in 2016 Romania sent 50,855 workers and received 10,028, thus their number has increased.
- In terms of sectors, the most vulnerable ones have been identified as being: transport, construction and industry.
- From a legal point of view, at the international and national level, there is a need to deal with "grey" areas that allow the employers to hire employees that are de facto posted, but not de jure.
- Institutionally, the experts interviewed (NGO and Risk Laboratory Representatives, 2017) have highlighted the need for more labour inspectors that conduct inspections in the various companies in order to see if they comply with the legal OSH related norms.

The main vulnerabilities that posted or migrant workers face in Romania and that Romanian migrant/posted workers face in Europe are: the lack of knowledge regarding the national language and culture in the country they are working, issues regarding housing, stress, fatigue, low impact of trainings due to their timing or lack of understanding, lack of proper equipment, etc.

Taking into consideration the main issues, the main recommendations have been identified: the desideratum of having an European minimum wage, the possibility of a unitary database development regarding the working accidents at the European level, the legislative gap filling in certain grey areas, etc.

## 1. Introduction

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

Romania is mainly a sending state, not a receiving one in terms of posted workers/migrants. Although, in absolute terms, 46,871 workers from Romania were posted to the EU in 2015, in relative terms, the aforementioned number represents 2.3% from the total EU posted workers (Romanian Labour Inspection, 2016 cit. in Novac, 2017). According to the European Parliament Overview (2018) in 2016, there were 50,855 workers that Romania sent to the other EU states, mainly to Germany (38%), Belgium (15.5%) and Italy (14.6%). In terms of the posted workers received by Romania, in 2016 there were 10,028 posted workers. The main sending countries were: Germany (22.1%), France (16.3%), Spain (14.9%) and Italy (10.8%). Thus, there is a relatively large discrepancy between the ones that came to Romania and the ones that left. This aspect can be partially explained by the Romanian economic development and the low level of salaries. As such, this country is a destination more for non-EU citizens from countries with lower economic development than for other EU citizens.

Taking into consideration that this study is part of a larger research that encompasses many EU states, the research questions are the same in all the cases, namely: *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, we used the following sub-questions:

- *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 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?*

To study the case of Romania the research team used both secondary (previous analyses on the EU and national levels) and primary sources (statistical data, national, European legislation, data collected from interviews), etc.

## 1.2. Main Findings

From a socio-economic context, Romania is mainly a donor state, not a receiving one, as it can be seen in the latest report of the European Parliament (2018). The sector in which the majority of the Romanian posted workers/migrants are working are: transport, construction and industry. From the sector of activity point of view, the most vulnerable ones have been identified as being: transport, construction, industry, agriculture and meat processing industry. Since the interviewed posted workers were from the international road transport sector, the main findings of the present report are focused on this sector and encompass multiple layers, as follows:

From a legal point of view, at international and national level, there is a need for dealing with “grey” areas that allow the employers to hire employees that are de facto posted, but not de jure. The example given in this case by the majority of the interviewees are the persons that work in the international road transport sector. The “grey area” generates also issues regarding health insurance. According to the law, the posted workers are beneficiaries of health insurance in the country that he/she is working in. But for the international road transport sector this represents an impossibility, and therefore puts workers in high vulnerability, as both the experts and the posted workers’ answers indicated since they work in several countries.

From an institutional point of view, at least at the level of Romania, three experts interviewed identified the need for more labour inspectors that conduct inspections on various companies in order to see if they comply with the legal norms.

The main vulnerability that posted or migrant workers face in and from Romania is: the lack of knowledge regarding the national language and culture in the country they are working in. This generates a lack of understating or partial understanding of the OSH related trainings that they are receiving at the work location where they are posted. Other vulnerabilities are more sector oriented. According to the two posted workers interviewed, due to the specific nature of their work, they face issues regarding housing (sleeping in trucks), stress (when they bend the timeline schedule of pauses and driving hours), etc.

## 1.3. Structure of the country report

The present report is organized as follows: firstly, it will focus on Romania's state context (the socio-economic dynamics, the legal framework according to which the Romanian state is regulated in the domain of OSH), the main actors (governmental and non-governmental/public and private) and their main responsibilities; secondly, a methodology shall be developed, that is used in the present research, taking into consideration the general research framework that is conducted at the level of the consortium. The limitations of the research will be taken into account, both at the consortium level, but also at the Romanian case study level. Thirdly, the findings of the research will be analysed according to the interviews that were conducted at the level of the Romanian state. Last, but not least, the study encompasses the conclusions and the recommendations that the research team from Romania developed taking into consideration both the desk and field research findings.

## 2. Country Context

### 2.1. Socio-economic overview

#### *Labour markets*

According to the National Institute of Statistics (INSSE), the number of employees in Romania on 31.12.2017 was 4,850,400. The economic sectors with the highest number of employees are: agriculture, forestry and fishing (112,900 employees), industry (1,378,600 employees), construction (379,700 employees), commerce (776,200 employees). In December 2017, the number of registered unemployed was 3.99% or 351,100 of which 42.49% were women (The National Institute of Statistics, 2017).

The most important categories of Romanian employers are: state-owned companies, retail companies, production companies, telecommunications and automotive companies.

#### *Labour demand and supply*

The working population is involved in the following economic sectors with high demand: agriculture, forestry and fishing, commerce and manufacturing industries. The rate of vacancies in the total economy was 1.22% in the third quarter of 2017 (The National Institute of Statistics, 2017). The most vacancies are in manufacturing (16,993), commerce (5,593), public administration and defence (6,935), human health and social work activities (8,711).

Companies in Romania are facing major staff shortage due to massive migration of labour force and lack of skills and abilities for the labour market. In Romania, the labour demand is higher than the offer; the unemployment rate was 3.99% in January 2018 (ANOFM Press release, 2018), the lowest level in 25 years. The companies are looking for employees from non-EU countries, increasing personnel costs, including travel and relocation. The highest demand of labour force by major occupations groups was in 2017 for professionals, craft and related trades workers, and service and sales workers.

#### *Working conditions*

The national average salary earnings for the year 2017 was 3,662 RON (approximately 785 euros) gross salary. In January 2018 the minimum gross wage has increased from 1,450 RON in 2017 to 1,900 RON. In Romania, a 25% of employees are paid with minimum gross wage for an eight hours day program. 96.9% of Romanian employees have signed an undetermined period work contract, especially in the urban area. Full-time working hours for employees over 18 years are eight hours per day, 40 hours per week. Although, according to the Living Conditions Survey 2016 conducted in Romania, over 20% of the employees declared that they work over 40 hours/week.

Regarding the working conditions provided by the employers, a total number of 2,964 work accidents were declared in 2017. The number of deadly work accidents was 86, i.e. 55.7% less than in 2016 (Ministry of Labour, Working Conditions, 2017). The economic sectors with the highest number of work accidents were: commerce, transportation, the automotive industry, and construction.

## 2.2. OSH and posting in the country

### 2.2.1 OSH legal framework

The general legal framework for the occupational safety and health (OSH) in Romania is provided through:

- Romanian Labour Code 53/2003;
- Law No. 319 of 14 July 2006 on Safety and Health at Work amended on 27 September 2010, that establish the measures for prevention occupational risks, reduction of work accidents, training of the workers, etc.
- Government Decision 1425 from 11 October 2006 on the Methodological Norms for the enforcement of the Law No. 319 on Safety and Health at Work, amended by GD 955/2010 that provide the implementations norms
- Government Decision No. 355/2007 on the workers' health surveillance
- Government Decision No. 1091/2006 on the minimum safety and health conditions at the workplace
- LAW no. 16/2017 on the posting of workers in the framework of the provision of transnational services

There are also several normative and government decisions regarding OSH for specific economic activities, specific risks, and some special categories of employees (such as OSH for pregnant women or OSH for youth employees, part-time workers, etc.).

Summing up, the OSH legal framework establishes:

- General measures for safety at work and for the prevention of work accidents and of professional diseases;
- Measures for safety at work, specific conditions for different activities or economic sectors;
- Measures for different categories of employees.

The general legal framework is transposed by the employers into institutional instruction/internal documents that provide information of the OSH measures according to the specific activity/economic sector.

### 2.2.2 OSH and Posting Stakeholders

The OSH and Posting Stakeholders in Romania are:

#### Public institutions

- The Ministry of Labour, Family, Social Protection and Elderly (provides the legislation, informative sessions, transposes the EU legislation and directives)
- The Labour Inspection (provides legislation, conducts control actions regarding the legal obligations of employers, raises awareness campaigns)
- The National House of Public Pensions (identifies the legislation for posted workers regarding social contributions for pensions, work accidents and professional diseases, health assurance)

Social partners

- Trade Unions (provide advice, social dialogue according to Law no. 62/2011, legal debates, etc.)
- Employers' Associations (provide advice, social dialogue according to Law no. 62/2011, legal debates, etc.)
- Other NGO's with activity related to OSH and posting workers.

**2.2.3 Data on posting**

In 2015, 46,871 workers from Romania were posted in the EU, representing 2.3% of the total number of EU posted workers (Authority perspective on posting of workers Romanian Labour Inspection, 2016). The Romanian posted workers work mainly in construction, industry, services and transportation. The destination countries for posted workers are: Germany, Spain, Italy and Belgium. Regarding the OSH-related issues of the Romanian posted workers, in the period 2007-2016, a number of 480 work accidents were reported, from which 47 were fatalities (source: Romanian Labour Inspection). Most accidents happened in the sectors of transportation and construction. In the same period, 61 EU posted workers in Romania suffered work accidents, from which 8 were fatalities. At the same time, it is very difficult to point the exact number of accidents since: they are not all reported, there is a legislative vacuum (issue that is going to be discussed in the vulnerabilities section), and there is no international or regional database for such incidents.

**2.2.4 Sector(s) characteristics**

Over 90% of posted workers from Romania are in EU-15 countries, especially in transportation, construction and industry. The EU average duration of a posting is less than 4 months. Based on the available legislation regarding posted workers at the level of EU, Romania can be characterized by having a minimum protection of posted workers.

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

Many skilled workers from construction, industry or services are being posted in EU countries. As a result, the Romanian labour market faces a lack of trained and experienced workers, which has a high impact on the local economy.

At the same time, posted workers from Romania are usually involved in poorly paid jobs and with high level of work accidents or occupational diseases. Many of them do not report OSH specific situations for fear of losing their jobs.

### 3. Methodology

#### 3.1. Data collection

The following research methods have been used: desk research (literature review and data analysis of the primary sources like statistical data or the legal available framework) and fieldwork (semi-structured interviews with experts, on one hand, and with posted workers, on the other).

The desk research method, more specifically, in this case, the literature review, was used in order: to analyze the legal and institutional framework regarding the occupational health and safety norms in the workplace (the domestic law, the main stakeholders in Romania that deal with the issue of migrants and posted workers, their competences on the labour market, their role in protecting the rights of Romanian migrants outside Romania and the rights of foreign workers working on the Romanian labour market), to identify the trends regarding posting (from/to Romania), to identify the number of Romanian migrants and posted workers in Europe and the number of foreign workers in Romania. This was necessary in order to establish if this state is a donor or receiving country. Last, but not least, the literature review was also used in order to identify the legislative vacuum on OSH and posting in the case of international road transport. The analysis of the legislation and regulation texts provided the framework under which OSH operates in Romania. The review of the academic literature provided the first input on the implementation of these rules and regulations, which were used both to prepare the analytical framework, as well as a way to triangulate the research findings.

The fieldwork was carried out through semi-structured interviews. The interviews were conducted with: representatives of the actors involved in the process, such as policy-makers, state agencies, trade union representatives, OSH representatives and other experts. Specifically: 1 interview with a representative of the Labour Inspection, 1 interview with a representative of the Bucharest Territorial Labour Inspectorate of the GEEA Economic Investigative Society of Bucharest; 2 with representatives of the National Confederation of Romanian Free Trade Unions – Frăția: 1 with the coordinator of the National Confederation of Romanian Free Trade Unions – Frăția- the 7 regions of Romania and 1 with a representative of the social department from the National Confederation of Romanian Free Trade Unions – Frăția, who is also the representative of the Romanian workers on the board of the European agency for OSH aspects and substitute member of the Romanian workers in the EU Advisory Council for OSH; 1 with the representative of the Chemical and Biological Risk Laboratory, the National Institute for Research and Development for Labour Protection; and 1 with the President of the Association for Dialogue, Employment and Migration Connect.

To complement our understanding on OSH practices in the workplace, we also conducted two interviews with Romanian posted workers. During the interviews, issues related to health and safety were put into discussion in order to retrieve valuable insights from the people that are directly affected by these practices. The Romanian posted workers that were interviewed work in the international road transport, as truck drivers. We chose this category especially because, according to the consulted literature, they are to be found in the grey area of European and national legislations regarding their status on the labour market as posted workers. Another reason refers to the risks that they have to face at the work place.



### **3.2. Analysis**

Once the interviews were conducted, all the data was collected and processed. Taking into consideration the structure of the interview grid, the questions have been clustered around specific themes like:

- The main actors that are involved in the process of developing/implementing/monitoring OSH related issues;
- The main vulnerabilities regarding OSH
- OSH in practice at transnational working places
- Language/cultural barriers for the posted workers/migrants.

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.

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

The limitations that the research team encountered when carrying out the fieldwork were the following: the reluctance of the representatives of employers to give interviews, especially of those that are involved in the international transport sector; the highly bureaucratized national, central institutions that made it very difficult to carry out the interviews with their representatives; the reluctance of the employers, but also employees to give interviews due to the fear of repercussions.

Regarding the interviewed posted workers, there was a challenge to find them and especially to convince them to take the interview. The research was limited to the international transport sector, due to the aforementioned reasons. At the same time the research team concentrated on the opportunity that arose, having access to this group, given the grey area in which they find themselves from a legislative perspective and the current debate regarding this sector at European level.

The research team also found the opportunity to have an on-the-phone focus group with 6 posted workers, but due to the advices of the research coordinator and the methodological constraints we tried to break them in smaller groups. This fact increased their reluctance and, finally, made them decline to give the interviews. Instead, we succeeded in having 2 individual interviews.

## 4. Results

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

The Romanian legislation is not harmonized and not ready to deal with the issues that a large number of workers face regarding their integration at work and in the society they live in. More specifically, at Romania's level, Law no. 16/2017 has been adopted, on the posting of workers in the framework of the provision of transnational services. At the same time, according to the answers received from the experts, this norm together with the Labour code should be coherent, but, unfortunately, they are not. In short, posting is provided in the labour code as an administrative act whereby a person changes his/her job to another employer who becomes responsible for paying the salary and ensuring all working conditions. In the case of delegation, the person concerned carries out the work in the interests of the employer, and the payment of the salary and the conditions of employment remain with the employer who has delegated him/her abroad. At European level, the posting directive considers that any person who carries out his/her work within the territory of the European Union without establishing himself/herself on the territory of the European Union is a posted worker. Hence, there is a lack of suitable legal regulation/adaptation. This allows for the emergence of grey areas as it is the case of international road transport sector, where workers are de facto posted, but de jure delegated, situation in which they are not benefiting from the rights of a posted worker, although they work as one. This aspect generates other vulnerabilities in terms of payment since the workers are benefiting from usually the minimum wage salaries in Romania, although they work in other EU states, receiving what is called daily subsistence. But this subsistence will not be taken into consideration for the retirement period, for example. At the same time, it has to be mentioned that this is not an issue specific to Romania only, but for Europe as a whole. In this sense, new legislation is being drafted and discussed at the EU level that would address these specific issues.

The Romanian state is underdeveloped regarding the way the OSH trainings are conducted. The legislation is clear and precise regarding these trainings that have to be held on hiring, at work and on a regular basis, thus from a temporal point of view. But it still needs to be adapted to the specificities of each sector of activity. Another vulnerability mentioned in the second layer of vulnerability by Sargeant and Tucker (2009) and that all the posted workers or migrants face is generated by the lack of knowledge regarding the national language from the country they are working in, thus creating a gap between them and their colleagues/ them and their superiors. The lack of suitably understanding the national language is generating also an issue for the posted worker because they may not understand the trainings regarding OSH. Thus, these issues can generate other two vulnerabilities: the lack of understanding their rights and obligations at the workplace and the low impact these trainings have since they are not sector specific. Also, the type of employment may come as a vulnerability because if the legal framework stipulates that OSH related trainings are done every 6 months (apart from the one conducted when the person is hired) and the person is employed for 5 months and a half, he/she cannot benefit from these trainings.

According to the answers given by one of the experts (NGO representative, 2017) there are posted workers that do not know their legal status in the country that they work in. Additionally they are not part of Trade Unions, since the workers are reluctant to be part of these organizations or they do not

know about them and the representatives of these organizations are reluctant to incorporate foreign workers in the Trade Unions. This issue could be included in the third layer of vulnerability of Sargeant and Tucker (2009) given their status as workers.

Other vulnerabilities may be sector specific.

In the international road transport sector, according to the answers from both posted workers the drivers are trained to be individualistic and are not interacting with their colleagues, since they usually work alone. Another aspect that was mentioned by one expert (Trade Union representative, 2017) relates to the fact that workers may benefit from OSH related information only when they come back to their base, a moment when the employees have totally different priorities regarding their personal life, hygiene, etc., other than the OSH related trainings. Thus, the impact of the trainings is rather limited. Also, the protection equipment may not serve as a protection for the employees, but rather a means to promote the company's image. Last, but not least, an issue that was acknowledged by all experts and recognised by one of the posted workers interviewed is the fact that the drivers may be forced by the employers to bend the hours of driving and risk fines or face lack of concentration due to fatigue which in turn can lead to accidents.

In the construction sector the workers that are employed can be day labourers that do not have enough information regarding their rights, may not know the OSH related aspects, etc. (NGO representative, 2017).

Since both Romanian posted workers interviewed are working in international road transport, the main vulnerabilities that they identified are specific for this sector.

One of the first vulnerabilities that emerged during the interviews was the lack of proper hygiene conditions, given the fact that, by nature, their workplace is not static to a single place, city, even country. At the same time, this is not a problem that can be located to only one country, but rather to the entire European Union, since both posted workers are developing their activity across several European states. Also this is rather an issue of unadapted infrastructure and services of states to the economic activities that are carried out throughout their territory. Thus, a solution rests in public policies and European/national infrastructure projects.

The lack of proper housing is another vulnerability, as the persons working in international road transport do not receive accommodation at motels, hostel or hotels, but sleep in their trucks, except during the week when they come back in the territorial base of the company that they work for or when they return home. This vulnerability can be linked with the aforementioned vulnerability, namely the underdeveloped national/European/international infrastructure, such as the parking places that are available for trucks and the additional services that they should provide, the hotels that are constructed close to highways, etc. This specific issue represented a big problem for one of the interviewees because the number of trucks increased over the years, but the parking places remained relatively the same. This issue generated a new related vulnerability, regarding the pauses that the truck drivers have to take at specific hours for resting purposes. These system vulnerabilities (lack of proper housing, of parking places, etc.) led to difficulties regarding the resting time, the stress level, elements that were emphasized by the posted workers and by experts.

Another vulnerability identified was the increased stress level due to the fact that, although the cargo is insured, the responsibility for it remains with the drivers. This stress combined with the poor conditions of accommodation, the lack of proper sleep generated health problems.

Moreover, given the nature of the activity, this category of posted workers are supposed to speak several languages, which if they don't can represent a vulnerability. Knowing English or using smart phones or other technological devices can help diminish this vulnerability, as one of the posted workers reported (2017).

Last, but not least, the working conditions affected their life, especially their family life. The large amount of time that they spend outside Romania and the lack of a unique place of work generated the impossibility of the family members to visit them or to speak with them at certain periods of time when they are driving.

## **4.2. OSH Institutional Framework**

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

OSH is regulated in Romania by Law 319/2006 and by other normative acts that specify the way of applying this law, as well as the Labour Code. Additionally, there are other legislative instruments that mandate national and regional organism to have a controlling role.

There has been noticed the lack of interest of various companies in asking for the advice of professional public bodies to make tests regarding OSH safety norms, this being the norm, rather than the exception (Representative of the Risks laboratory, 2017).

The actors' responsibilities are:

Management is responsible and must develop the professional tools to monitor OSH related issues. Depending on the capacity of each economic entity, the management has at its disposal either the setting up of departments or the employment of a specialist in the field who can provide the necessary expertise. Also, it has the possibility to resort to specialized external services. In what regards the chain of liability, according to the legal norms, in Romania, the contractor is responsible for supervising the way the subcontractor fulfils its obligations. That is, responsibility is not a direct one, but it is a legal responsibility, since it has the obligation to inform the state bodies (like the Labour Inspection) when it finds that things are not properly implemented.

The Labour Inspectorate is the institution responsible for monitoring the way OSH laws and the subsequent regulations of these laws apply. According to the Romanian legislation and European directives, it is the employer's responsibility to implement the OSH related tools in the workplace. In the case of this institution, one constant answer arose: the lack of sufficient labour inspectors that can periodically control the companies (NGO and Risks laboratory representative, 2017).

High standard OSH conditions are one of the main objectives of Trade Unions, both in terms of working relations as a bilateral regulatory framework, but also in terms of ensuring a safe working environment.

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

Regarding the coordination among the different national and transnational actors involved, there is an International Committee of Inspectors that try to update and exchange their experiences. This is necessary in order to generate scientific and technical progress. Also, cooperation is very important for reaching a certain extent of uniformity or harmonization, as generally is the case within the European Union.

Secondly, at European level, there is the European Agency for Safety and Health at Work (EU-OSHA), which has had, at least so far, an information role without being a binding organization for the national public and private organisms. Other institutions, like for example, the Directorates for Occupational Safety within the European Labour Offices are the most relevant ones for Employment related issues. Referring strictly to the field of international road transport, the Trade Unions are in close cooperation with the European Transport Federation, a structure very well connected to the sector, dealing with OSH matters and beyond.

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

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

In what concerns the OSH related trainings, as mentioned above, according to the legal framework, they must be done on hiring the person and afterwards once every 6 months. However, the type of employment can influence the access to these trainings, since one can have employment contracts of 5 months each. Furthermore, the sector characteristics can negatively influence the participant's access to these trainings, and here we can return to the abovementioned example of truck drivers who rarely come back to the company base.

The posted workers interviewed said that they did not receive information on health and safety at the workplace at all. The main reason for this is lack of language skills. The respondents argued that knowing English helped, as well as the use of technology, namely smartphones, translation apps, asking other colleagues for help, or using pre-written messages on white boards.

When it comes to monitoring, as one of the experts reported (Trade Union representative, 2017), in the international road transport sector, internal control is very difficult to implement since the drivers are in the majority of time on the road. In this sense, there is just some information that people receive at the beginning and maybe sporadically during their posting, but as we already mentioned in the section regarding vulnerabilities, the impact is relatively low. Moreover, the expert described the situation in which the equipment that the drivers received was aimed more to promote the image of the company, and not to protect the employee. For example, the boots that the drivers are receiving are not used in the majority of the time, since it is very difficult to drive with them. At the same time, when the driver needs to make the delivery, he/she is not using them either.

#### **4.3.2. (Migrant and/or posted) worker representation and protection**

Relating to the Trade Unions' role, they refer to creating decent working conditions, both in terms of working relations as a bilateral regulatory framework, but also in terms of ensuring a safe working environment. Their activity is of high importance, and at Romania's level, their involvement in protecting the rights of workers in the transport and construction sectors has been noticed.

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

Regarding health insurances, the workers who are posted in EU countries know that they have a minimum wage in Romania and are insured in the public health system in Romania. Examples which emerged during the interviews: the employees did not declare the accident as a work accident; the driver was injured, so he was sent back to Romania, and then the company turned against him for compensations for damaging the truck; a truck driver who suffered a work accident has become incapacitated, and his disability pension is somewhere around 500 RON (approx. 200 euro) per month, since it is calculated according to the salary and not the daily subsistence (Trade Union representative, 2017).

In cases of injuries suffered during posting, two situations were identified: one referred to a specific health problem that was individually solved by going to the pharmacy and another when a truck driver

suffered a serious injury in the workplace that generated his incapacity to continue working. So, when he broke his leg, the company chose to transport him back home for treatment and not to the nearest hospital due to lack of insurance. This example reveals that this category of posted workers does not receive any international health insurance during posting, which is one of the main vulnerabilities for people working in this sector.

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

As mentioned in the previous sections, in the case of posted workers or migrants, one constant arose from all the interviews (experts and posted workers, 2017), namely the vulnerability that appears due to the lack of language knowledge or culture/s of the country/countries in which they are posted. This aspect creates vulnerabilities in terms of: access and understanding the OSH related trainings, lack of understanding when it comes to their rights and obligations, life quality conditions, relation with colleagues and superiors, integration in the community, etc. This vulnerability is generally dealt with the help of translators or the introduction of internationally recognisable symbols. Also they may receive brochures regarding OSH regulations that are translated in several languages (interview 5, 2017).

According to the Romanian posted workers interviewed, the lack of language skills represents a problem, especially for the sector of international road transport, given the fact that they cross many countries and it is practically impossible to know them all. At the same time, according to one of the posted workers, three possible solutions were identified: knowing English represents an opportunity, given the fact that it is an international language and it is spoken or at least know even to a beginner level by the majority of the population (which was mentioned also by the other posted worker; making use of technological development, using smartphones in order to translate the conversation and last, but not least, asking for others' help in order to translate).



## 5. Synthesis and Conclusions

Romania is mainly a sending country, not a receiving one in terms of posted workers/migrants. The sector in which the majority of the Romanian posted workers/migrants are working are: transport, construction and industry, which are also the most vulnerable.

The European Directive on posting was adopted at the national level through Law no. 16/2017 on the posting of workers in the framework of the provision of transnational services. At the same time, there are still some inconsistencies between it and the labour code in what concerns the differences between delegation and posting.

In the specific sector of international road transport, legally, truck drivers are in a “grey” legislative vacuum in which they cannot benefit from the rights of posted workers, although de facto they are posted. This generates also health insurance problems and vulnerabilities in the case of work accidents.

The institutional framework in the case of Romania is very well developed, but at the same time there is a need for more adaptation to the demands of the labour market. The Romanian state has a very clear regulation regarding each actors’ involvement, from the level of Ministry to the level of the National Labour Inspectorate, Trade Unions, etc.

At the level of human resources, the results show a clear need for more labour inspectors that conduct inspections to various companies in order to see if they comply with the legal norms, especially in OSH related situations.

Regarding OSH, the lack of knowledge of the language or culture has been identified as one of the most important vulnerability that the posted workers/ migrants face since it generates a total or partial lack of understanding of the OSH related trainings that they are receiving at the work location where they are posted. Possible solutions here would be: to hire a translator, to use internationally recognisable symbols or to develop a brochure regarding OSH regulations that is translated in several languages.

## 6. Policy implications and Recommendations

Taking into consideration the literature review and the answers that the research team gathered from the experts and the posted workers, we can identify the following recommendations:

### At the workplace

- The adaptation of OSH related training to migrants and posted workers who may not fully understand them due to language/cultural constraints.
- The OSH related materials should use more internationally recognizable symbols in order to be better understood by migrants or posted workers who do not know the language of the country in which they have been posted or they migrated in.
- To develop a brochure regarding OSH regulations that is translated in several languages, so that the posted workers/migrants have easier access to information.

### At the national level

- Increasing the number of inspectors that will be able to periodically inspect all companies
- There is an urgent need to harmonize the Law no. 16/2017 on posting with the Romanian Labour Code.
- The role of the Ministry should not be limited to carrying out inspections and applying sanctions; however, the Labour Inspection should be much more involved in informing employers, providing advice and developing diagnoses based on prescriptions improving mechanisms, legislation, and all that means the correct and effective application of OSH rules.

### At the national/EU level

- A more specific legislative framework that will not allow grey areas like the one from international transport area to exist, which in turn will also influence positively the application of European norms in health insurances, avoiding difficult situations in which the persons that suffer a work accident have to be transported to their country in order to be treated, fact that puts them under threat.

### At the EU level

- There should be more cooperation related activities between European and trans-national companies regarding OSH
- There should be discussions about a minimum wage at European level
- A comprehensive system should be developed a that encompasses a database for work accidents at European level.

## References

- ANOFM (2018, March 9), Comunicat de presă 3,99% rata șomajului înregistrat în evidențele ANOFM în luna ianuarie 2018 [Press release 3.99% unemployment rate recorded in the ANOFM records in January 2018] retrieved from <http://www.anofm.ro/files/Comunicat%20de%20pres%C4%83-%20Rat%C4%83%20%C5%9Fomaj%20Ianuarie%202019.pdf>
- Authority perspective on posting of workers Romanian Labour Inspection (2016, November 26) retrieved from [http://www.eurodetachment-travail.eu/datas/files/EUR/Romania\\_Authority\\_perspective\\_on\\_posting\\_of\\_workers\\_.pdf](http://www.eurodetachment-travail.eu/datas/files/EUR/Romania_Authority_perspective_on_posting_of_workers_.pdf)
- Labour Inspection (2006, July 14), Law no. 319 of 14 July 2006 on safety and health of workers at work retrieved from <https://www.inspectiamuncii.ro/documents/66402/267275/Law+319+on+2006.pdf/43ef9465-6bf5-44c4-b912-3f7fa74eece8>
- Labour Inspection (2006, August 16), Government decision no. 1091 of 16 August 2006, concerning the minimum safety and health requirement for the workplace retrieved from <https://www.inspectiamuncii.ro/documents/66402/267275/GD+1091+on+2006.pdf/d86ad05b-32a1-4205-9928-36b47ad6f20f>
- Labour Inspection (2017, March 17) Lege nr. 16 din 17 martie 2017 privind detașarea salariaților în cadrul prestării de servicii transnaționale [Law no. 16 of 17 March 2017 on the posting of workers in the framework of the provision of transnational services] retrieved from <https://www.inspectiamuncii.ro/documents/66402/1518590/LEGE+nr+16.pdf/ecf44e60-0954-4694-993f-c990f9493039>
- Ministry of Labour (2017), Working Conditions, retrieved from [http://www.mmuncii.ro/j33/images/buletin\\_statistic/03012018-conditii\\_III\\_2017.pdf](http://www.mmuncii.ro/j33/images/buletin_statistic/03012018-conditii_III_2017.pdf)
- Ministry of Labour (2006, October 11), Hotărâre Nr. 1425 din 11 octombrie 2006 pentru aprobarea Normelor metodologice de aplicare a prevederilor Legii securității și sănătății în muncă nr. 319/2006 [Decision No. 1425 of 11 October 2006 for the approval of the Methodological Norms for the application of the provisions of the Law on Security and Health in work no. 319/2006] retrieved from <http://www.mmuncii.ro/pub/imagemanager/images/file/Legislatie/HOTARARI-DE-GUVERN/HG1425-2006.pdf>
- Ministry of Labour (2007, April 11), Hotărâre Nr. 355 din 11 aprilie 2007 privind supravegherea sănătății lucrătorilor [Decision No. 355 of 11 April 2007 on the health surveillance of workers] retrieved from <http://www.mmuncii.ro/pub/imagemanager/images/file/Legislatie/HOTARARI-DE-GUVERN/hg355-2007.pdf>
- 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.
- The National Institute of Statistics (2017, December), *Monthly Journal*. Retrieved from [http://www.insse.ro/cms/sites/default/files/field/publicatii/buletin\\_statistic\\_lunar\\_nr12\\_2017.pdf](http://www.insse.ro/cms/sites/default/files/field/publicatii/buletin_statistic_lunar_nr12_2017.pdf)

---

\*The content of the report was used presented and discussed at scientific symposium “Healthy Workplaces - Manage Dangerous Substances”, held on the 16th - 17th of October 2018, in Brasov, Romania.

This material has received financial support from the European Union Programme for Employment and Social Innovation "EaSI" (2014- 2020). For further information please consult: <http://ec.europa.eu/social/easi>

The information contained in this publication does not necessarily reflect the official position of the European Commission.