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Occupational Health and Safety of Posted Workers in the EU Comparative Report

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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.

// Cases and Methods

- ✓ 9 Case studies: Austria, Belgium, Croatia, Germany, Italy, Romania, Slovakia, Slovenia, Spain
 - Old, New and Recent Member States
 - Sending and Receiving
- ✓ Data
 - Literature review: academic and grey literature
 - Empirical data from semi-structured interviews

// Key Economic and Labour Market Indicators

	BE	DE	ES	HR	IT	AT	RO	SI	SK
GDP per capita (EUR)	38,500	39,500	25,000	11,700	28,400	42,000	9,600	21,000	15,600
GDP growth (%)	1.7	2.2	3.1	2.8	1.5	2.9	6.9	5.0	3.4
Employment rate (15-64) (%)	63.1	75.2	61.1	58.9	58.0	72.2	63.9	69.3	66.2
Unemployment rate (15-64) (%)	7.1	3.8	17.3	11.3	11.4	5.6	5.1	6.7	8.2
Job vacancy rate ¹ (%)	3.4	2.7	0.8	1.7	0.9	2.4	1.3	2.2	1.1
Average weekly working hours ²	37.5	35.0	37.7	39.6	37.2	36.4	39.7	39.0	39.8
Average monthly earnings ³ (EUR)	2,956	2,620	1,829	1,033	2,337	2,494	512	1,571	908
Statutory minimum wage ⁴ (monthly amount in EUR)	1,562.59	1,497.8	735.9	462.5	–	–	407.3	842.79	480

// Dataset

	Fieldwork period	Mode of data collection	Geographical coverage	Sectors covered	Number and Background of respondents	
BE	October 2017- February 2018	Interviews (telephone and face-to-face)	National and regional	Construction, transport	13	Labour Inspectorate (4); Trade Union (1); Expert (1); Posted worker (5); Cross-border worker (1); Immigrant worker (1)
DE	December 2017- April 2018	Interviews	National		10	Ministry of Labour and Social Affairs (3); Social Accident insurance (2); Trade Union (2); Counselling centre for posted workers (1); Posted workers (2)
ES	October 2017-January 2018	Interviews (face-to-face and skype)	National and Regional		7	Labour Inspectorate (2); Trade Union (2); Expert (2); Posted worker (1)
HR	October-December 2017	Interviews	National		7	Ministry of Labour and Pension System (2); Labour Inspectorate (1); Trade Union (2); Posted workers (2)
IT	August 2017- February 2018	Interviews (telephone and face-to-face)	National and Regional	Construction	9	Ministry of Labour and Social Affairs (1); Labour Inspectorate (1); Trade Union (4); Expert (1) Consulting agency (1); Posted workers (1)
AT	August-December 2017	Interviews	National	Construction	14	Labour Inspectorate (2); Trade Union (5); NGO for undocumented workers (1); Austrian Worker's Compensation Board (1); Construction Workers' Annual Leave and Severance Pay Fund (1); Posted workers (3)
RO	October-November 2017	Interviews	National	Transport	7	Labour Inspectorate (1); Trade Union (2); Expert (1); NGO (1); Posted worker (2)
SI	December 2017	Interviews	National		11	Ministry of Labour, Family, Social Affairs and Equal Opportunities (2); Labour Inspectorate (1); Trade Union (3) Employer organisation (1); NGO (1); Posted workers (3)
SK	June 2017-February 2018	Interviews	National	Construction, manufacturing	16	Labour Inspectorate (1); Trade Union (2); Employer organisation (2); Expert (2); Political advisor (1); Posted/Migrant workers (6), widow of posted worker (1)

// Research Questions

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

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

// OSH and Migrant Workers: A Layers of Vulnerability Approach

Sargeant and Tucker 2009:

- Migration Factors
 - Migration status
 - Conditions of recruitment
- Characteristics of Migrant Workers
 - Socio-economic conditions in the home country
 - Education and skills level
 - Language skills
- Receiving Country Conditions
 - Characteristics of employment and sector
 - Access to collective representation
 - Access to regulatory protection
 - Particular problems of social exclusion/social isolation

// Posting Legal Framework

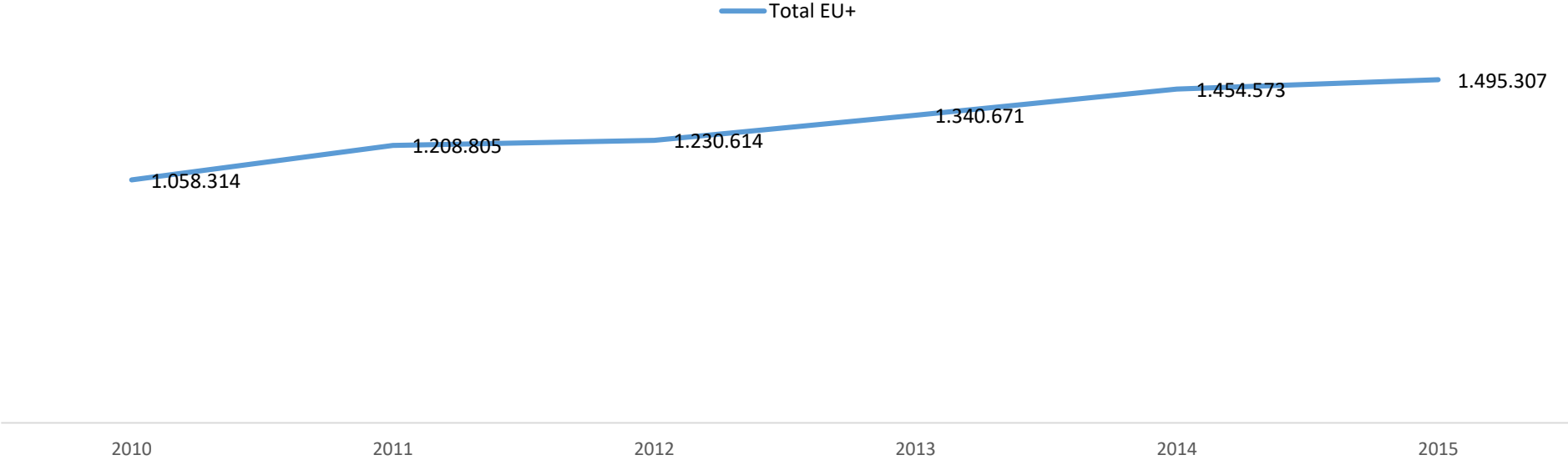
- Posting of Workers Directive (96/71/EC)
- Enforcement Directive (2014/67/EU)
- European Court of Justice Decisions
 - ❖ Case C-341/05, Laval un Partneri Ltd, ECR 2007, I-11767;
 - ❖ Case C-438/05 Viking, ECR 2007, I-10779;
 - ❖ Case C-346/06 Rüffert, ECR 2008, I-1989;
 - ❖ Case C-319/06, Commission v. Luxembourg, ECR 2008, I-4323;
 - ❖ Sähköalojen ammattiliitto ry v. Elektrobudowa Spolka Akcyjna: Case C-396/13, ECR 2015
- National labour laws and regulations
- Revision of the Posting of Workers Directive
(adopted on 28 June 2018)

// OSH Legal Framework

- At the EU level
 - The OSH Framework Directive
 - Workplaces, equipment, signs, personal protective equipment
 - Exposure to chemical agents and chemical safety
 - Exposure to physical hazards
 - Exposure to biological agents
 - Provisions on workload, ergonomical and psychosocial risks
 - Sector specific and worker related provisions
- National OSH laws and regulation

// Posting data

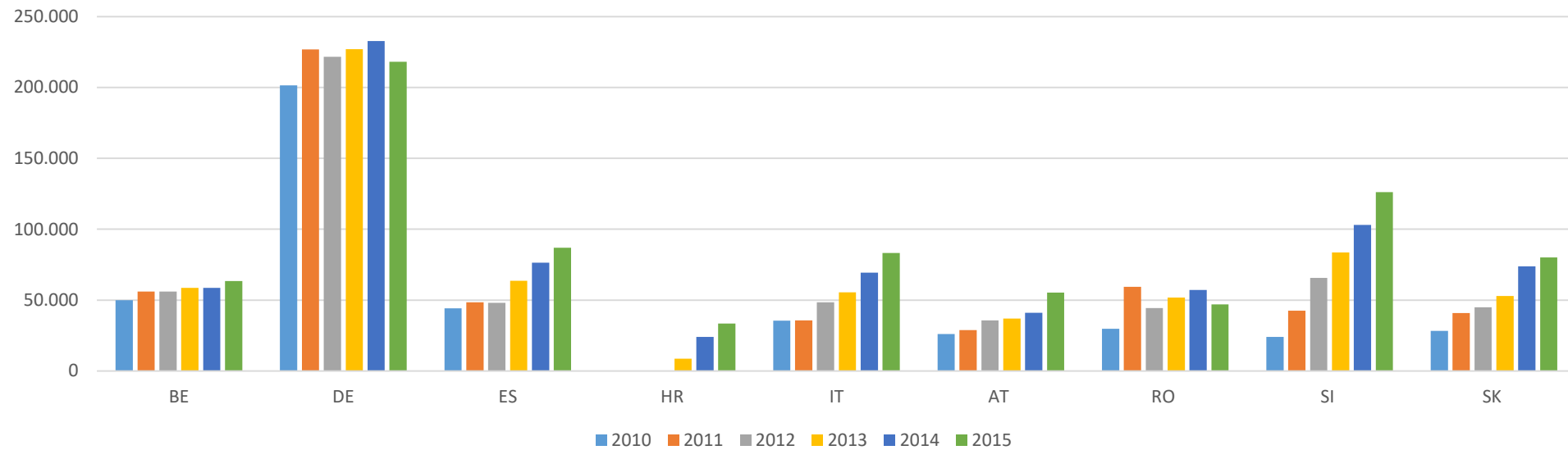
Graph 1. Total PD A1 for posted workers issued in EU+, 2010-2015



Based on data from: Pacolet & de Wispelaere 2016

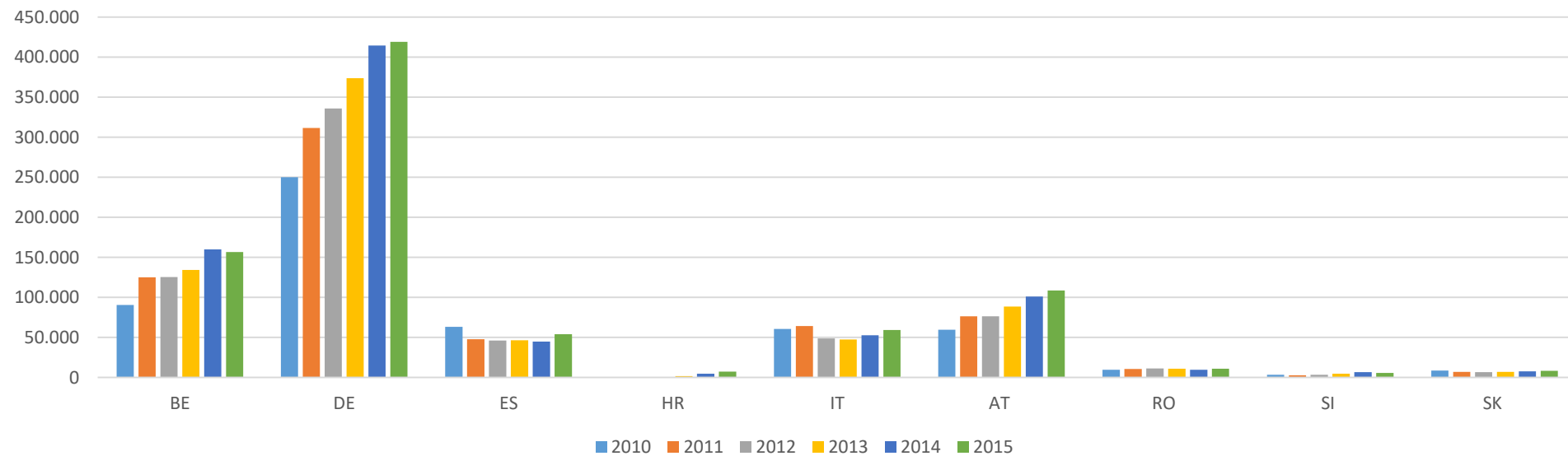
// Sending Trends

Graph 2. PDs A1 for posted workers issued by sending Member States, 2010-2015



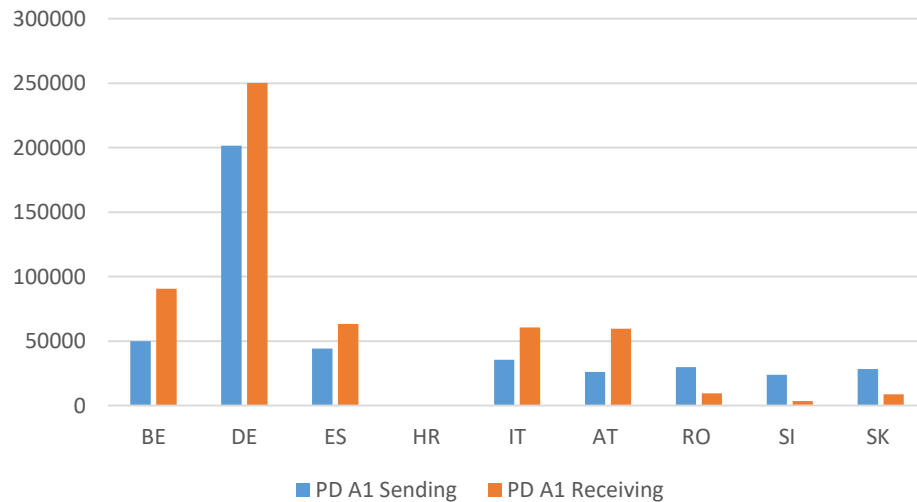
// Receiving Trends

Graph 3. PDs A1 for posted workers issued by receiving Member States, 2010-2015

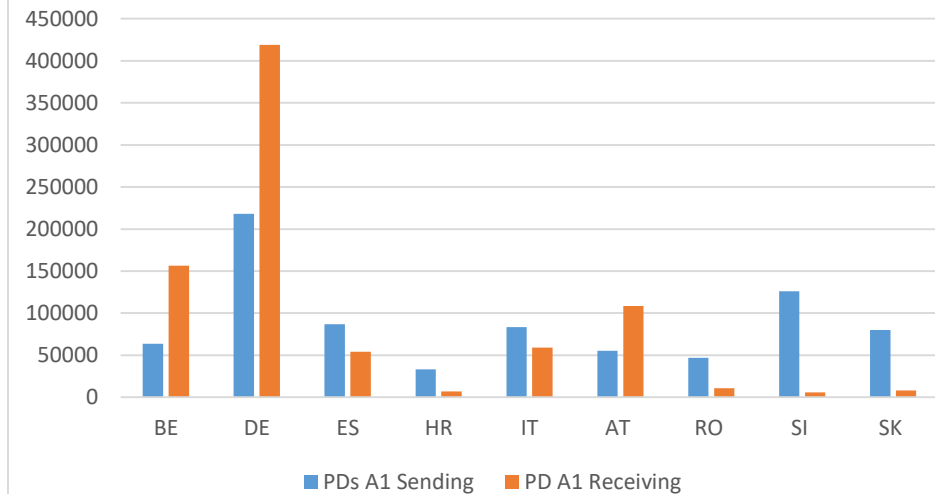


// The impact of the Economic Crisis

Graph 4. PD A1 issued as sending and receiving Member States, 2010



Graph 5. PD A1 issued as sending and receiving Member States, 2015



// Posting Patterns

Countries	Main Countries of Origin	Main Sectors of workers posted TO	Main Destination Countries	Main Sectors of workers posted FROM
Austria	Slovenia, Germany, Hungary, Slovakia, Poland, Italy	Construction, other industry, education, other services	Germany, Switzerland, Italy, France, Spain	Construction, other industry, personal, commerce, other services, agriculture
Belgium	France, Poland, Luxemburg, Germany, Netherlands, Portugal, Slovakia, Romania	Other industry, construction, business services, temporary agency work, personal services, other services, agriculture	France, Netherlands, Luxemburg, Germany, UK, Italy, Spain	Construction, industry, business services, personal services, other services, agriculture
Croatia	Slovenia, Germany, France, Poland, Italy	Construction, other industry, personal services, other services	Germany, Slovenia, Austria	Construction, other industry, business, other services
Germany	Poland, Slovenia, Slovakia, Hungary, Austria, Croatia, Romania, France	Industry, Construction, business, personal, other services, agriculture	Switzerland, Austria, Netherlands, France, Belgium, Spain, Italy, UK	No sufficient data available
Italy	Germany, France, Spain, Romania, Slovenia	Construction, other industry, business, personal services, other services, agriculture	Switzerland, France, Germany, Austria, Spain, Belgium	Not available
Romania	Germany, France, Spain, Poland, Italy, Bulgaria	Construction, other industry, business services, personal services, other services	Germany, Spain, Italy, Belgium, Netherlands	Other industry, construction, transport, agriculture, business services, other services
Slovakia	Germany, Poland, Czech Republic, France, Romania	Construction, other industry, transport, business, personal services, other services	Germany, Austria, Czech Republic, the Netherlands, Belgium	Construction, other industry, transport, personal services, other services
Slovenia	Croatia, Bulgaria, Germany, Austria, France	Construction other industry, business, personal services, other services, agriculture	Germany, Austria, Italy, Belgium	Construction, other industry, personal services, other services
Spain	France, Germany, Portugal, Romania, Italy	Construction, other industry, business, personal services, other services, agriculture	France, Germany, UK, Portugal, Italy, Belgium	Not available

Source: European Commission, *Country Factsheets 2015*.

// Institutional Framework

- National Structures are complex and differ from one country to another
- The policy level is predominantly controlled by the Ministries of Labour (all countries), but also of Health (Austria, Croatia, Romania, Slovakia and Slovenia) and Finance (Germany and Italy).
- The enforcement authorities are always the Labour Inspectorates, which have national, regional and sometimes local structures monitoring employment and OSH in the country
 - Additionally other agencies are involved in some countries, e.g. the *Carabinieri* in Italy
- Social Partners are actively involved in all countries, although their role is defined by:
 - national regulation and
 - whether there is trade union presence in the workplace

// Mechanisms and Procedures at different levels

	BE	DE	ES	HR	IT	AT	RO	SI	SK
Liability									
Main contractor			•		•		•		•
Subcontractor	•	•	•	•	•	•	•	•	•
Monitoring and Inspections									
Labour Inspectorate	•	•	•	•	•	•	•	•	•
Trade Unions			•		•			•	•
Workplace OSH representatives		•	•		•	•		•	
Make a complaint / Request an Inspection									
Enforcement authorities	•	•	•	•	•	•	•	•	•
Trade unions	•		•		•				•
Workers / Private citizens	•	•	•	•	•	•	•	•	•
Judicial Authorities	•				•				

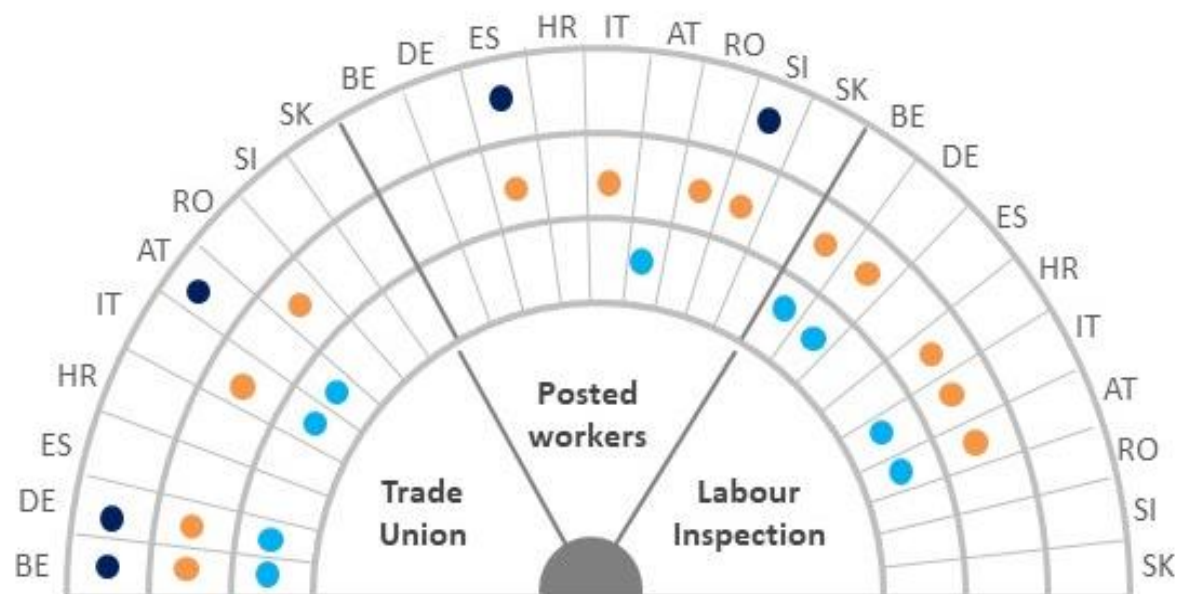
// The Implications of Complex National Systems

- **Limited or no knowledge** of the labour regulation, OSH system, and social protection system from the workers
- Limited or **insufficient information** and **scope of action** of state agencies on across the border activities (confined to/by national jurisdiction)
- Insufficient human resources
- (Long chains of) **Subcontracting** and different national rules on **liability** create challenges for enforcement agencies and workers
- **Division of labour** among state enforcement agencies or departments within the same agency (e.g. inspectors oversee either OSH or posting)
- **Joint national inspections** are commended but sometimes different agencies have diverging interests
- **Transnationally**, institutions rely on IMI, the Senior Labour Inspectors Committee (SLIC) and their Knowledge Sharing System (KSS platform), EU-OSHA on information sharing and exchange, while bilateral agreements regulate relations with non-EU countries

// OSH-related vulnerabilities of temporary migrant and posted workers

	BE	DE	ES	HR	IT	AT	RO	SI	SK
Employment and contractual conditions									
Lack of information about terms and conditions	●	●	●	●	●	●	●	●	●
Limited or no access to collective representation	●	●	●		●	●	●		
Limited or no access to regulatory protection	●	●			●		●	●	
Limited or no access to training (incl. on OSH)				●			●	●	
Irregular documentation		●		●	●			●	●
Wages and social security									
Wage dumping (i.e. below national minimum or provided by collective agreements)	●	●	●		●	●	●	●	●
No or irregular payment of overtime	●				●				
No or irregular payment of taxes/social contributions in country of origin	●		●		●	●	●	●	
Working conditions									
Working time issues (i.e. extended work hours, frequent overtime, weekend work)	●			●	●	●	●	●	●
Lack of or inadequate protective equipment/material	●				●		●	●	●
Health care									
Access to healthcare		●				●	●	●	●
Lack of information on health care system in receiving country	●	●			●	●		●	
No or insufficient health insurance coverage		●					●	●	●
Housing/Accommodation									
Access to accommodation	●	●			●		●		
Poor quality of accommodation (i.e. overcrowding, lack of amenities)	●	●	●	●	●		●		
Problems related to costs of accommodation	●	●	●		●		●		●
Language barriers	●	●	●	●	●	●	●	●	●
Social isolation/Disconnectedness		●	●		●	●	●	●	●

// Language Barriers



- Grievances (reporting problems/complaints to respective authorities)
- On-site communication (work instructions, manuals)
- Accessing general and OHS-related information and materials

// The multifaceted impact of language barriers

	BE	DE	ES	HR	IT	AT	RO	SI	SK
Language barriers	●	●	●	●	●	●	●	●	●
Access to information	●	●	●			●	●	●	●
Access to training						●	●		
On-site communication	●	●	●		●	●	●		●
Grievance management	●	●			●	●			
Engaging with local culture and people							●	●	●
Cultural barriers	●	●			●	●			●

// The peculiar case of Posted Third Country Nationals

- Posted from a Member State
- Recruited sometimes with the sole purpose of being posted
- Facing lack of appropriate and training, medical examinations, and poor communication with the employer, and
- Lack of information and knowledge about the labour and welfare regulation in the sending country in addition to the host country
- In case of injury 'dealt with', often by being returned or pushed to return first to the posting country and then country of nationality to avoid further investigation and expenses

// Understanding Posted Workers' OSH Vulnerabilities

The interplay of

- temporariness and cross-border mobility
- dependence on the employer (including irregular employment/posting)
- Extended work time and intensity
- complex national systems (regulations, institutions, mechanisms of protection, and grievance procedures)
- growing but still insufficient exchange and communication between public authorities within and across borders
- language barriers

Often leads to

- Turning a blind eye to OSH-related risks, and
- Not reporting irregularities and violations

Ultimately resulting in

- ❑ **High Risk of Accidents and Illness**
- ❑ **Insufficient or no health protection and care in case of accidents and occupational illness**

// Concluding Remarks

- ✓ The transition from one national labour market to another within the EU, albeit temporary and because it is temporary, creates a disruption in the OSH protection of (posted) workers, thus exposing them to multiple vulnerabilities with negative consequences to their OSH.
- ✓ When designing policy interventions, policy-makers should take into account both the cross-border and temporary mobility of posted workers as well as the legal implications of posting as movement of services rather than people.

// LEAD BENEFICIARY



// CO-BENEFICIARIES



// ASSOCIATED INSTITUTIONS

Ministry of Labour and Pension System of the Republic of Croatia (Croatia), Labour Inspectorate of the Federal Public Service Employment, Labour and Social Dialogue (Belgium), Federazione Italiana Lavoratori Legno Edili e Affini (Italy), European Trade Union Institute (Belgium), Ministry of Labour, Family, Social Affairs and Equal Opportunities of Republic Slovenia (Slovenia), CONECT Association for Employment, Dialogue and Migration (Romania).