



Occupational Safety and Health of Posted Workers

PROJECT 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 (Project number VS/2016/0224; 2017 – 2018)

Work Package 4
COMPARATIVE RESEARCH STUDY

Occupational Health and Safety of Posted Workers in the EU:
A COMPARATIVE REPORT

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// LIST OF ABBREVIATIONS

AT – Austria

BE – Belgium

CJEU – Court of Justice of the European Union

DE – Germany

ES – Spain

ETUC – European Trade Union Confederation

EU – European Union

EU OSHA – European Agency for Safety and Health at Work

GDP – Gross Domestic Product

HR – Croatia

ICT – Information Communication Technology

ILO – International Labour Organization

IMI – Internal Market Information System

IT – Italy

KSS – Knowledge Sharing System

LI – Labour Inspectorate

NGO – Nongovernmental Organization

OSH – Occupational Safety and Health

PDs A1 – Portable Documents A1 Form

POOSH – Occupational Safety and Health of Posted Workers Project

PWD – Posting of Workers Directive

RO – Romania

SI – Slovenia

SK – Slovakia

SLIC – Senior Labour Inspectors Committee

UK – United Kingdom

WHO – World Health Organization

// EXECUTIVE SUMMARY

- The comparative study focuses on nine exploratory case studies of EU Member States: Austria, Belgium, Croatia, Germany, Italy, Romania, Slovakia, Slovenia, and Spain. The main research question for the individual country case studies was to see how the interplay of EU-regulation and national OSH systems affects the health and safety of posted workers in a transnational workplace. To answer this question, we looked into the way OSH regulation is applied to posted workers and their experiences with OSH-related issues, and at the legal and institutional framework on posting and OSH, cross-border communication and exchange, the mechanisms for grievances at different levels, the vulnerabilities of posted workers and language barriers. As a result, 95 semi-structured interviews were conducted with national, regional, and workplace-level stakeholders, as well as with other experts and workers during the period June 2017–February 2018 in all the nine countries.
- The nine countries vary considerably in terms of their economic and labour market situation. They were affected by the 2008 recession and global financial and economic crisis to different degrees, with Italy, Slovenia, Spain, Croatia and Romania among the Member States most hardly hit. Following a period of contraction, economic growth resumed in all nine countries and by 2015 all recorded a positive change in their GDP. Increasingly irregular working patterns and, in particular, the rise in non-standard work, which are partly due to reasons such as automation, but also to more flexible employment laws and the rise in new types of work contracts following the economic crisis, pose a serious challenge in terms of increasing labour market polarization, job and income insecurity, inadequate social protection, and limited control over working time and work conditions in all country cases studied here.
- The Posting of Workers Directive (96/71/EC) adopted in 1996 aimed to regulate temporary labour mobility within the European single market. Concerns about the interpretation and implementation practices of the Directive have been addressed in two ways: through numerous rulings of the Court of Justice of the European Union, and through the passing of an Enforcement Directive of the Directive 96/71/EC (2014/67/EU) in 2014. Eventually, a revision of the Directive was proposed and negotiated throughout 2017, with the final version approved by the European Parliament on May 29, 2018 and adopted by the Council on 21 June 2018.
- European Commission data up to 2016 indicate an overall increase in the number of portable documents A1 (the closest available estimates on posting data) from approximately 1 million workers in 2010 to 1.6 million workers in 2016. Although in all countries there is a difference in the number of PDs A1 issued as sending rather than receiving or vice-versa, the increase in both numbers of PDs A1 as sending and receiving indicates that cross-border mobility in the European market goes in both directions in most Member States. Posting occurs in both low-skilled (approx. 64%) and high-skilled sectors (approx. 36%). The main sector is construction with half of the overall postings. There is a high frequency of posting to the neighbouring countries (52 %), followed by the old Member States. In 2016, the EU average duration amounted to 101 days but these data refer only to the 15 Member States that reported them.

- Occupational health and safety, on the other hand, are regulated at the international, EU, and national level. Internationally WHO and ILO have endorsed OSH strategies that recognize the necessity of inclusion of vulnerable groups as well as the complexities of labour mobility and promote collaboration and cooperation between sending and receiving countries across all government levels. EU level regulation includes a framework OSH directive and a number of specialized directives and guidelines on specific industries and/or OSH risks. The Posting of Workers Directive mentions the health, safety and hygiene at work in its Article 3/1, where the terms and conditions guaranteed to the posted workers are stipulated.
- While each country has complex systems of OSH providing for both prevention and protection of workers, posted workers do not necessarily take advantage of the existing mechanisms. This is partly due to their lack of knowledge on host countries' OSH structures and mechanisms, and partly because of their hesitation to go to the authorities, but it is also partly because of the inadequate response of enforcement organizations. The findings across countries suggest that enforcement organizations have limited human resources and the transnational mobility of workers creates confusion among them on the applicable legislation.
- The temporary, mobile and transnational character of posting affects the occupational health and safety of posted workers in multiple ways. The main areas where OSH-related vulnerabilities were identified in the nine country cases concern employment and contractual conditions, wages and social security, working conditions, housing, language and cultural barriers, and social isolation.
- The higher vulnerability of posted workers is in part explained by their insufficient information and knowledge concerning several aspects related to their posting such as legal and contractual conditions and accident and social insurance coverage. Posted workers often have no or only limited access to collective representation – an issue especially in smaller and non-unionised workplaces – which considerably lowers their level of protection from potential exploitation and OSH-related violations. Because of the comparatively higher wages they receive, posted workers are also more prone to accept working under poor and hazardous conditions. In addition, a number of the countries under review report that quality training, including on OSH matters, is either lacking or only available in limited format for posted workers.
- As regards employment and contractual conditions and OSH, the particularly vulnerable situation of posted workers employed through letter-box companies was specifically highlighted. Yet another group of vulnerable workers are posted third-country nationals who due to their increased exposure to irregular employment, labour exploitations and infringements of their rights are found to be at a greater risk also in terms of OSH.
- Lacking the knowledge of the receiving country's language was reported as a key factor contributing to the higher vulnerability of posted and temporary migrant workers in all nine countries. Language barriers pose a serious challenge in terms of increasing posted workers' exposure to work accidents and to safety and health risks in general. Furthermore, language barriers are shown to be one of the most important reasons for workers' lack of knowledge about their rights and obligations as posted workers. Language difficulties greatly limit their access to information concerning, among others,

national regulations and working conditions applicable in the country they are posted to, local OSH regulations, health and accident insurance coverage and grievance and redress mechanisms.

- These multiple vulnerabilities are challenged by public authorities and social partners through legal reform, joint action and collaboration at the national and the international level, and the use of creative ways to overcome language barriers. Aware of the challenges, stakeholders demand more coordinated and cohesive action.
- The report provides an extensive list of valuable policy recommendations for the different levels involved, namely the workplace level, the industry level, the national level, and the EU level.

1. Introduction

The Posting of Workers Directive (96/71/EC) (PWD) entered into force in 1996 as a mechanism for regulating temporary labour mobility in the common European market. Although accurate data on posted workers are difficult to obtain because of the differences in recording and reporting their mobility among EU Member States, estimates drawn from the number of portable documents A1 forms (PDs A1) indicate an overall increase in the number of PDs issued from approximately 1 million workers posted in 2010 to 1.6 million in 2016 (De Wispelaere & Pacolet, 2017). Regardless of the growing importance of this type of labour mobility within the European Union, research on the occupational safety and health (OSH) and working conditions of posted workers in the European Union, albeit mentioned frequently, has been scarce, unsystematic and fragmented. This exploratory research study sets out to fill the research niche by enhancing the existing field of research and creating new knowledge.

The research study is part of the project “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” funded by the EaSI Programme of the European Commission (Project number VS/2016/0224; 2017 – 2018).

The research agenda is twofold. Firstly, we map the trends in the posting of workers in the nine selected case studies and describe the implications of national labour law legislation in interaction with EU-level legislation on the posting of workers within the framework of OSH and labour/working conditions. Secondly, we assess the OSH-related vulnerabilities of posted workers, who are disproportionately recruited into more hazardous working posts/sectors and are exposed to 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.

The study focuses on nine case studies of EU Member States: Austria, Belgium, Croatia, Germany, Italy, Romania, Slovakia, Slovenia, and Spain. The selection criteria for this research was having countries with a relatively high number of posted workers, albeit some of them receive more posted workers than they send to other EU countries, e.g. Austria, Belgium, or Germany, while others have been considered by previous literature predominantly as sending countries, such as Slovakia or Slovenia. We also included countries that have recently become EU Member States, and that have been subjected to restrictions for their citizens into the common labour market, such as Romania (until January 1, 2014) or Croatia (until 2020). However, as labour mobility and posting within the EU is multidirectional, we treated each of our cases as both sending and receiving countries.

The main research question was to see how the interplay of EU-regulation and national OSH systems affects the health and safety of posted workers in a transnational workplace. To answer this question, we looked into the way OSH regulation is applied to posted workers and at their experiences with OSH-related issues, the legal and institutional framework on posting and OSH, cross-border communication and exchange, the mechanisms for grievances at different levels, the vulnerabilities of posted workers and language barriers.

Once the case studies were completed, a comparison of the findings across the nine cases was conducted. This comparative study report is therefore based on secondary desk research data and primary data provided by the nine country cases studies. In total, there were 95 semi-structured interviews conducted with national, regional, and workplace-level stakeholders, as well as with other

experts and workers during the period June 2017–February 2018. Sargeant and Tucker's (2009) layers of vulnerability framework was used to assess the OSH conditions of posted workers.

Findings indicate that posted workers are faced with multiple vulnerabilities, including employment and contractual conditions, wages and social security, working conditions, healthcare, housing, language barriers and social isolation. What becomes evident across the nine cases is that the temporary, mobile and transnational character of posting affects the health and safety of posted workers in multiple ways and involves several different aspects. Economic vulnerability and dependence on the employers make workers comply to poorer working and living conditions. Cases of injury also reveal the various irregularities of posted workers' health insurance and care. While each country has complex systems of OSH providing for both prevention and protection of workers, posted workers do not necessarily take advantage of the existing mechanisms. This is partly due to their lack of knowledge on host countries' OSH structures and mechanisms, and partly because of their hesitation to go to the authorities, but it is also partly because of the inadequate response of enforcement organizations. The findings across countries suggest that enforcement organizations have limited human resources and the transnational mobility of workers creates confusion among them on the applicable legislation. Furthermore, lack of or limited access to collective representation, particularly in smaller or non-unionized workplaces, significantly lowers workers' level of protection from possible exploitation and OSH-related violations. Language barriers further limit workers' access to information and present a major obstacle to engaging with the people in the receiving country which has a wide range of implications – from exercising their employment rights, including health and safety rights, to accessing healthcare and housing and managing their daily lives. These multiple vulnerabilities are challenged by public authorities and social partners through legal reform, joint action and collaboration at the national and international level, and the use of creative ways to overcome language barriers. Aware of the challenges, stakeholders demand more coordinated and cohesive action.

The report is structured as follows: after the introduction, the context of the nine countries is presented starting from their socio-economic situation, posting legislation and data, as well as from OSH regulation and OSH concerns already identified in the literature on migration and/or posting. After that, a detailed account of the methodology is presented. The findings of the comparative study are discussed in the next section, divided by an analysis of the OSH legal and institutional framework, the OSH vulnerabilities of posted workers, and language and cultural barriers. At the end, conclusions are drawn and policy implications and recommendations are advanced.

2. Country Cases Context

2.1 Socio-economic overview

The nine countries vary considerably in terms of their economic and labour market situation (Table 1). They were also affected by the 2008 recession and global financial and economic crisis to a different degree. Italy, Slovenia, Spain, Croatia and Romania were among the Member States most hardly hit by the crisis which was reflected in a sizeable decrease in their GDP growth. Although Austria and Germany also experienced a reduction in their overall economic performance, the impact was much less felt there. Following a period of contraction, economic growth resumed in all nine countries and by 2015 all recorded a positive change in their GDP. The highest growth rates in 2017 were recorded in Romania and Slovenia while the lowest rates were a growth of 1.5% in Italy and 1.7% in Belgium (Eurostat Database). Regarding the labour market situation, Germany and Austria clearly stand out with a high employment rate among the working age population (75% and 72% respectively) which is well above the EU-28 average (67.7% in 2017). The level of unemployment among the working age population ranges from 3.8% in Germany, which was the second-lowest in the EU in 2017, to as high as 17.3% in Spain. Other countries with high unemployment include Italy and Croatia with around 11%. Interestingly, while Romania is a laggard in terms of employment, the unemployment rate is significantly lower than the EU average which stood at 7.8% in 2017.

Table 1: Key economic and labour market indicators, 2017

	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 rate¹ (%)	3.4	2.7	0.8	1.7	0.9	2.4	1.3	2.2	1.1
Average weekly working hours²	37.5	35.0	37.7	39.6	37.2	36.4	39.7	39.0	39.8
Average monthly earnings³ (EUR)	2,956	2,620	1,829	1,033	2,337	2,494	512	1,571	908
Statutory minimum wage⁴ (monthly amount in EUR)	1,562.59	1,497.8	735.9	462.5	–	–	407.3	842.79	480

Source: Eurostat Database; Eurofound (2018).

Notes: ¹ Industry, construction and services (except activities of households as employers and extra-territorial organisations and bodies). ² Average number of weekly hours in main job. ³ Data refer to 2014. ⁴ No general statutory minimum wage is applicable in Italy and Austria. * For Germany, the hourly statutory minimum wage is EUR 8.84.

Data on job vacancy provides an indication of the situation of job matching in the labour markets of the nine countries. The annual job vacancy rate in 2017 was highest in Belgium (3.4%) followed by Germany, Austria and Slovenia, and lowest in Italy and Spain (both below 1%). While a higher job vacancy rate generally occurs with a lower unemployment rate, this is not the case in Belgium and Slovakia where the unmet demand for labour partly reflects mismatches between jobs and skills of the unemployed as well as relatively large regional inequalities (i.e. the jobs are not where the unemployed are). In terms of intensity of labour demand by economic sector, manufacturing, health care, ICT, and construction are the main sectors reported in the nine countries to face labour shortages.

Recent trends in atypical forms of employment in the EU show a steady growth in temporary agency work and fixed-term contracts. According to Eurostat statistics, among the nine countries, temporary agency work is highest in Slovenia, where it accounted for 5.7% of total employment in 2017. The proportion of persons in precarious employment (i.e. with a work contract of maximum 3 months) was highest in Croatia (7.1%), and Slovenia (5.1%) as well as in Spain, Belgium and Italy. Increasingly irregular working patterns and, in particular, the rise in non-standard work, which are partly due to reasons such as automation, but also because of more flexible employment laws and the rise in new types of work contracts following the economic crisis, pose a serious challenge in terms of increasing labour market polarization, job and income insecurity, inadequate social protection, and limited control over working time and work conditions. Thus, policies that reduce the risk of precariousness, for instance by ensuring an adequate statutory minimum wage, are of particular importance. In seven of the nine countries, there is a national statutory minimum wage in place with Italy and Austria being the exceptions (Eurofound, 2018). In both, minimum wage levels are set in sectoral collective agreements and no general statutory minimum wage applies.

2.2 Posting in the EU

2.2.1 European Regulation on the Posting of workers

The Posting of Workers Directive (96/71/EC) was adopted in 1996 after long discussions on the free movement of labour within the single market. The idea behind it was to regulate temporary transnational labour mobility within the European Union. In principle, the posting situation means that workers are part of the core workforce in the country of work/residence and are sent to another EU country to perform a task for a definite temporary period of time. In this understanding, workers are moving as services, not labour. The difference between the movement of posted workers as services rather than as people, both of which constitutive parts of the four pillars of the single European market project along with the free movement of goods and capital, stands in the access to social rights and protection extended to posted workers while they are posted in another EU country. Article 3/1 of the Posting of Workers Directive (PWD) regulates the terms and conditions guaranteed to the posted workers:

- Maximum work periods and minimum rest periods;
- Minimum paid annual holidays;

- The minimum rates of pay, including overtime rates; this point does not apply to supplementary occupational retirement pension schemes;
- The conditions of hiring-out of workers, in particular the supply of workers by temporary employment undertakings;
- Health, safety and hygiene at work;
- Protective measures with regard to the terms and conditions of employment of pregnant women or women who have recently given birth, of children and of young people; and
- Equality of treatment between men and women and other provisions on non-discrimination.

As we can see, the health, safety and hygiene at work is one of the fundamental rights to which posted workers are entitled to during their posting.

2.2.2 Enforcing and Revising the Directive

Member States have been transposing and implementing the PWD in different ways with some having it open to all industries, while others restricting it only to certain ones. Since the beginning, the PWD has attracted a lot of attention with critics highlighting the threat of unfair competition between local and posted workers and the elevated risk of social dumping in cases when workers are posted from countries with significant cost differentials, such as workers from Eastern or Southern Europe being posted to Western or Northern Europe (Cremers, 2011). In a recent briefing to the European Parliament it was stated that with the 2007 Enlargement Round, labour cost differentials between Member States with the highest and the lowest wage level have increased from a factor of 1:3 to 1:10. Other concerns have been raised about the high impact posting has had in labour-intensive sectors such as construction and the increase in fraudulent and abusive forms of posting such as letter-box companies or bogus self-employment (European Parliament, 2017). Concerns about the interpretation and implementation practices of the Directive have been addressed in two ways: through numerous rulings of the Court of Justice of the European Union, and through the passing of an Enforcement Directive of the Directive 96/71/EC (2014/67/EU) in 2014. The enforcement directive tried to address some of the concerns on social dumping and to specify how the Directive should be implemented through a set of measures and control mechanisms to guarantee genuine posting and prevent fraud. It also addressed the issue of accessible provision of information to a transnational and therefore multi-lingual workforce (Article 5, 2c). However, many issues raised before the Enforcement Directive remained unresolved and social partners and industrial relations scholars have argued that the Enforcement Directive, in fact, gives companies more leeway to interpret terms and conditions; hence it does not fulfil its objective (ETUC, 2014; Cremers, 2016).

After these attempts, the pressure to revise the Directive intensified with a number of documents produced by the different pillars of the European Union (European Parliament, 2017). The main challenges to the drafting of the revised Directive remained the difficulty in aligning to the different national legal, tax and social security frameworks of all EU Member States as well as to the differences in opinions on the necessity to revise the Directive altogether. The supporters of the

revision demanded stricter regulations and equal wages as a way to prevent social dumping, which opponents argued might render posting economically unviable (Bernaciak, 2017). After a 'lobbying tour' of one of the major proponents of the revisions to the Directive to the French President Macron and to different Central and Eastern European Member States, the European Council reached an agreement on its position on the Posting of Workers Directive in October 2017, which was followed by the tripartite legislative negotiations between the European Parliament and the European Council with the participation of the European Commission (European Council, 2017; European Parliament, 2017). A proposal with significant changes was put forth by these dialogues. The main revisions proposed relate to remuneration, employment agencies and chain posting, monitoring and sanctions, and period of posting. It was also agreed to regulate the international transport sector separately due to its complex nature. The proposal was approved by the European Parliament on May 29, 2018 and adopted by the Council on 21 June 2018.

2.2.3 The Court of Justice of the European Union Decisions

A number of decisions of the Court of Justice of the European Union have played an important role in the interpretation of the Directive. These decisions include:

- 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.

In the first four, often referred to as the Laval Quartet, the Court decisions supported the idea that free movement of services (*Laval*) and establishment (*Viking*) and free competition within the European common market (*Rüffert* and *Commission vs. Luxembourg*) preside over equality of social rights and treatment as well as industrial action (*Dølvik & Visser*, 2009). In the case of *Laval*, the court ruled against the secondary action taken by the Swedish Building Workers' Union that demanded the sectoral collective agreement to be extended to include posted workers, such as the ones hired by the Latvian company *Laval un Partneri Ltd*. The court also ruled in favour of the right of *Viking*, originally a Finnish ferry company, that wanted to re-establish itself from Finland to Estonia in order to replace its staff with Estonian workers and thus avoid abiding by the terms of the Finnish industrial system which have been stricter and more expensive than the Estonian one. In this case, *Viking* obtained an injunction to prevent Finnish unions' industrial action and the CJEU found the unions to be in breach of the company's right of establishment. In the case of *Rüffert* and *Commission vs. Luxembourg*, the Court decided on whether national labour law and regulations were applicable to posted workers, and whether member state governments could demand equal terms for workers employed by government contractors in the case of public works (*Rüffert*). In all four decisions, the CJEU interpreted the minimum protection stipulated in the Posting of Workers Directive as a ceiling to the rights of posted workers, allowing for differences in terms and conditions

between posted workers and local workers, including the exemption of posted workers from the terms provided by host country collective bargaining agreements (Barnard, 2009; Kilpatrick, 2009; Sack, 2012).

However, in a recent decision in 2015, i.e. the fifth case mentioned above: *Sähköalojen ammattiliitto ry v Elektrobudowa Spolka Akcyjna*, the Court decided in favour of Finnish Unions' claim of equal pay, including overtime and holiday payments, for posted workers based on their skill category, if such rates were included in the national collective agreements (Cremers, 2016; Lillie & Wagner, 2015). In the UK, the practice has already been used in the British Engineering Construction industry as the unions of the industry have included the right to equal pay rates for posted workers in their collective agreement (NAECI). However, as the collective agreement is not universally applicable in the British case, as it is in the Finnish case, they have to negotiate with every main contractor the terms and conditions of their agreement, including the clause on equal pay among local and posted workers (Danaj & Sippola, 2015).

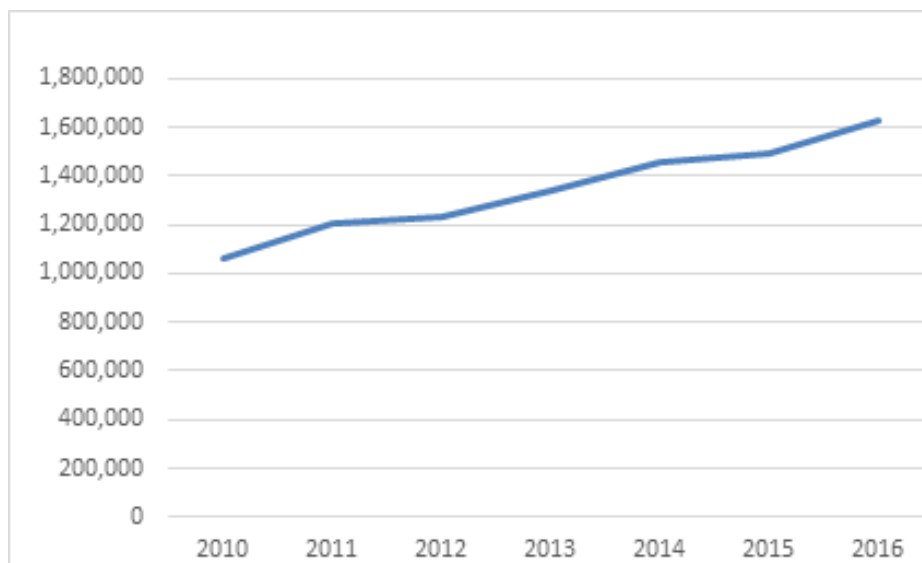
2.3 Data on posting

Accurate data on posted workers are difficult to obtain. The closest estimates are drawn from the number of portable documents A1 forms (PDs A1) issued by sending and receiving countries. European Commission data up to 2016 indicate an overall increase in the number of PDs from approximately 1 million workers in 2010 to 1.6 million workers being posted from one EU Member State to another in 2016 (De Wispelaere & Pacolet, 2017: Figure 1). These numbers do not necessarily coincide with the total number of individual posted workers, since a person might be issued multiple PDs A1 during a year, which increases the number of postings, but not the number of posted workers (Wagner & Hassel, 2015). Estimates suggest the number of unique posted workers is substantially lower and lies at around 60% of the total of PDs A1 (De Wispelaere & Pacolet, 2017).

Even in the case of PDs A1, there are differences among EU countries in the way data are reported and processed and in the conditions for reporting. For example, in Germany, if a company is posting for less than three months, the employers can submit them to the public authorities later, which can lead to inaccuracies in the data. Furthermore, as posting trends indicate, there is a lot of exchange with neighbouring countries, and in border areas, workers are often posted for a few days only. And in some cases, the same person can be posted more than once during the same year using the same PDs A1 form. The figures also do not take into account irregular posting and unreported or fraudulent forms of labour mobility within the European labour market.

Nevertheless, the PDs A1 data can provide valuable insights into the flows of cross-border labour mobility via posting. Despite the difficulty in comparing figures, it is likely that the posting of workers has been the fastest-growing form of cross-border labour mobility in the EU (European Parliament, 2016).

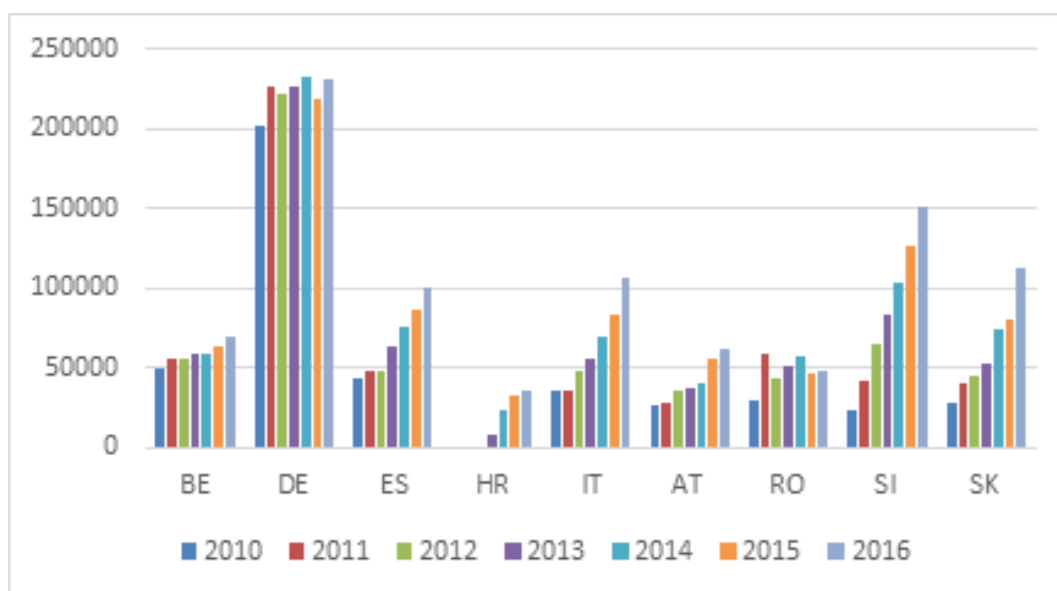
Figure 1: Total PDs A1 for posted workers issued in EU+, 2010-2016



Source: Own representation with data from De Wispelaere & Pacolet, 2017.

Not all countries, however, experience an increase. From the nine case studies in this report, Germany and Romania have seen fluctuating figures in terms of the number of PDs A1 issued as a sending country between 2010 and 2016 (Figure 2).

Figure 2: PDs A1 for posted workers issued by sending Member States, 2010-2016

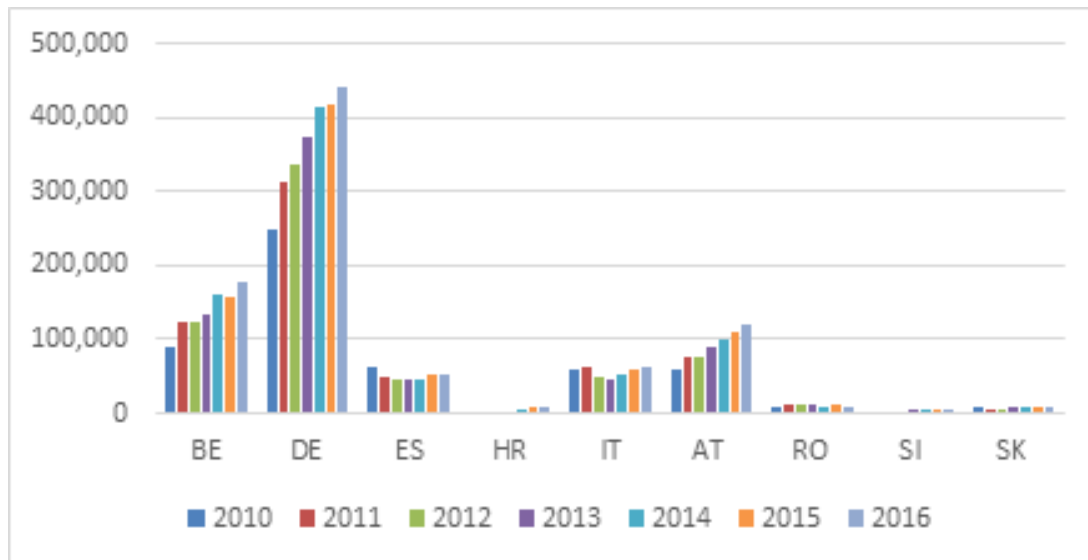


Source: Own representation with data from De Wispelaere & Pacolet, 2017.

Furthermore, in the Romanian case the inflow and the outflow have also been influenced by the restrictions to the EU labour market that workers from Romania and Bulgaria faced from other Member States like Austria, Belgium, Britain, France, Germany, Luxembourg, Malta, the Netherlands and Spain. The restrictions applied to certain sectors like construction ended in January 2014. Croatian workers will also face restrictions in Austria, Malta, the Netherlands, Slovenia and the UK until 2020.

Most countries indicate fluctuating receiving figures for the period 2010-2016 (Figure 3). Germany is the leading country of destination in the whole EU with 440,065 (Table 3). Interestingly, it is also the largest sending country among our sample (Table 2) and the second-largest sending country in the EU after Poland (De Wispelaere & Pacolet, 2017).

Figure 3: PDs A1 for posted workers issued by receiving Member States, 2010-2016



Source: Own representation with data from De Wispelaere & Pacolet, 2017.

Table 2: PDs A1 for posted workers issued by sending Member States, 2010-2016

	2010	2011	2012	2013	2014	2015	2016
BE	49,862	55,931	56,103	58,522	58,611	63,467	69,836
DE	201,436	226,850	221,650	227,008	232,776	218,006	231,766
ES	44,087	48,479	48,132	63,519	76,286	86,943	100,469
HR				8,716	24,060	33,381	36,142
IT	35,430	35,611	48,369	55,509	69,279	83,277	106,395
AT	25,957	28,806	35,671	36,959	41,114	55,320	62,526
RO	29,730	59,363	44,318	51,739	57,194	46,871	48,710
SI	23,944	42,485	65,727	83,659	102,920	126,153	150,922
SK	28,245	40,926	44,854	52,807	73,810	80,058	112,028
Total EU+	1,058,314	1,200,027	1,230,892	1,341,267	1,454,697	1,495,307	1,623,695

Source: De Wispelaere & Pacolet, 2017.

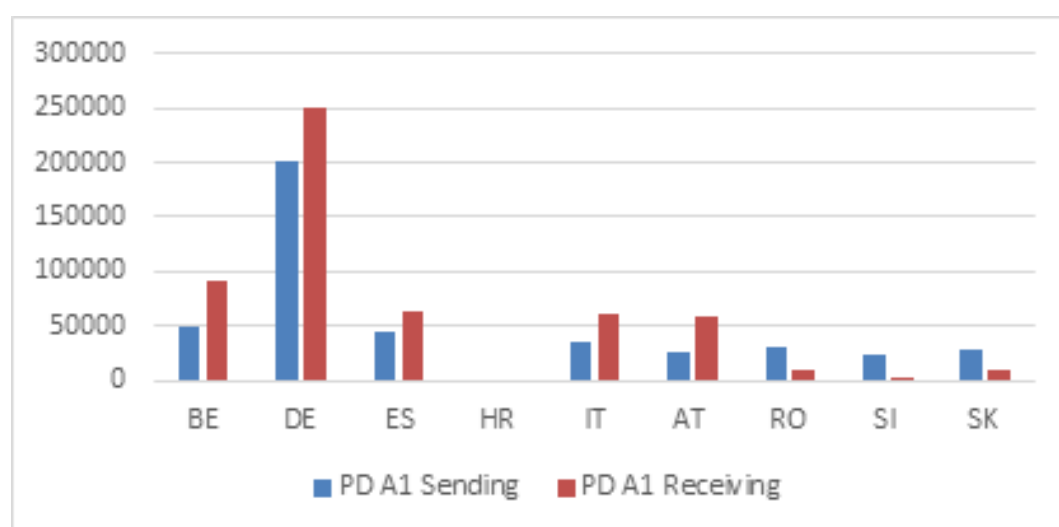
Table 3: PDs A1 for posted workers issued by receiving Member States, 2010-2016

	2010	2011	2012	2013	2014	2015	2016
BE	90,540	125,107	125,264	134,340	159,749	156,556	178,319
DE	250,054	311,361	335,862	373,666	414,220	418,908	440,065
ES	63,304	47,640	46,075	46,507	44,825	54,037	52,353
HR				1,753	4,560	7,164	9,835
IT	60,460	64,223	48,663	47,445	52,481	59,095	61,321
AT	59,642	76,335	76,445	88,596	101,015	108,627	120,150
RO	9,445	10,476	11,224	10,894	9,717	10,709	10,028
SI	3,391	2,676	3,340	4,507	6,550	5,685	5,146
SK	8,692	6,876	6,641	7,010	7,648	8,141	9,694
Total EU+	1,058,314	1,208,805	1,230,614	1,340,671	1,454,573	1,495,307	1,623,695

Source: De Wispelaere & Pacolet, 2017.

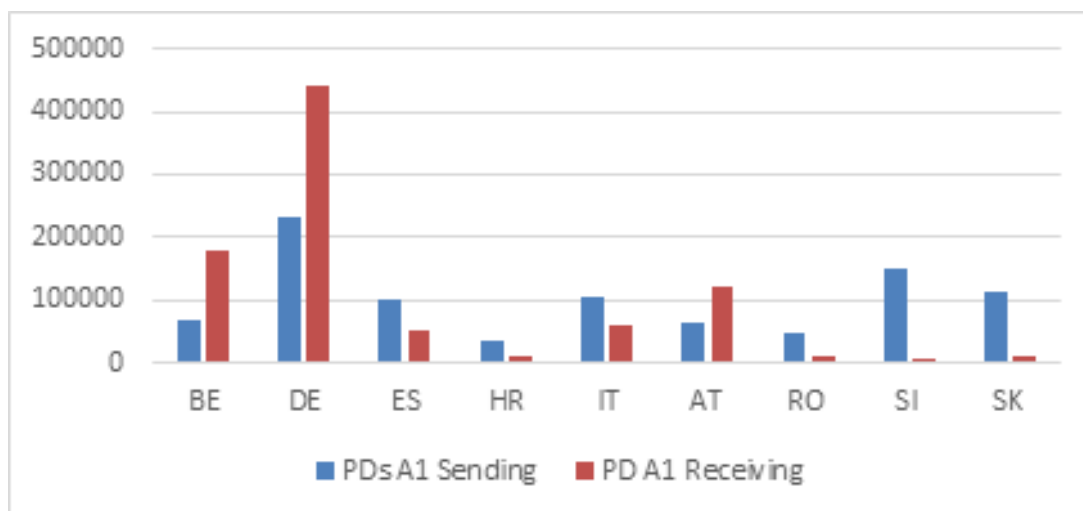
Although in all countries there is a difference in the number of PDs A1 issued as sending rather than receiving or vice-versa, the increase in both numbers of PDs as sending and receiving indicates that cross-border mobility in the European market goes in both directions in most Member States (Figure 4, Tables 2 & 3). The impact of the crisis can be noticed in the case of Spain and Italy, as the number of posted workers sent from these countries has superseded the number of posted workers received between 2010 and 2016 (see Figures 4 and 5).

Figure 4: PD A1 issued as sending and receiving Member States, 2010



Source: Own representation with data from De Wispelaere & Pacolet, 2017.

Figure 5: PD A1 issued as sending and receiving Member States, 2016



Source: Own representation with data from De Wispelaere & Pacolet, 2017.

2.3.1 Sectors characteristics

As the data on posted workers is limited, so is the information on their sectoral distribution. However, estimates suggest that posting is used in two different situations. In the first scenario, posting is triggered by labour cost differentials and the competitive advantage of lower-wage countries, which has resulted in a significant share of posting done in low value chains, mainly in construction, services, and agriculture, which cannot be delocalised. Construction remains the predominant sector, with half of the overall number of posted workers sent and received to work in construction projects around the EU. In these cases, posting firms tend to apply the minimum terms of employment and rates of pay required in the receiving country. In the second scenario, it is skills shortages and the need for highly-specialised personnel that drives posting as an employment practice usually in high value chains that require a highly-skilled workforce, such as in engineering, specialised construction professions or financial services. In such circumstances, the wages of posted workers are based on the country with the higher wage levels between the sending and the receiving one. DG Employment has estimated this kind of posting to account for nearly 36% of all postings (European Parliament, 2016). Highly skilled posting is mostly from older Member States like Austria, Germany, Belgium, Italy, and Spain towards other old Member States as well as new Member States (for more see Table 4).

In terms of countries of destination and origin, we notice that there is a high frequency of cross-border mobility, i.e. a high number of posted workers sent to work in the neighbouring countries (52 %) (European Parliament, 2017), which has been the case for all of the nine countries studied here. After neighbouring countries, the old Member States remain the main countries of destination for most posting assignments (see Table 4). There is also a newly developing pattern, according to which workers from the most recent Member States, such as Bulgaria, Romania and Croatia, as well as Western Balkan countries, in particular Bosnia-Herzegovina, Macedonia, and Serbia are posted through companies in EU-8 countries, mostly from Slovenia (for Austria see for e.g. Schmatz & Wetzel, 2014).

Table 4: Sectors, countries of origin, and destination in 2016

Countries	Main Countries of Origin	Main Sectors of Workers Posted TO	Main Destination Countries	Main Sectors of Workers Posted FROM
Austria	Slovenia, Germany, Slovakia, Hungary, Poland, Italy	Construction, other industry, education, other services	Germany, Switzerland, Italy, France	Construction, other industry, education, commerce, other services
Belgium	France, Poland, Luxemburg, Germany, Portugal, Netherlands, Slovenia, Romania	Industry, construction, education, other services	France, Netherlands, Germany, Luxemburg	Construction, industry, business services, personal services, other services, agriculture
Croatia	Slovenia, Germany, Italy, France, Austria	Construction, industry, education, other services	Germany, Slovenia	Construction, other industry, commerce, other services
Germany	Poland, Slovenia, Slovakia, Hungary, Austria, Croatia, Romania, France	Industry, construction, education, other services	Switzerland, Austria, Netherlands, France, Belgium, Spain, Luxemburg, Italy, UK	Not available
Italy	Germany, France, Spain, Slovenia, Romania, Austria, Poland	Construction, other industry, education, other services	Switzerland, France, Germany, Spain, Belgium, Austria	Not available
Romania	Germany, France, Spain, Italy, Hungary, Poland, Slovakia, Austria	Construction, other industry, education, other services	Germany, Spain, Italy, France, Netherlands	Other industry, construction, commerce, other services
Slovakia	Germany, Poland, Czech Republic, Slovenia, Austria, France, Spain, Italy, Romania, Hungary	Other industry, construction, education, other services	Germany, Austria, Czech Republic, Belgium, France, Netherlands	Other industry, construction, commerce, other services
Slovenia	Croatia, Austria, Germany, France, Italy, Slovakia	Other industry, construction, education, other services, agriculture	Germany, Austria, Belgium, Italy, Croatia	Other industry, construction, commerce, other services
Spain	Germany, France, Portugal, Italy, Poland, Belgium	Industry, construction, education, other services	France, Germany, Portugal, UK, Italy, Belgium	Not available

Source: European Commission, 2018a, Country Factsheets 2016.

2.3.2 Average duration of posting

The average duration of posting for 2014 was 103 days or less than 4 months, with huge differences among countries such as 33 days in Belgium, France and Luxemburg, and 230 days in Estonia, Hungary and Ireland (European Commission, 2016). In 2016, the average duration in the EU amounted to 101 days but these data refer only to the 15 Member States that reported them (De Wispelaere & Pacolet, 2017). Of these, Luxemburg, France and Belgium all reported a duration of almost less than a month, while Hungary, Croatia, Latvia, Ireland and Estonia reported an average posting period of more than 200 days. Among the reporting countries, only five of the countries included in this study reported the average duration of a posting placement in 2016 (see Table 5).

Table 5: Average duration of the posting period, in days, 2016, from a sending perspective

	Average duration per posting (A)	Time posted during the year (B)	Average duration per individual posted worker (A*B)
BE	37	2.0	74
HR	240	1.4	326
IT	55	1.8	99
SI	67	3.2	216
SK	97	1.6	156
Total EU	101	1.7	170

Source: *De Wispelaere & Pacolet, 2017.*

2.4 OSH regulation

Occupational health and safety are regulated at the international, EU, and national level. Overall, the safety legislation addresses both physical and social risk factors. At the international level, organizations such as the World Health Organization and the International Labour Organization have designed and endorsed various documents on OSH. WHO, for example, endorsed its Global Plan of Action on Workers' Health (2008-2017), in which the changes in the world of work were recognized demanding for appropriate measures of prevention and protection. The Plan also recognized the necessity to draft regulation that is inclusive of vulnerable groups and takes into consideration the intricacies of labour mobility, thus promoting the improvement of collaboration and cooperation between sending and receiving countries and expanding the collaboration and cooperation across all government levels (2017, Point 7).

ILO has set up more than forty instruments on occupational health and safety that cover a wide range spanning from general provisions to protection against specific risks and to specific branches of activity, as well as ILO's Codes of Practice. Since 2003, ILO has adopted a Global Strategy on Occupational Safety and Health in which, similar to WHO's Global Plan, attention to prevention mechanisms, inspections and education, and vulnerable groups were stressed (p. 10). Recognizing the increase in cross-border labour mobility and the challenges this brings, the necessity of OSH training in languages accessible to migrant workers was brought forward in the Fundamental Principles of Occupational Health and Safety (Alli, 2008: 149). Furthermore, attached to a recent study on the OSH of migrant workers, titled *Promoting Fair Migration: General Survey* (ILO, 2016), there was also a Report of the Committee of Experts on the Application of Conventions and Recommendations, in which the implications of labour migration on migrants' occupational safety and health were discussed. Based on the evidence of elevated risks for migrant workers among the workforce, the Committee recommended training and other preparatory measures in languages migrants understand.

The European Union has included health and safety in the Treaty on the Functioning of the European Union (Article 153). Additionally, the EU Occupational Safety and Health Agency (EU-OSHA) has been established and a number of directives have been passed throughout the years, such as:

- 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, ergonomic and psychosocial risks
- Sector specific and worker-related provisions

Furthermore, there are: a number of European Guidelines, which are non-binding documents drafted to facilitate the implementation of the directives; the EU standards that aim to create cohesion within the EU; and the European Commission's Strategic Framework for Safety and Health at Work (2014-2020). In a similar vein to the international documents, EU regulations outline the necessity of preventative measures, as well as training, education, and appropriate protection in terms of occupational health and safety. OSH is considered as one of the most developed and successful policies in the EU throughout the decades, which has seen impressive transformation from the technical standards of the early times prescriptive approach to the more current goal-oriented and social dialogue approaches (Liu and Liu, 2015), although more needs to be done in particular in terms of enforcement (del Castillo, 2016).

OSH is simultaneously regulated at the national level, where OSH national legislative and institutional frameworks are built with all the necessary mechanisms for implementation and enforcement. Each of the nine countries that were covered by this study has a complex OSH system, where national and transposed EU legislation are intertwined reflecting the socio-economic and technological changes on working conditions and environment of their society. A more detailed account of the national legal and institutional frameworks of the nine countries is presented below in Section 4.1.

2.5 OSH of migrant and posted workers in the literature

In the framework of this project, a review of the OSH literature, with a special focus on the OSH of migrant and posted workers was conducted (see Danaj 2018a & 2018b). The findings of the review indicate that although there is an extended literature on OSH and a growing one on posting, both strands hardly intersect. The OSH literature pays particular attention to OSH risks and the factors that influence preventative and protection measures. The factors that influence protection range from structures and procedures, to training and artefacts, as well as the behaviour of the actors involved in the process (employers/managers/workers/OSH representatives/OSH inspectors). Although the commitment of all actors involved is fundamental for a well-functioning OSH protection system (Guldenmund, 2000; Sawacha et al., 1999), previous studies suggest that if management, in particular, is committed to OSH at all levels, the rest of the workforce will follow their lead (Aksorn & Hadikusumo, 2008). Management commitment is understood as management support, team work, and clear and realistic goals in relation to OSH.

The commitment of employers has become even more crucial in the current world of work characterized by fragmentation and outsourcing, producing long supply chains that can increase risks of injuries and fatal accidents in the workplace and make OSH protection difficult to be guaranteed (Cox et al., 2014; Nenonen, 2011). Companies operating at different points of the chain might have different knowledge, experiences, and resources, and therefore apply different OSH standards (Manu et al., 2009; Swuste et al., 2012; Wadsworth & Walters, 2018). The previous literature also indicates that at the end of the subcontracting chain the tension between safety and production efficiency is higher (Lingard, 2013; Mayhew et al., 1997), thus exposing workers to elevated OSH risks.

Precarious employment and mobility are other relevant social determinants of the health of workers (Benach et al., 2010, 2014, 2016; EU-OSHA, 2007; Sargeant & Tucker, 2009). The correlation between precarity and migration and OSH vulnerabilities is negative and previous studies indicate that there is a higher incidence of workplace-related accidents and fatalities among migrant workers as compared to local workers (e.g. Schenker, 2010). Both grey and academic literature find migrants located in a segmented labour market, often in physically demanding and highly hazardous jobs working under poor and precarious conditions (EU-OSHA, 2007; Benach et al., 2010; Schenker, 2010). Apart from exploitation and lack of (appropriate) protection and training on health and safety, they are also exposed to discrimination and/or bullying, social exclusion, fear of employer reprisal, and have limited or no access to care and compensation.

To process the multitude of factors that influence the OSH of migrant workers, Sargeant and Tucker (2009) proposed a layered framework. Migration factors are the first layer of vulnerability and include the conditions of recruitment and the migration status of the workers. Regulated residence and (long-term) employment provide a more protected work environment as opposed to one of irregularity, precarity and informality. The socio-economic conditions in the home country, education and skills levels, and language skills, collectively called the characteristics of the migrants, are the second layer of vulnerability. Poor socio-economic conditions at home, low levels of education and training make migrant workers more willing to consent to poor working conditions and make them more vulnerable to OSH risks compared to others. The receiving country conditions, specifically the characteristics of employment and sector, access to collective representation, access to regulatory protection, and particular problems of social exclusion/social isolation, comprise the third layer of vulnerability. Additionally, linguistic and cultural barriers can limit the access to OSH information, services and protection (Bust et al., 2008; Guldenmund, 2000; Sargeant & Tucker, 2009; Tutt et al., 2011, 2013).

In line with the overall literature on the OSH of migrant workers, the posting of workers literature has already drawn the attention to the OSH vulnerability of the workers, although very little research has focused on the matter. The terms of employment, that is the efforts of the employers to reduce costs often means that posted workers are used as a cheaper labour force (Berntsen & Lillie 2015; Cremers, 2011). Posted workers, in particular in low-pay and low-skill jobs, are often paid either less or subjected to charges on various expenses such as travel, accommodation, or administrative fees (Cremers, 2011; Cremers et al., 2007; Cremers, 2016; Kall & Lillie, 2017; Lillie & Wagner, 2015). As they are predominantly precarious and with insecure employment, they also agree to poor working conditions and extended shifts (Alberti & Danaj, 2017; Wagner, 2017). Previous

research has also found that accommodation arrangements for posted workers can frequently be poor, crowded, and sometimes isolated from the local community (Caro et al., 2015; Fitzgerald, 2010). Similar to other migrants, language and cultural barriers expose posted workers to high OSH risks (Caro et al., 2015; Rogelja et al., 2016). Additional barriers are found in terms of access to social protection and worker representation, where their posting situation works against these workers by creating spaces of exception, in which access is either limited or unclear, and therefore often not used to protect posted workers (Berntsen, 2015; Carmel et al., 2016; Danaj & Sippola 2015; Lillie & Sippola, 2011; Scheibelhofer et al., 2016).

3. Methodology

The research design for this study is based on the multiple case studies approach (Yin, 2003) and focuses on nine case studies of EU Member State countries, namely Austria, Belgium, Croatia, Germany, Italy, Romania, Slovakia, Slovenia, and Spain. Through the case study approach, the social phenomena are placed in the wider context and observed in interaction with this context (Yin, 2003; Kitay & Callus, 1998). In addition, the cross-national case study research gave us the opportunity to compare and contrast the same social phenomenon in different national contexts (Hantrais & Mangen, 1996). The selection criteria for this research was having both countries with a relatively high number of posted workers, albeit some of them receive more posted workers than they send to other EU countries, e.g. Austria, Belgium, or Germany, while others have been considered by previous literature predominantly as sending countries, such as Slovakia or Slovenia. We also included countries that have recently become EU Member States, and that have been subjected to restrictions for their citizens into the common labour market, such as Romania (until January 1, 2015) or Croatia (until 2020). With the restrictions to the labour market in place during the first period of EU membership, the citizens of these Member States have had few points of entry into the rest of the EU labour market, as access has been or is limited to highly-skilled, self-employed, and posted workers. However, as labour mobility and posting within the EU is multidirectional, we treated each of our cases as both sending and receiving countries. In terms of OSH this is important, because whether workers are posted in or out of their country of residence, their knowledge of and training in OSH regulations and practices, as well as access to social protection are crucial for their health and safety.

The main research question we posed for this study is:

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 regulation interact in transnational workplaces within the EU common market?
- Which 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?

The unit of analysis for this research is the system of occupational health and safety in each of the country case studies. As such, the elements we focused on are the legislative framework that regulates OSH in each country, the institutional mechanisms established to implement and enforce OSH regulation, other organizations or actors that monitor the working conditions of workers (such as trade unions or other worker representation bodies, and civil society organisations), and workplace practices both from the perspective of the stakeholders and that of the workers. However, as the whole system was too broad for the purposes of this study, we narrowed it down to the case of posted workers by looking at the way OSH regulation is applied to posted workers and at their experiences with OSH-related issues, the legal and institutional framework on posting and OSH, cross-border communication and exchange, the mechanisms for grievances at different levels, the vulnerabilities of posted workers and language barriers. Furthermore, as the national legislation, regulations, state agencies, institutional mechanisms, worker representative bodies, employers and workers are faced with the supranational level of the EU in direct and indirect forms such as the Posting of Workers Directive, the Enforcement Directive of the Posting of Workers Directive, and the European directives on safety and health at work, this supranational dimension is also to be taken into consideration.

The research is policy-oriented; which, based on the description given by Hakim (1987) and adapted to the field of industrial relations by Strauss and Whitfield (1998) means that the approach is multidisciplinary and multi-level, targeting both expert and professional respondents. In terms of multidisciplinary, the approach combines disciplines such as employment/industrial relations, human resource management, health sciences and social sciences. The policy orientation also guided the process of data collection as well as the different levels of analysis, i.e. the supranational, national, industry and workplace levels. The selection of multiple (nine) national cases with variation in contexts allows us to draw some insights into the OSH practices for posted workers in the European Union.

3.1 Data collection

The study is based on secondary and primary data. Secondary data were gathered through desk research and literature review (academic and grey) of existing publications on OSH and posting, and the analysis of OSH and posting legislation and regulation at the EU, national, industry, and workplace level. Furthermore, we conducted a total of 95 semi-structured interviews with national, regional, and workplace level stakeholders and other experts (67) as well as workers (28). The geographical coverage of the interviews was either national or regional and focused on the nine country case studies. The overall fieldwork was conducted for the period June 2017–February 2018 and most interviews were done face-to-face. The workers interviewed were employed in

three main sectors: construction, transport, and manufacturing. A detailed account of the primary data collection for each country case is presented in Table 6 below:

Table 6: Detailed account of the primary data collection in the nine countries

	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	14	- Labour Inspectorate (4) - Trade Union (1) - Expert (1) - Constructiv (1) - Posted worker (5) - Cross-border worker (1) - Immigrant worker (1)
DE	December 2017 - April 2018	Interviews	National	Shipyard	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	Construction	7	- Labour Inspectorate (2) - Trade Union (2) - Expert (2) - Posted worker (1)
HR	October - December 2017	Interviews	National	Construction	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, transport, manufacturing	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	Construction	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 and regional	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)

Source: POOSH Country Reports, 2018.

3.2 Analysis

The empirical data were transcribed and when necessary translated before they were analysed. The data collected were then analysed using thematic analysis. Codes emerged from the preceding literature review and the focus points of the research, mainly the OSH vulnerabilities of posted workers, the national institutional framework on OSH and its interaction with partners across state borders, OSH practices in transnational workplaces, as well as language and cultural barriers. Sargeant and Tucker's (2009) layered framework was used to assess the OSH vulnerabilities of posted migrant workers.

3.3 Challenges and limitations

The main challenge of this study was finding and interviewing posted workers. As a vulnerable group, they are often difficult to approach and resist giving interviews about their working conditions. To overcome this challenge, the researchers used different intermediaries or visited their places of work or accommodation, followed by the snowballing technique, in which one interviewee suggests the name of a colleague for interview and perhaps facilitates the introduction. Related to this challenge was the language barrier, which was addressed with the help of interpreters when possible. In other cases, the interviews were conducted in the languages familiar to both the interviewer and the interviewee.

Occasionally, it was also difficult to interview representatives of public authorities, sometimes because of the high level of bureaucratization of the institution, and sometimes because they believed they did not have much to contribute on the topic of OSH and posting, as they thought they were familiar with only one aspect but not the other.

While the exploratory nature of this qualitative study and the data collected from a limited number of interviews have obvious limitations in terms of generalisability of results and for drawing overall conclusions, collectively across the country cases they allow us to identify similarities and differences among the nine different national OSH systems and gain valuable insights in the occupational health and safety of posted workers across the European Union.

Despite our efforts to investigate the OSH of highly-skilled posted workers, they were even more difficult to identify and interview than low-skilled workers. This outcome suggests that even though nearly 35% of postings, as reported by the European Commission's estimates, are of highly-skilled workers, they remain quite invisible. The level of OSH protection for this category might be better based on the general state of OSH in their industries; however, further research is needed to investigate how posting affects the level of OSH protection for this sub-category.

4. Results

4.1 OSH legal and institutional framework

Each of the national legal and regulatory frameworks is composed of the national labour codes in which the different aspects of health and safety at work are taken into consideration, including overtime, time off, and holidays (See Table 7). Furthermore, all countries have specific laws on Health and Safety and on Labour Inspection, and most of them also have national strategies on OSH, in which prevention and protection are addressed. Labour mobility within the common European market has also led to laws on the transposition of the different directives, such as the Posting of Workers Directive. In the case of the new and recent Member States such as Croatia, Romania and Slovakia, legal reform has been more comprehensive as part of the accession process. In Romania health and safety policy was reformed to provide the framework for Romanian workers (including Romanian posted workers) and for other workers in Romania (including posted workers to Romania). Slovakia passed a new law on cross-border mobility for both ingoing and outgoing posted workers (Act on Cross-border Cooperation in Posting Employees, Act No. 351/2015), whose main contribution was to introduce a joint liability of the “host employer” and the “home employer” (the contractor in the Slovak Republic) (Act 351/2015, Čl.II 4 (9)). In terms of pay, most countries (except Austria, where a statutory minimum wage is being rolled out until 2020, and Italy) provide statutory minimum wage for workers posted in their country, while Slovakia in the abovementioned law also demands that posted workers from Slovakia are paid at least the minimum wage of the country where they are posted to. Meanwhile Austria, Germany, Belgium, Italy, Slovenia and Spain have also binding national or sectoral collective bargaining agreements in place, which should be applicable to all workers within a sector in their own country.

Each country has a complex network of institutions and agencies involved in the monitoring, control, protection and compensation of different aspects of occupational health and safety (see Table 7). 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. However, in Belgium different Labour Inspectorate divisions cover different aspects, such as health and safety, social protection aspects, and employment, including a specific section on transnational labour (Cellules Travail Transfrontalier); and in Italy, the Carabinieri (one of the police forces in the country) also share labour protection duties along with the Labour Inspectorate. In most cases, enforcement agencies can issue administrative sanctions directly, some issue criminal ones (such as in Italy), while others cannot (Belgian OSH inspectors)¹. Overall, national embassies and consulates should represent the rights of their citizens when abroad based on the Vienna Convention on Diplomatic Relations (1961). In the case of Romania, the Romanian Government has also issued Decision 1425/2006, in which posted workers are mentioned specifically in regard to reporting potential accidents to the Romanian diplomatic missions in the host country: “any event occurring in the territory of another country involving Romanian workers, posted by Romanian employers to

¹Belgian OSH inspectors can only draw Pro Justitia. The Court can impose fines and/or imprisonment, or send back to Service Administrative Sanctions of the Federal Public Service Employment Work and Social dialogue for an administrative fine, without any further interference of the inspection.

foreign employers, i.e. foreign users, for carrying out work on the territory of another state, shall be immediately communicated by the Romanian employer to the diplomatic mission or the Romanian consular office in that country”, which means that the embassies should be informed of the cases involving OSH-related accidents of Romanian posted workers as well.

Table 7: Legal and institutional framework in the nine countries

	National Legal and Regulatory Framework	Responsible Bodies	Social Partners and other Key Stakeholders
AT	<ul style="list-style-type: none"> - ArbeitnehmerInnenschutzgesetz (Health and Safety at Work Act) 1994 - Occupational Safety and Health Strategy for Austria, 2013-2020 - National Collective Bargaining Agreements 	<ul style="list-style-type: none"> - Federal Ministry of Labour, Social Affairs and Consumer Protection (BMASK) - Federal Ministry of Health and Women's Affairs (BMGF) - Labour Inspectorate - Austrian social security institutions - Austrian Social Insurance for Occupational Risks (AUVA) - Construction Workers' Annual Leave and Severance Pay Fund (BUAK) 	<ul style="list-style-type: none"> - Trade Union Federation (ÖGB) - Federation of Austrian Industries (IV) - Economic Chamber (WKO) - Chamber of Labour (AK) - Chamber of Agriculture (LK) - Occupational Safety and Health Advisory Board - UNDOK
BE	<ul style="list-style-type: none"> - Loi belge du 5 mars 2002 transposant la directive 96/71/CE du Parlement européen et du Conseil du 16 décembre 1996 concernant le détachement des travailleurs effectué dans le cadre d'une prestation de services et instaurant un régime simplifié de tenue des documents sociaux pour les employeurs qui détachent des travailleurs en Belgique - "Loi du 16 mars 1971 sur le travail" - Sectoral Collective Bargaining Agreements - Royal Decrees that make Sectoral Collective Bargaining Agreements compulsory - Loi du 24 juillet 1987 sur le travail temporaire, le travail intérimaire et la mise de travailleurs à la disposition d'utilisateurs and its Codex - Loi du 4 août 1996 relative au bien-être des travailleurs lors de l'exécution de leur travail - Loi du 11 décembre 2016 portant diverses dispositions concernant le détachement de travailleurs - Collaboration protocols between the inspectorates of the Contrôle des lois sociales and Contrôle du bien-être au travail and a number of inspectorate services belonging to the SIRS 	<ul style="list-style-type: none"> - Ministry of Employment, Economy and Consumers - Ministry of Social Affairs and Public Health - Federal Public Service Employment, Labour and Social Dialogue (S.P.F. Emploi, Travail et Concertation sociale) - General Directorate for the Supervision of Social Legislation - General Directorate for the Supervision of Wellbeing at Work - Division for chemical risks control - Division for Regional Control of wellbeing at work and its 8 Regional Directorates; - Division for knowledge management on wellbeing at work - Directorate General for the Humanization of Work - Federal Public Service Social Security (S.P.F. Sécurité sociale) - Directorate-General for Social Inspection - Social Information and Investigation Service - Inspection Service of the National Employment Office (ONEM) - National Institute for Health and Disability Insurance (INAMI) - FAMIFED - National Pension Office - Regional inspection services responsible for the control of work permits - College of Prosecutors-General - Cellules Travail transfrontalier 	<ul style="list-style-type: none"> - Confederation of Christian Trade Unions (ACV-CSC) - General Federation of Belgian Labour (ABVV-FGTB) - General Confederation of Liberal Trade Unions of Belgium (ACLVB-CGSLB) - The Federation of Belgian Enterprises (VBO/FEB)

National Legal and Regulatory Framework	Responsible Bodies	Social Partners and other Key Stakeholders
<p>DE</p> <ul style="list-style-type: none"> - The Working Conditions Act - The Seventh Book of the Social Security Statute Book (SGB VII, Statutory Accident Insurance) - Industrial Code - The Joint German Occupational Safety and Health Strategy - National Collective Bargaining Agreements 	<ul style="list-style-type: none"> - Federal Ministry of Labour and Social Affairs - Federal Ministry of Health - Central Customs Authority - The Commission for Occupational Safety and Safety Engineering of the Federal States - Financial Control of Undeclared Employment (FKS) of the Customs Administration - Federal Institute for Occupational Safety and Health (BAuA) - National Occupational Health and Safety Conference - German Statutory Accident Insurance - German Junction Accident Insurance – foreign countries - Social insurance services - Pension Insurance Institute or the Consortium of Professional Association Pension Schemes - Workplace inspectorates 	<ul style="list-style-type: none"> - German Social Accident Insurance (DGUV) - German Industry and Trade Federation - German Confederation of Skilled Crafts - Industrial Metal Union (IG Metall) - German Trade Union Confederation (DGB) - Industrial Trade Union Building Agriculture Environment (IG BAU) - Unified service sector union (Ver.di) - Association of the German Construction Industry - Federal Labour Office, EURES consultants - Joint German Occupational Safety and Health Strategy (GDA) - National Occupational Safety and Health Conference (NOSHC) - The Professional Association for energy, textile, electrical and media products (BG ETEM) - Faire Mobilität
<p>ES</p> <ul style="list-style-type: none"> - Royal Decree Law 9/2017 - Resolution of 4 May 2015 that defines the Social Security preventive general activity to be applied by Mutual insurance companies that collaborate with Social Security in activities planning for 2015 - Orden núm. TIN/1448/2010 por la que se desarrolla el Real Decreto 404/2010 por el que se regula el establecimiento de un sistema de reducción de las cotizaciones por contingencias profesionales a las empresas que hayan contribuido especialmente a la disminución y prevención de la siniestralidad laboral. - Real Decreto 485/1997, de 14 de abril, sobre disposiciones mínimas en materia de señalización de seguridad y salud en el trabajo - Real Decreto 487/1997, de 14 de abril, sobre disposiciones mínimas de seguridad y salud relativas a la manipulación manual de cargas que entrañe riesgos, en particular dorsolumbares, para los trabajadores - Real Decreto 486/1997, de 14 de abril, por el que se establecen las disposiciones mínimas de seguridad y salud en los lugares de trabajo - Real Decreto 39/1997, de 17 de enero, por el que se aprueba el Reglamento de los Servicios de Prevención - Real Decreto 488/1997, de 14 de abril, sobre disposiciones mínimas de seguridad y salud relativas al trabajo con equipos que incluyen pantallas de visualización - Real Decreto 1879/1996, de 2 de agosto, por el que se regula la composición de la Comisión Nacional de Seguridad y Salud en el Trabajo - Ley núm. 31/1995, de 8 de noviembre, de Prevención de Riesgos Laborales - National Collective Agreements 	<ul style="list-style-type: none"> - Ministry of Employment and Social Security - Labour Inspectorate - National Institute of Safety and Hygiene 	<ul style="list-style-type: none"> - Workers' Commissions (Comisiones Obreras) - General Union of Workers (Unión General de Trabajadores) - Galician Unions Confederacy (Confederación Intersindical Galega) - Basque Workers' Solidarity (Eusko Langileen Alkartasuna – Solidaridad de los Trabajadores Vascos)
<p>HR</p> <ul style="list-style-type: none"> - The Occupational Health and Safety Act - Statutory Minimum Wage 	<ul style="list-style-type: none"> - The Ministry of Labour and Pension System - The Labour Inspectorate - Ministry of Health - Croatian Institute for Health Protection and Safety at Work - The Institute for Occupational Safety Improvement - Croatian Health Insurance Institute Fund - The Croatian Pension Insurance Institute 	<ul style="list-style-type: none"> - Institute for the Advancement of Safety at Work - Union of Autonomous Trade Unions of Croatia (UATUC) - The Croatian Employers Association (CEA) - Independent Croatian Trade Unions - The Croatian Society of Occupational Health - The Croatian Chamber of Economy - The Croatian Chamber of Trades and Crafts

	National Legal and Regulatory Framework	Responsible Bodies	Social Partners and other Key Stakeholders
IT	<ul style="list-style-type: none"> - Civil Code - Legislative Decree No. 72/2000 - Legislative Decree No. 66/2003 - Legislative Decree No. 276/2003 - Legislative Decree No. 81/2008 „Consolidated Law on Health and Safety at Work“ - Interpello 12 October 2010, No. 33/2010 - Legislative Decree No. 267/2013 - Legislative Decree No. 81/2015 - National Sectoral Collective Bargaining Agreements 	<ul style="list-style-type: none"> - Ministry of Labour and Social Affairs - National Labour Inspectorate - Local Labour Inspectorates - Service for prevention and safety in the workplace (Servizio per la prevenzione e la sicurezza negli ambienti di lavoro – SPSAL) - Carabinieri for labour protection - Carabinieri Labour Inspectorate - Guardia di Finanza supervised by the Ministry of Economy and Finance 	<ul style="list-style-type: none"> - Italian General Confederation of Labour (CGIL) - Italian Confederation of Workers' Trade Unions (CISL) - Italian Labour Union (UIL) - Confindustria - National Confederation of Craftsmanship and SMEs (CNA) - Confartigianato Imprese - Italian Confederation of Businesses in the Trade, Tourism, and Service Sectors (Confesercenti) - Italian General Confederation of Companies, Professional Activities, and Self-employment (Confcommercio) - Italian Confederation of SMEs (Confapi) - Legacoop, Confcooperative, and AGCI (cooperative sector)
RO	<ul style="list-style-type: none"> - Romanian Labour Code 53/2003; - Law No. 319 of 14 July 2006 on Safety and Health at Work amended on 27 September 2010 - 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 provides 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 	<ul style="list-style-type: none"> - The Ministry of Labour, Family, Social Protection and the Elderly - The Labour Inspection - The National House of Public Pensions - National Institute for Research and Development for Labour Protection - Ministry of Health - The diplomatic mission or the Romanian consular office in the host country 	<ul style="list-style-type: none"> - National Trade Unions Confederation 'Cartel Alfa' (CNS 'Cartel Alfa'; Confederația Națională Sindicală 'Cartel Alfa') - National Confederation of Free Trade Unions from Romania Frăția (Confederația Națională a Sindicatelor Libere din România Frăția) - National Trade Union Bloc (Blocul Național Sindical) - Meridian National Trade Union Confederation (Confederația Sindicală Națională Meridian) - Confederation of Democratic Trade Unions in Romania (Confederația Sindicatelor Democratice din România) - Employers' Confederation Concordia (Confederația Patronala Concordia) - National Confederation of Romanian Employers (Confederația Națională a Patronatului Roman) - Romanian National Council of Private Small and Medium Enterprises (Consiliul Național al Întreprinderilor Private Mici și Mijlocii din România) - Romanian Employers Organisation Confederation (Confederația Patronatul Român) - Insurance agents - Other NGOs with activity related to OSH and posting workers
SI	<ul style="list-style-type: none"> - Health and Safety at Work Act, Uradni list RS, št. 43/2011, ZVZD-1 - Worker Participation in Management Act - Representativeness of Trade Unions Act - Pension and Disability Insurance Act - Employment Relationship Act - Civil Servants Act - Health Services Act and Health Care and Health Insurance Act - Inspection Act - Labour Inspection Act - Resolution on the national programme for health and safety at work - National Collective Bargaining Agreements 	<ul style="list-style-type: none"> - Ministry of Labour, Family, Social Affairs and Equal Opportunities - Ministry of Health - Labour Inspectorate of the Republic of Slovenia - Occupational Safety and Health Chamber - National Institute of Public Health 	<ul style="list-style-type: none"> - Association of Free Trade Unions of Slovenia - Delavska svetovalnica (Counselling Office for workers) - Chamber of Commerce and Industry of Slovenia - Trade Union Confederation 90 of Slovenia - Trade Union Confederation of Slovenia PERGAM - Neodvisnost, New Trade Union Confederation of Slovenia - Chamber of Craft and Small Businesses of Slovenia - Association of Employers in Craft and Small Business of Slovenia - Association of Employers of Slovenia - Association of Free Trade Unions of Slovenia - Occupational Safety and Health Chamber - Slovene Association of Safety Engineers Societies - Slovene National Network for Cooperation with EU-OSHA - University Medical Centre Ljubljana – Clinical Institute of Occupational, Traffic and Sports Medicine - The Health Insurance Institute of Slovenia - Institute of Occupational Safety

National Legal and Regulatory Framework		Responsible Bodies	Social Partners and other Key Stakeholders
SK	<ul style="list-style-type: none"> - Act on occupational safety and health, Act No. 124/2006 - Act on Labour Inspection, Act No. 125/2006 - Act on Cross-border Cooperation in Posting Employees, Act No. 351/2015 - Act on employment of third country nationals, Act 108/2018 - Strategy on Health and Safety - 2020 and its Action Plan - Statutory Minimum Wage 	<ul style="list-style-type: none"> - Ministry of Labour, Social Affairs and Family - National Labour Inspectorate - Regional labour inspectorates - Ministry of Health - Slovak Social Insurance Agency (Sociálna poisťovňa) - National Public Health Authority - Regional public health authorities 	<ul style="list-style-type: none"> - Confederation of Trade Unions (KOZ) - Federation of employers' associations of the Slovak Republic (AZZZ) - The National Union of Employers (RÚZ) - The Association of Towns and Villages (ZMOS) - The OSH and Fire Protection Association (Slovenská asociácia pre bezpečnosť a ochranu zdravia pri práci a ochranu pred požiarimi)

Notes: The information in this table is not exhaustive. The data presented is a selection of the most relevant legislation, public authorities, social partners and other key stakeholders as identified during the fieldwork and presented in the nine country reports.

Social Security is structured differently in each country. There are Social Insurance Agencies in all countries, but when it comes to OSH workers might need to approach one or the other specific institution, depending on their individual problem. In Austria, for example, occupational risks are covered by a separate insurance institution for occupational risks (Austrian Social Insurance for Occupational Risks [AUVA]). In Belgium, one of the federal social security institutions (FEDRIS) is dealing with compensation of occupational diseases, and with supervising the decisions of accredited private insurance companies for compensation of occupational accidents. In Germany, Accident Insurance is a separate body from Social Insurance Services. In international comparison, Germany has a particularly strong fragmentation of the supervisory and control authorities (e.g. Financial Control of Undeclared Employment [FKS], factory inspectorates, professional associations, occupational health and safety authorities, social insurance services, etc.). Institutional fragmentation and lack of jurisdiction for some institutions combined with the absence of statutory provisions has led to violations of compulsory regulations without sanctions. Public authorities often face barriers which have resulted in rudimentary legal enforcement in the area of labour law (German Trade Union Federation [DGB] & Justitia et Pax, 2017: 12).

Social Partners are also actively involved in OSH monitoring and protection in all nine countries. Trade unions provide information, training, and also workplace representatives, whose mandate is either inclusive of OSH (shop stewards) or specifically on OSH (as safety representatives/stewards). Unions have also helped to establish support offices and projects in countries such as Austria (UNDOK), Germany (Faire Mobilität), Romania (various), or Slovenia (Delavska svetovalnica), which provide support for migrant and posted workers on various issues, including health and safety. In Slovakia, there is also the OSH and Fire Protection Association (Slovenská asociácia pre bezpečnosť a ochranu zdravia pri práci a ochranu pred požiarimi), a community organization that aims to improve the occupational health and safety of all workers in the country.

In some countries, tripartite bodies comprised of public authorities, trade unions and employer associations have been established to advise on matters related to OSH. Austria, for example, has an Occupational Safety and Health Advisory Board (Arbeitnehmerschutzbeirat) with two representatives from each of the social partners – the Chamber of Labour (Arbeiterkammer, AK), the Economic Chamber (Wirtschaftskammer Österreich, WKO), the Federation of Austrian Industry (Industriellenvereinigung, IV) and the Austrian Trade Union Federation (Österreichischer

Gewerkschaftsbund, ÖGB) – together with experts from the Chamber of Engineers, the Chamber of Medical Doctors and the Austrian Social Insurance for Occupational risks (Prammer et al., 2016; Krenn, 2010). Similarly, The National Occupational Safety and Health Conference (NAK) in Germany is composed of public authorities and social partners, who together oversee the implementation of the Joint German Occupational Safety and Health Strategy. In Belgium, there is a highly developed system of internal and external prevention and protection services. Every employer must either have different prevention competences in house or must be affiliated to an External Prevention and Protection Service. These services are under control of both the OSH labour inspection service and the social partners via the High Council on Prevention and Protection² and local trade union representatives, and also within each External service. They are in charge of assisting employers and workers to implement OSH requirements.

Information dissemination and education/training on OSH are conducted by the Labour Inspectorate and in some countries by the Ministry of Health (e.g. Romania), but in the case of migrant or posted workers, often Labour Inspectorates have information only in national language(s), and sometimes a concise version in English. The most extended English version among our nine case studies was the OSH information on the Austrian Labour Inspectorate webpage. Multilingual information is found mostly in the national websites on posting: the Austrian site informs in seven languages, the Belgian and Slovenian ones in four languages, the German site in three languages, the Croatian, Italian and Slovak ones in two languages, while the Romanian site is only in Romanian. Furthermore, trade unions provide additional multilingual information and/or education in countries like Germany and Italy.

4.1.1 Mechanisms and procedures at different levels

By law, the employer is responsible for OSH in the workplace in all nine countries. As a result, employers are responsible for monitoring OSH in the workplace, conduct risk assessments, take preventative measures, provide workers with OSH training and protective equipment, and in cases of accidents should notify the authorities immediately. The findings from the nine country reports indicate that there are important differences between larger companies and small and medium ones. Larger companies, usually with more than fifty employees, hire or appoint OSH specialists that overview all aspects of OSH in the workplace. They also have internal bonus/sanctioning mechanisms to promote OSH in the workplace. SMEs, on the other hand, have to outsource it or rely on external bodies. Findings show that smaller enterprises operating at the end of the subcontracting chain tend to be the most problematic.

Because in most cases the employer is understood as the direct employer, i.e. the subcontractor, and very few countries (Belgium, Italy, Spain, Slovakia) have chain liability laws in place that make the main contractor responsible for all workers in their sites, there are differences in the level of OSH protection among workers employed by different companies. Even in the few cases where joint liability regulation exists, it does not always include OSH, as is the case in Slovakia, for example, where joint liability law applies to salaries and social contributions only and in Belgium,

² The High Council has a key advisory role in the elaboration of all OSH regulations in Belgium

where it clearly applies for social issues, but not unequivocally for OSH issues. This is particularly relevant in the case of posted workers that, faced with uncooperative employers, are often left without health and care support in case of accidents or occupational disease. Participants in the research argued that making main contractors responsible for what happens in their sites will have a positive effect on the level of OSH protection of posted workers.

In terms of mechanisms and procedures, there are two main ways in which inspections can be initiated: either by the labour inspectorate or after a complaint has been received. In most countries the workplaces to inspect are selected based on systems of surveillance and monitoring prescribed by the national laws and regulations. In countries like Austria, Belgium, Romania, Slovakia, Slovenia and Spain, it was reported that due to limited human resources, the number of pro-active inspections is insufficient and more human resources are needed to properly address the situation in the field. In Austria, by default inspections are done after a complaint has been received or an accident has occurred. Complaints or requests for inspection can come from the workers themselves (all nine countries), enforcement authorities (all nine countries), trade unions (Austria, Belgium, Italy, Spain, Slovakia), and judicial authorities (Belgium, Italy). Inspections can be carried out by employment departments of labour inspectorates that look at the documentation of the posted workers, whereas OSH is monitored by OSH departments of the same agency. The targeted mandate of the officials can sometimes be problematic as they might be checking the workplace for one single purpose and ignore the multi-layered vulnerabilities posted workers might be exposed to in the workplace.

In transnational workplaces, joint inspections involving the labour inspectorate, the trade authority, the financial police or the police are carried out on an occasional basis in countries like Austria. In cases of severe accidents, other agencies and institutions are involved, such as accident insurance agencies and police forces. However, these agencies have sometimes diverging interests, as the labour inspectorate investigates the employer, but the financial police investigates the employees too. Another problem with transnational workplaces is the lack of knowledge of the various public authorities' representatives on the legal framework, especially that of the other country, or their uncertainty about which sets of rules apply to workers posted from another country. In countries like Austria, Belgium and Slovenia, the labour inspectorate can also file criminal charges against employers as the last course of action, after the other measures have been exhausted.

Text Box 1: Example of national multidisciplinary inspection taskforces

BELGIUM

Proactive inspections based on specific campaigns of monitoring are carried out periodically by multidisciplinary taskforces which include the labour inspectorates, the federal and local police, the inspection services of the Regions responsible for the control of work permits, and the financial police. Additionally, based on the characteristics of the specific case, these taskforces might include the transport unit (cellule transport), which monitors and controls the compliance with the regulations applicable to the sector transport, the Covron unit, which monitors and controls the cross-border companies and foreign companies active in Belgium that employ posted workers, the “travail transfrontalier GOTOT” unit, which monitors and controls whether posted workers are employed under the statutory conditions concerning social security.

Based on centralized monitoring, the labour inspectorates can identify the companies to be controlled through the LIMOSA and DIMONA databases. The LIMOSA database allows access to data on mandatory registrations of posted workers (both subordinated and self-employed). The DIMONA database allows access to data related to the mandatory communications of any entry and exit of service of a worker to the National Social Security Office (Office national de sécurité sociale).

If during the controls social inspectors detect situations not complying with the existing regulation, they provide indications to regularize the situation, whether the company is employing Belgian workers or posted workers, they set a time limit within which the offenders must regularize their situation and, if this does not happen, they can issue a report (Pro Justitia) and apply administrative or criminal sanctions. Furthermore, if workers' health and safety are highly at risk, inspectors can order production shutdowns.

Despite the existence of structures and mechanisms for raising complaints and starting grievance procedures in all nine countries, in most cases posted workers either were not aware of them or did not make use of them. The temporary nature of their employment and fear of repercussions from the employers made most workers reluctant to address grievances formally. A general lack of know-how accentuated by language barriers were also recognized as deterring factors. Workers were mostly inclined to start a grievance procedure when, after being seriously injured or ill and unable to work, they have had to cover unaffordable medical expenses. Even in those occasions, they would start procedures long after the fact, often with the support of trade unions or civil society organizations. In those cases, due to the irregularities in the way accidents are handled, such as by not having paid any contributions, improper health insurance, not declaring the accident to the authorities, removing injured workers from the site and hiding the fact that it was a work-related accident or returning/sending them home for health care, it has been very difficult to prove their claims. Representatives of trade unions and NGOs that have been involved in such claims reported the process as complicated and lengthy, while these workers, often incapacitated to work, are left to bear the high costs of their health care. The transnational nature of posting also created confusion on what laws were applicable and which institutions were responsible and how. Similarly, the organizations supporting workers highlighted the fact that in countries without joint liability, it was rather difficult to make subcontractors pay workers in cases of injury, as they tended to dissolve companies and rebrand to avoid legal obligations.

Text Box 2: The Peculiar Situation of Posted Third Country Nationals

One particular group of posted workers that has been identified to be especially vulnerable are third-country nationals (TCN) whose employment and by extension posting assignment is conditional on having a work permit or visa issued by an EU Member State. While a detailed discussion of their situation is outside the scope of the present study, their increased exposure to irregular employment, labour exploitations and violations of their rights, with implications for their occupational safety and health, is highlighted in a number of country reports. In Slovakia, there has been a growing number of such workers hired by local companies, mainly recruited through employment agencies which are sometimes located in another EU country. There are cases reported when workers are employed illegally without work permits or registered by their employers (or the employment agency) under categories that provide exemptions for third-country nationals from applying for a proper work permit (e.g. undergoing training). Thus, the workers may end up having no or limited access to health and accident insurance in addition to being exposed to risk of fines and deportation if found out to work illegally. As documented in the Austrian, Slovakian and Slovenian country reports, the peculiar legal situation of third-country nationals (e.g. administrative burdens and often lengthy procedures to obtain work permits, limited duration of stay) also makes them more dependent on their employers and as a consequence they are more likely to accept working under poor or hazardous working conditions and receive less training and preventative measures against OSH risks. The most complex cases of injuries reported have been those in which posted workers from third countries were involved. Interviewees noted that some TCN-posted workers from former Yugoslav republics find themselves in dire economic constraints when after an injury they are returned, first, to the sending country (mostly Slovenia) and then back home without following the proper procedure for insurance, thus losing any claim to health benefits they could be entitled to (cf Lukić, 2017). Delavska svetovalnica (Counselling Office for Workers) in Slovenia and UNDOK in Austria are the only organizations that provide support for posted TCN workers on various issues, including health and safety in these countries.

4.1.2 National and transnational actor interaction and/or cooperation

Interaction and cooperation at the national level are embedded in the OSH system of each country. Some structures interact hierarchically with the responsible ministry overseeing the policy level and the dependant agencies implementing and enforcing laws and regulations. In some cases, as in Austria, Germany and Slovakia, tripartite structures are built to coordinate the process. In addition, in Slovakia there is a national bilateral cooperation agreement between the Labour Inspectorate and the trade unions. And Belgium has a separate organization, the Social Information and Investigation Service (SIRS) in charge of coordination of public agencies involved in the fight against social fraud and undeclared work.

Transnationally, the Internal Market Information System (IMI), the Senior Labour Inspectors Committee (SLIC) and their Knowledge Sharing System (KSS platform) are the main sources of information sharing and exchange. The role of EU-OSHA was also highlighted as fundamental in facilitating exchange of information between agencies in the various EU Member States. Other direct exchanges between representatives of public authorities and, to a degree, trade unions in different Member States were also common practice, especially neighbouring countries among which labour mobility is more frequent. Most of the representatives of the public authorities interviewed describe cross-border cooperation, through IMI or otherwise, to be valuable and good,

although some reported it to be slow at times. In cases of insurance payments, in particular, a tendency to avoid or delay them was noticed. Personal acquaintance with colleagues across the border was considered as having a positive effect on the level of cooperation among their respective institutions.

Additionally, countries like Belgium, Germany, Slovakia, Slovenia and Spain have signed special bilateral cooperation agreements with authorities of the main sending countries, often bordering EU and third countries.

Text Box 3: Examples of national and transnational cooperation

AUSTRIA has a cooperation network fostered between the Ministry of Labour, Social Affairs, Health and Consumer Protection, the Labour Inspectorate, social partners, AUVA, and the police. They have meetings regularly and have set up four thematic working groups on workplace evaluation, prevention of accidents, disease prevention and education. The Labour Inspectorate and the trade unions each organize joint meetings or conduct mutual projects with their respective partners across the border, especially Slovenia and Hungary. A closer cooperation is observed in the construction sector between Austrian and German labour inspectorates.

BELGIUM has established the Social Information and Investigation Service (SIRS), which is in charge of coordinating the national authorities involved in the fight against fraud and undeclared work. There are also district taskforces (cellules d'arrondissement) that cooperate at the local level. Representatives of public authorities have been actively involved in the working groups of the European Commission in regard to the Posting of Workers Directive.

CROATIA relies on IMI and the cross-border working groups established within SLIC as the main channel of cooperation. They also value mutual meetings and conferences in which personal connections are established for the benefit of inter-agency cooperation.

GERMANY coordinates the work of the different agencies at the different levels through the Joint German OSH strategy. Internationally, the country has additional bilateral agreements with Polish rehabilitation clinics in order to enable injured Polish posted workers to spend the long stay in the hospital close to the family. So far, the trade unions reached agreements with four Polish rehab clinics. Another bilateral agreement with France is also in force.

ITALY has established an Observatory on transnational posting in order to gather information on posting in the country, where social partners are also involved by the responsible authority, the Labour Inspectorate. The LI also involves the Carabinieri Command for Labour Protection and the Guardia di Finanza in complex inspection cases.

ROMANIA makes use of the International Committee of Inspectors to share information and exchange knowledge.

SLOVENIA relies on IMI and the cross-border working groups established within SLIC as some of the main channels of cooperation.

SLOVAKIA has an agreement between the Labour Inspectorate and the Confederation of Trade Unions to meet and exchange information and experience, sometimes in thematic meetings. The country also has a bilateral agreement with Serbia, one of the main sending countries of temporary migrant workers.

SPAIN has special bilateral agreements with the main sending countries, i.e. France, Portugal, Romania and Poland.

4.2 OSH-related vulnerabilities of temporary migrant and posted workers

This section of the report discusses OSH-related vulnerabilities of migrant and posted workers focusing on different aspects which include migration- and migrant-related factors as well as receiving country conditions based on Sargeant and Tucker's multi-layered framework of OSH vulnerabilities of migrant workers (2009). The analysis is based on results of the research conducted in the nine countries which are described in more detail in the respective country case studies. An overview of the main vulnerabilities reported in the nine country cases is presented in Table 8 below, listing them according to the main areas where vulnerabilities were identified which include: employment and contractual conditions, wages and social security, working conditions, healthcare, housing, language and cultural barriers and social isolation.³

What becomes evident across the nine cases is that the temporary, mobile and transnational character of posting affects the health and safety of posted workers in multiple ways and involves several different dimensions (ranging from the employment and contractual conditions to social isolation) and relates to specific aspects (e.g. lack of information on terms and conditions of employment or limited access to collective representation in the area of employment and contractual conditions).

Vulnerabilities of posted workers are apparent with respect to the employment and contractual situation, which often appear to be unclear to them. All countries report that posted workers are insufficiently informed about specific terms and conditions concerning their legal and employment status, their rights and obligations as posted workers. They tend to lack enough information about local working conditions, including OSH regulations and procedures, and details about the work they are contracted to perform. In this regard, the issue of letter-box companies was specifically highlighted in Austria, Belgium, Germany, Slovakia and Slovenia. Workers whose posting involves this type of 'virtual' companies are especially vulnerable as they cannot make any claims in the case of outstanding payments of salaries, social and health contributions or other costs incurred by them. Irregular documentation was referred to in relation to health documents in Germany and in connection with illegal employment of third-country nationals in Slovenia and Slovakia. In the latter, illegal work among migrant workers is a growing concern and has received much publicity in the most recent years. This kind of workers were the most vulnerable category of all.

In addition, it was noted in a number of country reports that posted workers have no or only limited access to collective representation, in particular in smaller or non-unionized workplaces, which significantly lowers their level of protection from possible exploitation and OSH-related violations. While the lack of collective representation can be partly explained by the short-term character of their work assignment, it may also stem from a lack of familiarity or trust in the host countries' organizations. Sometimes workers simply do not know where they can go for support in cases of grievances. In cases where there are trade unions or works councils in the workplace, the situation tends to be better, because they also tend to monitor OSH and/or have safety representatives responsible for the whole site, regardless of whether they are paying special attention to the conditions of posted workers. In countries like Austria, trade unions can offer legal advice, even

³ The findings presented in this section are based on information gained from a limited number of interviews with stakeholders, experts and posted workers carried out in the nine countries, which should be borne in mind when interpreting the results (see section 3).

in various languages, but not in terms of OSH, for which they can only refer workers to other organizations and institutions. However, in workplaces without union presence, where posted workers often find themselves, they have difficulties in accessing local unions.

In terms of training, their status as posted workers also limits participation in work- and OSH-related trainings, an issue that was underscored in the cases of Croatian, Slovenian and Romanian posted workers interviewed. In Belgium, Slovakia and Germany, workers were reported to receive instructions through video or in a written form, after which they had to sign a form declaring that they had understood the training/instructions. Workers posted to Croatia also had to have written proof of the training received. However, in the case of Belgium it was reported that workers do not always understand the language of the video instructions. The situation seems to be better in larger companies in different countries, because they either offer better quality training, as reported in the German case, or have made training mandatory by requiring workers to pass a test that includes OSH questions, as reported in the Slovak case. Although national laws might require training before the employment starts, in the cases of Austria, Croatia, Italy, Romania and Spain it was reported that language barriers limit the actual amount and quality of the training received by posted workers, as well as the ability of the labour inspectors to control that the proper training has been received.

Regarding wages and salaries, wage- and social dumping and the implications for occupational health and safety are considered as serious matters in almost all the nine countries. On the one hand, the, many times large, wage differential between sending and receiving countries is the main reason why workers agree to be posted. On the other hand, this also becomes a major source of economic vulnerability in so far as it prompts posted workers to accept salaries which are substantially lower than what is paid to their local counterparts. They may also receive and willingly or unwillingly agree to wages that are below the national minimum or the collective and sectoral agreements rates. In Belgium and Italy, there are many instances when overtime or weekend work is either not or irregularly paid by employers while the same was reported concerning payment of taxes and social contributions in the country of origin in four additional countries.

Because of the comparatively higher wages they receive, workers are more likely to consent to poorer working conditions and overlook the higher occupational and health risks these may carry. Irregular and long working hours, which often extend beyond the statutory limit, weekend work, frequent overtime and too short work- and rest breaks were the typical working time issues reported in most cases. Lack of or inadequate protective equipment seem to be less of a cause for concern in the majority of countries, which may partly be explained by the higher work safety awareness in these countries as well as among the workers themselves. On the other hand, it was also found that workers tend to downplay the significance of protective gears and equipment or are reluctant to raise the issue with their employers and report violations to authorities for fear of losing their job. While employers are legally responsible for ensuring safe and healthy working conditions including protective gear for employees in general, the findings emerging from the country reports suggest that in the case of posting, these are frequently overlooked in the name of cost-saving. Sometimes, both the main contractor and the subcontractors expect the other to provide the protective gear, which results in posted workers having no or insufficient protection. In the absence of necessary knowledge and information or support from local trade unions these workers are in a far too weak

position to be able to bargain with the employer or the work supervisor and assert their right to decent work. As mentioned before, often posted workers are not even aware where or to whom they should turn to for help.

Table 8: Overview of reported OSH-related vulnerabilities of migrant and posted workers posted to and from the nine countries

	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	●	●	●	●	●	●	●	●	●
Cultural barriers	●	●			●	●			●
Social isolation/Disconnectedness		●	●	●	●	●	●	●	●

Source: Information based on POOSH Country Reports, 2018.

Notes: Full dots indicate the main areas of OSH-related vulnerabilities identified in the context of posting (posting to and from the nine countries), while empty dots highlight specific aspects within the corresponding areas that were mentioned by the informants directly.

Being more likely to be exposed to poor work conditions also means that posted workers are more prone to experience work injuries. What is also evident from the findings of the country cases is that in the event of work accidents, posted workers are highly dependent on the site supervisor as well as on their co-workers about how accidents and injuries are handled. There are examples for work accidents not reported immediately or remaining unreported altogether (Austria, Belgium, Croatia, Germany, Spain), injured workers being transported back to their country of origin instead

of being attended by health professionals in the country where the work accident occurred (Austria, Belgium and Croatia), or the injured worker having to bear the costs fully or partly without being reimbursed (e.g. Spain and Slovakia). The latter is a problem that arises due to the fact that in many cases posted workers are not or only partially insured and covered by health and accident insurance. In some cases, it was also reported that health care institutions do not always recognize the European health card and expect workers to pay if they want to be serviced. Lacking information about the health care system and about entitlements and obligations in this regard adds a further layer of vulnerability.

Lack of or limited access to affordable and adequate housing affects many posted and temporary migrant workers. In addition to the relatively high housing costs in the receiving country, which represent a significant financial burden for workers, their insufficient knowledge of the local housing market puts them at a further disadvantage. In a number of countries, such as Belgium and Spain, there are cases reported when employers take advantage of the workers' vulnerable position deducting housing costs from their salaries, for instance. Accommodations provided by the employer are also often of poor quality with no adequate space and facilities. As a result, workers are often forced to live in overcrowded conditions lacking enough space to allow them to have privacy, for example if they wish to be alone. Moreover, overcrowding presents a major health challenge as it prevents them from getting enough sleep thus increasing their exposure to workplace accidents. In some cases, the accommodation provided is situated in isolated locations with no shops or transport options nearby which heightens feelings of social exclusion among the workers. Finally, there is also a sectoral element to housing in that having access to suitable accommodation can be of crucial importance in sectors such as road transport, to ensure that posted workers can carry out their job without endangering themselves and others. From the interviews with posted workers in the international transport sector, we find that sometimes these workers are offered no accommodation compensation at all and are obliged to sleep in their trucks.

The field of OSH includes also psychosocial hazards such as work-related stress, anxiety, isolation and mobbing at the workplace. According to 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, and workplace violence and harassment, they are at risk of experiencing psychosocial risks that may lead to mental health and physical health issues. Concerns about psychosocial risks in the context of posting were reported in several of the case studies. Loneliness and isolation are significant features of the lives of posted and temporary migrant workers. They frequently report that being away from the home environment and having limited contact with family and friends take a psychological toll on them increasing their vulnerability to mental health problems. Due to the short-term and transient nature of their employment, posted workers also face difficulties in forming bonds with co-workers and acquiring social contacts in the country to which they are posted. The role of cultural and language differences should also be highlighted as they are likely to pose a significant challenge not only in terms of posted workers' social exclusion, but also for occupational safety and health. Knowledge of the local language, and its lack thereof, was reported as a significant factor contributing to the higher vulnerability of posted and migrant workers in all nine countries (see the discussion on this in more detail in section 4.3).

Text Box 4: The peculiar situation of posted workers in international road transport

Posting of workers in international road transport presents a number of challenges that derive from the nature of the work in this sector. Although workers can be formally posted, during their work they might cross more than one national border, sometimes within the same day or in consecutive days, depending on the travel distances. This makes the monitoring of the posted workers' OSH conditions difficult for national enforcement agencies and other stakeholders, including worker organizations. In the case of Belgium, a specific taskforce, the transport unit, is in charge of monitoring the employment of posted workers and the transport union BTB carries out its own investigations.

One of the main concerns related to posting in the international road transport sector is health insurance, as noted in the Romanian, Belgian and Slovak reports. While posted workers are entitled to health insurance in the country where they are posted to, in the international road transport sector they are posted to a number of countries simultaneously, so it is difficult to figure out where health care contributions should go to. Therefore, they are often given a simple travel insurance, which is insufficient to cover expenses in cases of work-related injury, in particular in cases when workers are incapacitated for work.

The lack of proper accommodation and resting places and/or time is another reported vulnerability. In both the Belgian and the Romanian report, drivers interviewed reported that they are not offered any proper accommodation or accommodation compensation and therefore are obliged to sleep in their trucks during their assignment or in garages during the weekly rest period. One of the interviewees also pointed out that even finding a parking spot for the truck along the way so that they can rest is becoming more difficult with the passing of the years as the number of trucks continues to increase, while parking stations do not. Other related vulnerabilities workers in the international transport are exposed to include lack of proper protective equipment and OSH training, lack of hygiene, isolation as they are usually traveling alone and language barriers as they are traveling through several countries. In some cases, the drivers are pressured to drive for extended periods of time to meet delivery deadlines, which leads to lack of concentration and fatigue which in turn can lead to accidents. Belgian labour inspectors interviewed, also reported cases of illegal practices in which the sending companies had tampered with the tachograph to exceed the limit of permitted hours of work and not to comply with the mandatory rest, in order to be able to carry out the transport service faster.

The situation becomes particularly challenging when letterbox companies are used as the posting employer, as reported in the Slovak report. A recent investigation of the Belgian transport union BTB revealed hundreds of Belgian transport subsidiaries registered in Slovakia, often letterbox companies, who hire drivers from Romania and Bulgaria to drive trucks to Belgium. In case of injury, drivers working for these letterbox companies have found they do not have the proper health insurance to cover their medical bills. In extreme cases, they are also asked to pay for any damages to the trucks during an accident. Letterbox companies' attention to OSH is minimal, thus exposing posted workers in the international road transport sector to elevated OSH risks and putting them in extremely vulnerable positions.

4.3 Language and cultural barriers in transnational workplaces

Lacking the knowledge of the receiving country’s language has been identified by previous research as an important factor for explaining the higher vulnerability of migrant workers (Bust et al., 2008; Tutt et al., 2011, 2013). The fact that posted workers are overwhelmingly employed in hazardous sectors and occupations makes language barriers especially problematic in terms of increasing the risk of work accidents and their exposure to safety and health risks in general. Language barriers pose a serious challenge with regard to posted workers’ ability to access information about their rights and obligations and to familiarise themselves with working conditions in the country they are posted to. This entails, among others, information about the specific contractual conditions, safety regulations, health and accident insurance coverage as well as grievance and redress procedures in case problems at work arise. Even in the absence of an information gap, communication presents a major obstacle for posted workers with limited foreign language proficiency to engage with the people in the receiving country which has a wide range of implications – from exercising their employment rights, including health and safety rights, to accessing healthcare and housing and managing their daily lives.

Results from the research conducted in the nine countries largely confirm these previous findings. Table 9 presents the language barriers faced by migrant and posted workers in the nine countries based on information provided in the case studies. Overall, language differences are cited as an important barrier to work safety and health conditions in the context of posting, albeit in some countries such as Croatia, Slovenia and Slovakia, where many posted or temporary migrant workers come from the countries of former Yugoslavia or other Slavic-speaking countries (e.g. Ukraine), this applies to a somewhat lesser degree. Nevertheless, language is becoming an issue even in these countries as reported for instance in Croatia where there are increasing numbers of workers from Romania and Bulgaria.

Table 9: Language barriers faced by workers posted in the nine countries

	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							○	○	○

Source: Information based on POOSH Country Reports, 2018.

Notes: Full dots indicate language barriers identified by informants as a problem for workers posted to the respective countries, while empty dots highlight specific aspects of language barriers. In the case of Romania, the information relates to language barriers for workers posted from Romania working in international road transport.

One aspect where language barriers most commonly manifest themselves is accessing information and materials on working conditions and specifically on OSH. While most countries report this to be a general problem for posted workers with no or insufficient knowledge of the local language, it was highlighted by trade union representatives as a particular challenge in Belgium, Germany and Austria. The same was reported by posted workers interviewed in Spain and Slovenia. Romanian posted workers interviewed in Romania were employed in the international transport industry, which means that their job required them to cross several national borders while transporting cargo from the country of origin to the country of destination and therefore being exposed to various languages while posted. Understanding training materials and statutory safety instructions due to language difficulties appears to be an additional hurdle faced by workers interviewed in Spain, Croatia, Italy, Austria, Romania and Slovenia. Indeed, a number of countries report that locally-provided OSH trainings are often offered only in the local language from which non-native speakers cannot benefit.

Given the high presence of posted workers in hazardous sectors such as construction, language barriers present a significant risk for their health and safety. This is especially the case for those who are at their first experience of posting or who do not possess the skills necessary for the work they are tasked to perform thus further exposing them to potentially dangerous work situations. Potential risks at the work site due to lack of or insufficient knowledge of the local language were reported by both trade union and labour inspection representatives. In particular, communication difficulties during inspection controls (e.g. checking if workers received all necessary instructions) were noted by representatives from the labour inspectorates in Belgium, Germany, Slovenia, Italy and Austria. Concerning language and communication barriers at the work site, the most frequently mentioned challenges were understanding work instructions, interacting with colleagues, coordinating work tasks, reading operating manuals and hazard warnings (e.g. Belgium, Germany, Romania), and communication in the event of work accidents (Italy). In Spain, communication difficulties in general were mentioned in the case of workers posted from Romania.

Findings from the country case studies also reveal that lack of language skills together with insufficient knowledge of the receiving country's grievance policies and procedures make it difficult for posted workers to report problems and complaints about working conditions and seek information and legal assistance from respective authorities. Language barriers to grievance management were reported by both trade union and labour inspection representatives in Belgium, Germany, Italy and Austria. On the other hand, neither trade unions nor labour inspectorates appear to have the resources and capacities to adequately deal with this issue. Where counselling services and support are offered in several languages (e.g. Austria, Germany, Slovenia) their availability is often limited. For example, counselling services in Germany and Austria are mostly provided by trade unions in the context of specific projects. In Austria, however, legal advice and assistance is not available on OSH-related issues (although such cases can be referred to organisations that are able to offer some help). In Belgium and Italy, trade unions and labour inspectorates generally resort to using representatives who can speak the language of the sending countries and can act as interpreters.

The country reports provide a number of examples for how posted workers deal with the language problem. These mostly refer to informal solutions such as asking colleagues with better foreign

language skills to translate instructions and materials and act as mediators for them if needed, using smart phones and translation apps, and when possible relying on English as the common language to communicate with co-workers and supervisors. Some countries also introduced policies and tools aimed at addressing the language gap. They include legislative measures (e.g. in Austria having German-speaker work supervisors is required by law), policies that aim to improve language competences of trade unions and labour inspectorates by employing foreign language speakers and interpreters as reported in the case of Belgium and Italy, making training courses and materials available in different languages (e.g. Germany, Italian trade unions), using video materials and pictograms for work safety instructions (e.g. Austria, Belgium and Italy), and introducing language apps (currently experimented with in Austria). To improve posted workers' access to information concerning their rights and obligations, countries set up specific websites where they provide relevant information and services on posting, such as Austria and Slovenia, also making these available in languages other than the host country language and English.

Text Box 5: Examples of efforts to overcome the language barriers in posting

AUSTRIA: The Posting of workers platform (<http://www.entsendeplattform.at> or <http://www.postingofworkers.at> – both leading to the same page), a website dedicated to providing information for companies and employees concerning posting to Austria, is accessible in several languages. In addition to English, the website is available in the languages of the main source countries including Slovakian, Slovenian, Polish, Hungarian and Czech. The platform offers information covering a wide range of specific topics relevant to posting: labour law, minimum wage, collective agreements, formal requirements, enforcement as well as sections with special rules that apply in posting and hiring workers in the construction and transport sector. Working time, annual leave and occupational health and safety are found under the Labour Law heading. Links to the main institutions and authorities involved in posting can also be found for further information and assistance.

BELGIUM: In the construction sector, Constructiv, a bipartite body established by trade unions and business organisations, participated in the development of CONTRACTERANTO, an online lexicon of work-related terminology. They also regularly run preventive information- and awareness-raising campaigns, for instance targeting general contractors to ensure that there is at least one person in the subcontracting teams who speaks French, English or Dutch to make communication between workers possible on the site. The Service Public Fédéral (SPF) is also carrying out a project aimed at publishing a multilingual brochure on the rights of posted workers, including those related to OSH, as part of the implementation of the Enforcement Directive.

In addition to language barriers, differences in perceptions of work and safety due to culture can also contribute to increasing posted workers' vulnerability. Because workers at transnational workplaces tend to come from a diverse set of countries with different safety cultures and levels of OSH protection, such cultural barriers may result in potentially dangerous work behaviour, e.g. ignoring safety procedures or not wearing protective gears and equipment provided to them as was highlighted for instance in the country reports of Austria, Belgium, Germany, Italy, Slovakia and Slovenia.

5. Synthesis and Conclusions

The findings of this comparative report based on the exploratory qualitative case studies research conducted in nine EU Member States, i.e. Austria, Belgium, Croatia, Germany, Italy, Romania, Slovakia, Slovenia, and Spain, contribute to the study of occupational safety and health of mobile transnational European workers. The research finds that posting is used across the European Union. Cross-border labour mobility is the most common form, and even though some countries receive more posted workers than they send or vice-versa, posting is going in both directions. Typically, we find posted workers in project-based industries with high levels of precarity, such as construction. However, many people are also employed in manufacturing and international transport. Most of the workers interviewed for this research were employed in one of these three industries.

In the case of workers employed in construction, manufacturing and international transport, the findings indicate that workers are faced with multiple vulnerabilities, including employment and contractual conditions, wages and social security, working conditions, healthcare, housing, language barriers and social isolation. What becomes evident across the nine cases is that the temporary, mobile and transnational character of posting affects the health and safety of posted workers in multiple ways and involves several different aspects. The layers of vulnerability of the migrant workers framework (Sargeant & Tucker, 2009) was beneficial for the study of posted workers as a particular kind of migrant workers. The differentiating factor between posted workers and other types of migrant workers, however, i.e. their temporary cross-border mobility, was fundamental in capturing the complexities of their situation and provides a more detailed account of their OSH vulnerabilities and experiences (cf. Danaj, 2018b).

While employers are legally responsible for ensuring safe and healthy working conditions for employees in general, in the case of posting, these are frequently overlooked in the name of cost-saving. Posted workers remain considerably uninformed about the terms and conditions of their employment and despite national rules on OSH training prior to the commencement of employment, they receive little to no proper OSH training. Their economic vulnerability and dependence on the employers add to their OSH vulnerability, as workers are willingly or unwillingly agreeing to lower terms and poorer conditions in order not to lose their jobs. The temporary nature of their employment makes workers also overlook the higher occupational and health risks. Therefore, in cases of injury, many workers are faced with unimaginable difficulties. Various irregularities have been identified in the way accidents are handled, such as unpaid contributions or improper health insurance, not declaring the accident to the authorities, removing injured workers from the site and hiding the fact that they have been in work-related accidents or returning/sending them home for health care. Under these circumstances, it has been very challenging for workers to prove their claims.

The situation becomes more strenuous by the transnational nature of their employment. While each country has complex systems of OSH providing for both prevention and protection of workers, posted workers do not necessarily take advantage of the existing mechanisms. This is partly due to their lack of knowledge on host countries' OSH structures and mechanisms, and partly because of their hesitation to go to the authorities, but it is also partly because of the inadequate response of enforcement organizations. The findings in many countries suggest that labour inspectorates have

limited human resources, therefore they conduct very few inspections in transnational workplaces, and mostly after a complaint has been made or an accident has been reported. There is confusion among authorities about who is responsible for what and whether they have jurisdiction or not when it comes to transnational workplaces and contractors that hire posted workers. The division of labour among departments of labour inspectorates, for example, means that one might be investigating the legality of the posting employment, and another might be investigating OSH. This targeted mandate of the officials can sometimes be problematic as they might be checking the workplace for one single purpose and ignore the multi-layered vulnerabilities posted workers might be exposed to in the workplace. Additionally, labour inspection bodies have only national jurisdiction, therefore once the companies they might be investigating leave the country, it is very difficult for national authorities to follow them, which makes cross-border and transnational cooperation crucial. In this regard, the Internal Market Information System, the Senior Labour Inspectors Committee and their Knowledge Sharing System have been useful channels of communication and exchange, albeit sometimes slow. Hence the necessity for better collaboration among authorities nationally and transnationally has been raised repeatedly.

Furthermore, posted workers have no or only limited access to collective representation, particularly in smaller or non-unionized workplaces, which significantly lowers their level of protection from possible exploitation and OSH-related violations. While the lack of collective representation can be partly explained by the short-term character of their work assignment, it may also stem from a lack of familiarity or trust in the host countries organizations. In cases where there are trade unions or works councils in the workplace, the situation tends to be better, because they also tend to monitor OSH and/or have safety representatives responsible for the whole site, regardless of whether they are paying special attention to the conditions of posted workers.

Language barriers are also considered as an important factor. They limit workers access to information and present a major obstacle to engaging with the people in the receiving country which has a wide range of implications – from exercising their employment rights, including health and safety rights and training, to accessing healthcare and housing, and managing their daily lives. Language barriers also become an impediment to any efforts for thorough inspections on the part of the authorities, which, if they cannot communicate properly with the workers, cannot protect workers from any OSH risks they are exposed to.

All the above-mentioned vulnerabilities are challenged by public authorities and social partners. Different efforts are made in the different countries to address issues by reforming legislation, as in the case of Slovakia, where the new law on posting mandates equal terms and conditions; by establishing organizations that conduct joint investigations, such as in the case of Belgium's multidisciplinary task-forces; by strengthening cross-border collaboration, in which stakeholders interviewed in all nine countries have participated; by using alternative methods to overcome language barriers, such as the translation app experimented with in Austria; and so on. These efforts show that the people on the ground are aware of the challenges and they are the first to demand more coordinated and cohesive action. The temporary, transnational and mobile nature of posting demands for an approach that takes into consideration all these variables in combination, otherwise efforts will remain partial and with limited success.

6. Policy Implications and Recommendations

A number of valuable recommendations have been collected through the fieldwork in all nine countries. For ease of access, they have been grouped according to the level where the intervention is needed, namely the workplace level, the industry level, the national level, and the EU level.

At the workplace level

OSH training could be started in the sending country and followed up in the receiving country before workers start working. Knowledge of their rights prior to the initiation of the posting assignment would help to decrease their vulnerability created by language and other potential barriers. In order to guarantee that the information and the training are received, they should be mandatory for employers and workers. Certificates could be used upon the completion of the training. Incentives could also be used to encourage companies to be more committed to the OSH training of posted workers.

Information on workplace hazards should increase and be made available to newly-arrived posted workers. OSH training and/or induction as well as other relevant information have to be made available in languages accessible to workers. OSH materials should use more internationally recognizable symbols in order to be better understood by migrants or posted workers that do not know the local language.

A work-safety-specific app would also be useful. In addition to a translation programme, the app should contain all relevant information about OSH in different languages and differentiated by sector. The app could also include a scanner for hazard. The posted workers would be able to use this app before or during their posting. The app could also be made part of the work instruction. The technical framework could be provided by a national or European authority.

Apart from information leaflets, brochures and apps, pairing them with local workers who are already familiar with the workplace could also be useful. Colleagues can show them at the workplace and give advice and information on relevant procedures. This practice could also help in counter-acting the social isolation of posted workers.

Increasing the number of inspections would also serve as a deterring factor, which can be achieved if the number of labour inspectors increases. Increasing the competencies of the enforcing authorities might also positively influence the monitoring of OSH practices in the workplace. Small-scale companies dealing with posted workers should be monitored more frequently.

Public announcements of detected deficiencies would put more pressure on individual companies and lead to improved compliance.

Language barriers faced by the inspectors have to be better addressed, even though a lot has already been done. Experimental methods, such as the use of translation mobile apps, for example, can be extended to all inspectors. Hiring a number of inspectors with language skills in the languages spoken by the majority of posted workers and their deployment in transnational workplaces with migrant and/or posted workers might help improve the process of inspection.

Special attention should be paid to workers at the end of the subcontracting chain, especially those employed by agencies in order to make sure they have received the necessary OSH training and the protective equipment and outfits.

The involvement of social partners in the OSH of migrant workers should increase by establishing direct channels of communication and by increasing union membership among migrant workers. Tailor-made membership of trade unions for transnational workers should be taken into consideration.

Greater importance and scope of action should be given to the structures that represent the workers in the workplace by introducing them even in smaller companies with less than 50 employees.

At the industry level

Employers' associations should be encouraged to be more active in the process. They could take a leading role in informing and training employers on their OSH obligations. Training seminars/capacity building workshops related to OSH for employers who are posting workers abroad or are working with posted workers should be organised on a regular basis. Another suggestion might be to involve them in the preparation of multilingual information material, which would then facilitate the job of individual employers that could make use of these materials.

The introduction of continuing education policies on OSH should be envisaged in all sectors, with services aimed at all workers. It should also be envisaged to inform and train posted workers through training courses designed according to the specific needs of individual sectors.

At the national level

Awareness-raising preventive campaigns should be organized in a way that they address the general public but also reach posted workers in individual workplaces. Again, multi-lingual tools could be used to help increase the dissemination of the campaign messages.

A more specific legislative framework for complex industries such as international road transport would have a positive influence on the prevention of OSH risks for workers and on the application of the European norms in health insurances.

Monitoring of OSH risks, in particular in the most hazardous sectors, such as construction, could be improved by extending the main contractor's liability to include OSH or by adding joint liability to national legislation.

Undeclared work should be monitored and fined with stronger measures especially because the dependence of workers on their employers in cases of undeclared work is significant, since it generates precariousness and prevents interactions with the host society.

More stringent rules should be introduced in order to punish those who do not respect OSH regulation.

More transparency is required with regard to the responsible authorities and institutions. At the same time, the establishment of institutionalized communication and collaboration between authorities and/or offices responsible for posting and those responsible for OSH would increase the efficiency of monitoring and control mechanisms both nationally and cross-border. Furthermore, documents and applications regarding the OSH of posted workers, exchanged between countries, must be available in different languages and filled in in the language of the country of posting.

Multi-sectoral and multi-level approach and strengthened transnational cooperation among the various stakeholders (formal and informal) is of crucial importance also for the OSH-related issues of posted workers.

An improvement of the integrated competencies on OSH and posting of the institutional human resources is necessary. It is recommended that an expert body responsible for providing data, guidance, advice and knowledge to the competent authorities is created.

There is a need for further studies to make the deficiencies in connection with posting and OSH visible and public. Data collection on posting and OSH should improve in terms of quality and accuracy.

More attention should be given 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.

The field of OSH includes also psychosocial hazards such as work-related stress, anxiety, isolation and mobbing in the workplace. 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. Easily accessible counselling services that provide psychosocial help to workers are required.

At the EU level

An integrated EU legal framework in the field of OSH would, for example, mean that an occupational accident would be defined in the same way in all EU countries. At present, an accident on the way to work in Germany is already considered a work-related accident, but not in all other countries, for example. This provides backdoors for institutions to refuse payments. A uniform regulation would both improve and accelerate processes in favour of posted workers.

The European framework directive on OSH should include an article that prohibits any possibility for any contracting party, and especially the main contractor, that exempts any actor in a contracting chain from liability in case of occupational accident or disease of one of the workers by delegating them to contractors and subcontractors.

There should be more cooperation and exchanges of good practices among Member States' public authorities and social partners. This can be done by continuously improving the IMI system but also by improving exchange possibilities in person. A central authority, such as the proposed European Labour Authority, could also serve as the transnational body to coordinate and facilitate the exchange among national authorities. The proposed European Labour Agency might be the

solution for many of the issues at stake: facilitating and monitoring the dialogue between national counterparts in order to finish the investigations, harmonising practices, and quality check of the National Labour Inspectorates.

There should be discussions about a minimum wage at the European level as a way to minimize risks stemming from social dumping.

Transnational sectoral agreements would also help link social partners across the EU and provide the same terms and conditions for posted workers everywhere within their own sector.

The systematization and harmonization of data collection through an electronic registry at the EU level might help the process of exchange among institutions and countries.

EU-level agreements with neighbouring countries to the EU that supply labour to the EU labour market could facilitate matters for individual Member States and allow for equal treatment of workers across the borders of the EU Member States.

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PROJECT REPORT



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