

Posted workers

La condizione dei lavoratori in distacco transnazionale in Europa

a cura di Rossana Cillo e Fabio Perocco

Posting of Third Country Nationals from Slovenia Safety and Health Concerns

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Abstract Slovenia is one of the main sending states when it comes to posting of workers to provide services in the EU Member States. A significant percentage of those workers are third country nationals (TCN) coming from the Western Balkans countries, particularly from Bosnia and Herzegovina. The chapter first outlines the scale and characteristics of posting of workers from Slovenia based on the analysis of issued A1 forms and then moves on to explore the persistent trend of TCN posting, focusing primarily on safety and health concerns related to workers from Bosnia and Herzegovina. The discussion builds on the insights provided by representatives of the national policymaking and enforcement authorities, including ministries of labour, labour inspectorates and public employment agencies, posted workers, trade unions and employers' organizations, NGOs, and research institutions in Slovenia and Bosnia and Herzegovina.

Keywords Posting of workers. Third country nationals. Occupational safety and health. Slovenia. Bosnia and Herzegovina.

Summary 1 Introduction. – 2 Posting in Numbers. – 3 Posting of Third Country Nationals from Slovenia. – 4 Occupational Safety and Health of Posted Workers. – 5 Conclusion.



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1 Introduction

Slovenia is one of the main sending states when it comes to posting workers to provide services in EU Member States. Workers are most often posted to Germany and Austria to provide services in the construction sector (De Wispelaere; De Smedt; Pacolet 2019). A significant percentage of those workers are third country nationals (TCN) coming from the Western Balkans countries, particularly from Bosnia and Herzegovina (BiH). Bosnian workers come from the experience of economic and political instability and insecurity that drives them to Slovenia, which provides relatively easy access to their labour market for workers from the former Yugoslavia. Employers in the construction sector in Slovenia have used these TCN workers, as well as Slovenian workers, to provide competitively cheaper services to the wider EU construction industry, thus transforming temporary service provision via posting into an expanding business model (Danaj et al. 2020).

Third country nationals who are simultaneously migrants and posted workers may find themselves in a particularly vulnerable position. Despite the mechanisms for control and enforcement of national and EU standards, their vulnerability often persists due to the cloaking effect of the posting employment characterised by subcontracting, cross-border mobility and temporary service provision (Danaj et al. 2020). They find themselves working in transnational and multilingual workplaces, often in physically demanding and highly hazardous sectors where the risk of injuries and occupational diseases is high, and often without undergoing proper occupational safety and health (OSH)¹ training. Their precarious status is further exacerbated by the fact that their residency permit is granted on the basis of their employment in Slovenia, which makes them dependent on their employer and compliant also in cases of irregularities and violations of their rights. Lack of access to care and compensation in cases of work-related injuries and occupational diseases is also problematic, especially when long-term care and rehabilitation is required after the residency permit has expired and workers must return to their countries of origin.

1 The field of occupational safety and health in the workplace covers all aspects of health and safety in the workplace with a strong focus on primary prevention of hazards. The first set of determinants relates to risk factors in the workplace such as work-related accidents, development of a variety of diseases and stress-related disorders. The second set relates to employment and working conditions such as working hours, salary, workplace policies concerning e.g. maternity leave, health promotion and protection. It addresses issues related to sector-specific hazards that can lead to work accidents and poor health, including psychosocial hazards such as work-related stress, anxiety, isolation and mobbing at the workplace (World Health Organisation 2007).

The findings in the chapter are based on secondary sources such as academic and grey literature on posting of workers from Slovenia, and empirical data collected within the framework of two transnational projects dealing with occupational safety and health of posted workers² and posting of third country nationals in the construction sector.³ The discussion builds on the insights provided by representatives of the national policy-making and enforcement authorities, including ministries of labour, labour inspectorates and public employment agencies, posted workers, trade unions and employers' organisations, NGOs, and research institutions in Slovenia and Bosnia and Herzegovina. The chapter first outlines the scale and characteristics of posting of workers from Slovenia based on the analysis of issued A1 forms and then moves on to explore the persistent trend of posting of third country nationals from Slovenia, focusing primarily on outlining and discussing the multiple vulnerabilities related to TCN workers' occupational safety and health while working abroad.

2 Posting in Numbers

The number of issued Portable Documents A1 (PD A1)⁴ by each Member State provides only an estimate of the actual number of posted workers. Posting may take place without informing the relevant institutions and requesting the PD A1 form and is therefore not included in the statistics. The number of issued PDs A1 is also not necessarily equal to the number of persons involved, as one person can be issued several PDs A1 per year. In addition, only data on the number of PDs A1 issued according to Article 12 of the so-called Basic Regulation ((EC) No. 883/2004)⁵ are available from the per-

2 *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*, EaSI-Progress VS/2016/0224, 1.1.2017-31.12.2018. The authors also acknowledge the financial support from the Slovenian Research Agency (Research core funding No. P5-0070).

3 *Con3Post - Posting of Third Country Nationals. Exploring the Trend in the Construction Sector*, EaSI-Progress VP/2018/011/0019, 1.1.2019-31.12.2020. The authors also acknowledge the financial support from the Slovenian Research Agency (Research core funding No. P5-0070).

4 PDs (Portable Documents) A1 are issued to posted workers in order to prove that they are subject to a social security system of the sending Member State and confirms that they have no obligation to pay contributions in another Member State.

5 Regulation (EC) No. 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems. Article 12 relates to employed persons who are employed by an employer which normally carry out its activities in a Member State and who are posted by that employer to another Member State to perform work on its behalf, and persons who normally pursue an activity as a self-employed person in a Member State who go to pursue a similar activity in another Member State.

spective of the receiving state, which is an underestimation of the total number PDs A1 received (De Wispelaere, Pacolet 2018). These forms are received for several other cases pertaining to Article 13 of the Basic Regulation, i.e. workers who pursue an activity as an employed or self-employed person in two or more Member States, mariners and flight or cabin crew members. Finally, it should be noted that differences exist in the notion of 'posted' used by the Basic Regulation compared to the Posting of Workers Directive (Directive 96/71/EC).⁶ Persons might be posted under the Basic Regulation, but are not covered by the Posting of Workers Directive, and vice versa (De Wispelaere, Pacolet 2018).

Regardless of these methodological shortcomings, statistics related to PDs A1 provide an indicative picture of the number of postings under the Posting of Workers Directive. In Slovenia, the number of PD A1s issued according to Article 12 of the Basic Regulation has been rising continuously and sharply from 2010 to 2017. The number of issued documents was 23,944 in 2010 and 163,876 in 2017. The increase from 2016 to 2017 was 8.6%, meaning that 12,954 more documents were issued in 2017 than in the previous year. These numbers place Slovenia in the top three sending Member States, immediately after Germany (332,091 PDs A1 issued in 2017) and Poland (235,836 PDs A1 issued in 2017). The percentage of self-employed persons who were issued the document was 4.6%. Persons were most often posted to Germany (71,219 PD A1s) and the predominant sector for posting has been construction (De Wispelaere, Pacolet 2018). In 2017, a PD A1 was issued to an equivalent of nearly 20% of the employed population, which in relative terms made Slovenia the main sending Member State. However, this figure does not take into account the actual number of individual persons involved and the number of persons in full-time equivalents. The number of persons posted abroad from Slovenia was roughly 30% of the number of PDs A1 issued, which means that 47,698 individual persons received the document in 2017. This high number indicates a significant impact on the Slovenian labour market, as it estimates that roughly 5% of the Slovenian employed population was sent abroad in 2017 (De Wispelaere, Pacolet 2018).

However, a strong decrease in the number of PDs A1 issued by Slovenia according to Article 12 was noted in the subsequent year. In 2018, the number of issued documents was 127,000, which represents a decrease of one third compared to 2017 and is back at the level of 2015. As a consequence, Slovenia was no longer in the top five of the most important sending Member States, as those spots were occupied by Poland, Germany, Spain, Italy and Belgium, respective-

⁶ Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services.

ly. In relative terms, Slovenia became the second main sending state, after Luxembourg, with a share of national employment reaching 12%. The number of posted workers was 29,126 (De Wispelaere, De Smedt, Pacolet 2020). It is worth noting, however, that A1 certificates for persons active in two or more Member States (Art.13 of the Basic Regulation), were issued for 29,791 persons, which is an increase compared to 2017, when the number was 19,480. Only in Luxembourg (4.3%), Slovenia (3.0%), Poland (1.8%), Slovakia (1.4%) and Denmark (1.1%) more than 1% of the employed population was active in two or more Member States (De Wispelaere, De Smedt, Pacolet 2020).⁷

A steep decrease in posting of workers from Slovenia according to Article 12 in 2018 was largely due to the adoption of a new regulatory framework on transnational provision of services,⁸ which came into force in the beginning of 2018. The Act sets stricter rules for employers who would like to post workers abroad to provide services in the EU Member States. According to the Act, PDs A1 are to be issued only to employers without history of documented violations of workers' rights or involvement in fraudulent activities, such as creation of letterbox companies, undeclared work or tax evasion, and those who are listed in the Slovenian Business Register for at least two months prior to attempting to post their workers abroad. Another important precondition that was met with disapproval by many employers is a requirement that a worker needs to be employed full-time and included in compulsory social security schemes for at least thirty days prior to being posted abroad. In addition, PDs A1 are to be issued only to companies which demonstrate a required ratio of employed persons who are conducting work in Slovenia and those who are posted to work abroad. Many employers in the construction sector noted that some of these conditions go against the core principle of posting of workers, which was designed as a mechanism to balance out supply and demand in the EU Member States, and a policy that removes obstacles to the free cross-border movement of services within the internal EU market.

Despite the regulatory framework remaining starkly in place, the negative trend was reversed in 2019, when the number of issued PDs A1 rose again to 146,157.⁹ The reasons for the rise are yet to be explored.

7 Half of the A1 certificates issued according to Article 13 in EU Member States were issued to persons employed in the road freight transport sector (De Wispelaere, De Smedt, Pacolet 2020).

8 Transnational Provision of Services Act, Official Gazette RS, No. 10/17.

9 E-mail correspondence with Health Insurance Institute, 26 March 2020.

3 Posting of Third Country Nationals from Slovenia

There is a peculiar trend of recruiting, employing and posting of third country nationals from Slovenia to work in the EU Member States. The third countries in question are primarily Western Balkan countries, which are in close geographical proximity and share a strong historical link. Data provided by the Health Insurance Institute of Slovenia (ZZZS) indicate that the total number of TCN posted workers in 2019 was around 25,200,¹⁰ out of whom more than 50% are from Bosnia and Herzegovina (almost 17,000), 6,181 from Serbia, and around 2,000 from Kosovo. The rest are mostly from Northern Macedonia and Montenegro. They are recruited via formal channels, i.e. through employment services following the regulations outlined in the bilateral agreements,¹¹ which promote and facilitate recruitment, and informal channels, i.e. by personal acquaintances or family ties (Danaj et al. 2020). The persistent and intricate dynamics of recruiting and posting them further has prompted some stakeholders to describe the process in terms of a business model, developed by Slovenian employers solely for profit maximisation.

The dominant sector within which third country nationals are posted is construction. In 2018, nearly 60% of the Slovenian construction sector was posted (De Wispelaere, De Smedt, Pacolet 2020). In the same year, only 70% of persons employed in construction were Slovenian citizens (Šulin Košar 2019). The ratio changed in 2019, when 62% of Slovenian citizens and 38% of foreign citizens were employed in the construction sector, of whom 22% were from Bosnia and Herzegovina, 8% from Kosovo, 3% from Northern Macedonia, and 6% from other nationalities (Klanjšek 2019).¹² The share of TCN construction workers that are posted is estimated between 30-50% of the total number of the outgoing posted workers in the sector.¹³

Continuous recruitment from the third countries is also possible due to their unfavourable economic situation and, particularly in Bosnia and Herzegovina, the general climate of insecurity, political tensions and institutional discrimination of ethnic minorities in a post-conflict society (Čičić et al. 2019; Kačapor-Džihic, Oruč 2012; Danaj et al. 2020). In addition, multiple labour rights violations have been documented in Bosnia and Herzegovina, mostly caused by the fact that there is a high degree of informality around employment relations, and therefore many workers operate outside the scope of the legal framework (Danaj et al. 2020). The promise of regular pay

10 E-mail correspondence with Health Insurance Institute, 26 March 2020.

11 Bosnia and Herzegovina (March 2013) and later with Serbia (September 2019).

12 <https://www.stat.si/StatWeb/en/News/Index/8004>.

13 E-mail correspondence with the Health Insurance Institute, 26 March 2020.

and social security in the EU countries often prompts the decision to emigrate and leave behind the irregular and exploitative employment relations practices. However, serious violations of workers' rights occur also in Slovenia (Rogelja, Mlekuž 2018; Vah Jevšnik 2018). These have to do with various irregularities concerning working hours, social contributions and wages. It frequently turns out in practice that Bosnian workers sign contracts they do not understand because of the language, or contracts that do not comply with Slovenian labour legislation (Rogelja, Mlekuž 2018). The so-called 'fake postings', i.e. the registration of local workers in another EU country with lower social security contributions, e.g. Slovenia, and their subsequent 'posting' to other EU Member States is another problematic practice that also occurs in relations to third country nationals. In this case, workers from third countries are hired and directly posted to the receiving country without ever being employed in the sending country itself (Danaj et al. 2020). Fake postings increase the vulnerability of posted workers in particular when posting occurs through letter box companies,¹⁴ especially if they declare bankruptcy and fail to pay the wages to their workers. In addition, long subcontracting chains, often characteristic in posting situations, make it difficult for workers to claim their rights, because they can make it very hard to identify the contracting company at the end of the chain (Danaj et al. 2020).

Although there is no doubt that fraudulent posting occurs, there is no systematic data available on the scale and profile of the infringements. The evidence available is often based on the experiences of individual posted workers, which is most often obtained from their trade union representatives or non-governmental organisations specialising in counselling for migrant and posted workers. The individual cases show that serious violations do exist, but they cannot be a reliable indicator of a sector-wide or country-wide posting fraud. Because these cases are often highly publicised, as opposed to postings that closely follow regulations, the general public perception of posting tends to be negative and often linked to exploitation of workers for economic benefit of employers. In order to be able to corroborate such claims, however, more systematic data is needed.

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

4 Occupational Safety and Health of Posted Workers

Research on the occupational safety and health of posted workers has been scarce and fragmented and has, in the absence of systematic statistical data, built on the individual cases (Vah Jevšnik 2017; Rogelja, Toplak 2017). The issues of liability in multi-employer workplaces, grievance procedures and management, transnational cooperation between competent authorities and enforcement bodies, and the development of systemic and workplace level measures to reduce OSH-related vulnerabilities of posted workers have also not been on the research agenda. More attention has been attributed to topics such as posting-related fraud, social security issues, wage differentials among EU Member States and general employment conditions. Much less often has the focus been on the lack of preventative measures before posting workers abroad, work-related injuries occurring during posting and ill-health that can develop as a result of working abroad.

OSH and posted workers' overall workplace wellbeing is inextricably connected to the general employment conditions. Serious infringements in matters of OSH often go hand in hand with factors such as undeclared work, underpayment, excessive working time, lack of rest periods, and non-compliance with regulations concerning social security and health insurance. Work-related accidents and ill health can therefore also be attributed to stress-related conditions which may occur as a result of irregularities in the posting procedure, fatigue caused by long working hours, failure to provide adequate OSH training, failure to provide translations of health and safety regulations and failure to establish efficient communication channels, to name a few. This may lead to a higher rate of work-related accidents, especially in high-risk, hazardous sectors, and can have short-term and long-term effects on the health of posted workers (i.e. burnout, development of chronic diseases and a variety of disabilities). Since posted workers predominantly provide services in hazardous sectors such as construction, heavy industry and agriculture and/or are often exposed to hazardous agents such as chemical substances or radiation, they are particularly vulnerable to accidents and occupational diseases (cf. Vah Jevšnik, Cukut Krilić 2016).¹⁵

It should be noted that occupational safety and health of posted workers is not a problematic issue by default. There are employees

¹⁵ According to the International Labour Organisation (ILO) and the European Agency for Safety and Health at Work (EU-OSHA) studies, OSH is of special importance for migrant workers for similar reasons: high employment rates of migrant workers in high-risk sectors, language and cultural barriers which require specific OSH communication, instructions and training approaches, and frequent overtime work, which makes them more prone to occupational diseases and injuries (International Labour Organisation 2004; European Agency for Safety and Health at Work 2007).

who work towards ensuring stable working conditions, limited exposure to health and safety risks, who offer support in cases of injuries and poor health and respect work-life balance of their employees (Van Damme 2017). But there are also cases where no OSH training is provided, where exposure to multiple and variable risks is considerable and continuous, where physical workload is too extensive and burdensome, and where healthcare provision is poor and insufficient. Often, these conditions are linked to the cases where workers are not in a position to refuse a job offer (Van Damme 2017). In Slovenia, the documented cases of violations of posted workers' rights most often involve various work-related injuries of posted workers who are third country nationals and are working in construction or other hazardous sectors. These cases often reveal gross violations of workers' rights and illuminate multiple irregularities that occur during posting. But while they provide an indication of the nature of irregularities, the extent of these irregularities remains unresearched.

When identifying OSH-related vulnerabilities of posted workers, the layered framework to assess vulnerability in occupational safety and health for migrant workers developed by Sargeant and Tucker (2009) is most useful. Sargeant and Tucker define migrant workers as workers without a permanent status in the receiving countries, which is also applicable in cases of posting. They argue that migrants are exposed to a multi-layered vulnerability that manifests itself in a variety of forms depending on a set of factors, but, importantly, that the heterogeneity of migrant workers should be taken into consideration when assessing their vulnerabilities. In the first layer of vulnerability, they outline migration factors, such as the conditions of the recruitment and the migration status of the worker. If the conditions of recruitment are regular, meaning that suitable contracts are in place according to national laws and workers have valid work permits, the workers will be better protected.¹⁶ If employment is precarious and/or informal, migrants will be more vulnerable to OSH risks, with irregular migrants operating in the informal economy being the most vulnerable of all. In the cases of posting, several cases were highlighted by the labour inspectors of posted workers being sent to work abroad by letterbox companies without being registered in social security schemes or covered by accident insurance. In those cases, medical bills for illness or accidents had to be paid by the workers themselves, saddling many of them with debts they could not repay in the foreseeable future (Vah Jevšnik, Rogelja 2018). Representatives of Slovenian trade unions also pointed to cas-

16 Bosnian workers have been observed to frequently sign contracts they do not understand, although they might not comply with Slovenian labour legislation, because of the language barriers (Rogelja, Mlekuž 2018, 114).

es where posted workers who returned to Slovenia to undergo medical treatment after a work-related injury abroad had to cover the bills themselves if they did not have supplementary medical insurance.¹⁷ Indeed, since many workers who are posted from Slovenia are third country nationals, they are often not aware of the characteristics of the Slovenian health system. Such lack of knowledge about rights and regulations and lack of proper information about the functioning of the Slovenian healthcare system also significantly shape workers' vulnerabilities.

In cases of work-related injuries resulting in life-long disabilities and inability to work, the struggles of workers are immense. TCN posted workers who are no longer capable of working are let go and they may lose the right of residency in Slovenia. This means that they are forced to move back to their countries of origin and continue with rehabilitation there. In cases of posting irregularities, the position of workers is further exacerbated. Lukić (2017) provides a well-documented case of a worker from Bosnia and Herzegovina who was posted from Slovenia to a construction site in Belgium and got caught in a chain of inauspicious events. The worker obtained a serious spine injury when the roof of the building under construction collapsed and he suffered a five metres fall. He was taken to a Belgian hospital where he spent almost three months and was subsequently transferred to Slovenia for further rehabilitation due to the fact that his injuries resulted in paraplegia. During the time he was in a hospital, he did not receive any wage compensation from the employer and therefore had no funds to return to his home in BiH or to travel from BiH to Slovenia for control visits. He was put in a precarious position due to his inability to work and a low salary compensation he began receiving (irregularly) on the basis of a minimum wage. He was also expected to pay a participatory fee to the Belgian hospital himself, but could not raise the required amount without the financial assistance of a non-governmental organisation. He eventually returned to his country of origin due to lack of job offers in Slovenia.

The second layer of vulnerability refers to the characteristics of the migrants themselves, namely the socioeconomic conditions of their home country, education and skill levels, and language skills. For workers coming from poor countries, the cost of losing their jobs are higher than for those workers who can return home to jobs that are comparable, and this can inhibit the workers' willingness to exercise their rights. For these reasons, workers may also seek to maximise their income in the short term by agreeing to work long

17 In Slovenia, the basic compulsory medical insurance paid by the employer does not cover all medical expenses. Residents are required to purchase supplementary medical insurance on a monthly basis, which provides wider coverage.

hours, thereby increasing their risk of injury, illness or disability (Sargeant, Tucker 2009, 54). Due to significant wage disparities in the EU Member States, workers from lower-income countries sometimes tend to intentionally ignore or downplay irregularities and are reluctant to report OSH-related violations for fear of losing their jobs. In cases where posted workers are third country nationals, the fear might be even more pronounced as safety net in cases of unemployment is much looser. Our findings show that workers from BiH are exposed to several vulnerabilities and labour right violations in their country of origin, which continues to have high levels of informality and semi-formal salary schemes, considerable levels of unpaid contributions and health insurance, poor mechanisms for social dialogue and low trust in unions, as well as a dysfunctional juridical system, all of which are providing poor levels of protection to the workforce in general (Danaj et al. 2020). The expectations of higher labour standards and salaries in Slovenia are therefore a strong push factor, although we find that irregular and exploitative employment relations practices are often transferred from BiH to Slovenia and the receiving EU countries (Danaj et al. 2020). In the transport sector, for instance, some workers posted from Slovenia have been reportedly expected to work long hours due to a continuous pressure to deliver goods within the agreed time, which means that they did not have enough rest and were at risk of being in an accident due to stress and fatigue. Some employers pressured them to use magnets to tamper with their tachograph readings so as to avoid possible fines for speeding. Of great concern are also reports of workers being exposed to inadequately labelled hazardous chemicals or biological materials or not being fully informed about the dangers associated with the load they carried (Vah Jevšnik 2018). Yet often such irregularities are intentionally overlooked for fear of losing the job and being denied the residency permit.

Training and skill levels, including language skills, are of paramount importance since untrained or poorly trained and unskilled workers are more vulnerable to OSH risks compared to others. Slovenian labour inspectors reported on OSH trainings for workers from BiH being conducted superficially or only on paper and medical examinations often being less than thorough. They also noted that many TCNs are posted from Slovenia soon after they sign the employment contract, without obtaining any proper knowledge, training or awareness on the importance of OSH (Danaj et al. 2020). Language and the ability to communicate should be particularly emphasised here, as it is an important aspect that overwhelmingly singles out the migrant workforce as a particular type of vulnerable workforce (Sargeant, Tucker 2009). Lack of knowledge of the local language may mean that workers are unable to fully understand instructions, read warning signs, communicate concerns and learn

about regulatory protection in place in order to voice their concerns regarding safety and health. Some UK studies on the OSH of migrant workers also shed light on the issue of lack of understandable training and argue that “risk assessments bearing in mind migrant workers (language barriers and cultural differences) are hardly done” (European Agency for Safety and Health at Work 2007, 29). Finally, the language barrier is also a pressing issue because the inability to communicate at work can interfere with establishing supportive relations at work, which in itself can adversely affect workers’ well-being (Premji, Messing, Lippel 2008). All these aspects were noted in cases of TCN workers posted from Slovenia. According to them, working in transnational workplaces where several languages are being spoken is tremendously stressful and can at times be a significant OSH-related risk. One posted worker noted that they did have a translator travel with them to a construction site, but if you were not on good terms with him he would translate selectively, which he described as “a workers’ nightmare” (Vah Jevšnik 2018, 24). Inability to effectively communicate in workplaces may indeed put workers at risk of injuries or physical illnesses, but there is another aspect that needs to be addressed in this respect. Ineffective communication and lack of support from management or colleagues are categorised by the European Agency for Safety and Health at Work also as psychosocial risks that may result in negative psychological, physical and social outcomes such as work-related stress, burnout or depression (EU-OSHA). Therefore, it should be noted that even though posting jobs are temporary and transient in nature, integration into workplace dynamics, as well as the host society, is something workers may strongly desire. Language plays an important role in this respect, as language barriers may also evoke feelings of loneliness, detachment and social exclusion in workplace and beyond. One posted worker noted that the inability to speak German when he was posted to Germany was the most difficult barrier to overcome. Not so much in the workplace because, he explained, they communicated about the details of the work process with the use of drawings. For him, it was the inability to communicate outside work that was most burdensome (Vah Jevšnik 2018).

The third layer of vulnerability, Sargeant and Tucker (2009) argue, refers to the conditions in the receiving country, such as the characteristics of employment and the sector, access to collective representation, access to regulatory protection and issues of social exclusion and social isolation. Some sectors and jobs are more hazardous than others, and that increases OSH-related vulnerabilities, which are further exacerbated when coupled with a lack of knowledge of the health and safety risks, difficulties in accessing proper OSH training and lack of thorough induction in accessible languages. Apart from the risks associated with the workplace, the issue of living con-

ditions during posting assignments should also be addressed here. Some workers from BiH who are posted from Slovenia have reported about incredibly crowded, inappropriate and unsanitary housing when working abroad.¹⁸ Slovenian labour inspectors acknowledged the fact that accommodation for posted workers in general can be a problematic issue, but they noted that it is difficult to monitor their living conditions because inspectors are not allowed to enter private premises (Vah Jevšnik 2018). Finally, access to collective representation in cases of rights violations is another important issue to consider, because it can significantly reduce vulnerability of workers. But as Danaj and Zólyomi (2018) note, posted workers often have no or only limited access to collective representation, which considerably lowers their level of protection from potential exploitation and OSH-related violations. We found that many workers who are third country nationals simply do not know where they can go for support in cases of grievances, which puts them in a particularly vulnerable position. In Slovenia, foreign workers in particular are underrepresented in the trade unions and they usually seek unions' advice and representation only in cases of gross violations of their rights (Danaj et al. 2020). Reluctance to approach the unions by workers from BiH can partly be explained by their lack of trust in unions in BiH and subsequently also in Slovenia. In addition, recruitment of workers from BiH often occurs through networks of trust and joining the union would imply that the worker does not trust his employer (Danaj et al. 2020).

Another aspect of OSH-related vulnerability should be mentioned, especially when the subject of investigation are posted workers, i.e. work fragmentation, outsourcing and long supply chain. Providing services in multi-employer workplaces with a long supply chain presents challenges for OSH (Cox, Fletcher, Rhisiart 2014) and may also lead to elevated risks of work-related injuries (Nenonen 2011). Several factors contribute to this, including tension between the safety and production efficiency of workers at the end of the subcontracting chain, miscommunication, conflicting interests, disorganisation, inadequate regulatory controls and inability to initiate collective actions (cf. Lingard 2013; Mayhew, Quintan, Ferris 1997). Ambiguities concerning liability in cases of work accidents and health-related issues in cases of long supply chain were also continuously reported by Slovenian representatives of trade unions and non-governmental organisations (Vah Jevšnik, Rogelja 2018). Even when chain liability

18 Accommodation of TCN workers in Slovenia is often problematic as well. One worker from BiH noted that he was accommodated by his employer near a huge landfill with the remains of toxic waste from the former zinc plant. In a radio interview he said: "there was smoke and lots of dust, we couldn't sleep. When I woke up in the morning, there was so much dust all over me as if I had been working in a coal mine and not sleeping in a room" (Radio Slovenia, Val 202 2017).

ty laws are in place, long subcontracting chains make it difficult for workers to claim their rights because they can make it very hard to identify the contracting company at the end of the chain (Danaj et al. 2020). In the context of OSH, outsourcing is problematic because both outsourced companies and contractors are often not aware of the OSH-related risks in a transnational setting and might not have the knowledge on how to control these risks.

5 Conclusion

We find that the most indicative interplay of vulnerabilities relating to posting can be linked to the temporariness of work abroad, which often results in turning a blind eye to OSH-related risks by employers and workers alike. Efforts to increase productivity, frequently working overtime in order to finish the job quickly, and fear of losing the job or endangering future business cooperation if reporting irregularities and violations are continuously reported. In cases when posted workers are third country nationals, their often precarious status is further exacerbated by the fact that their residency permit is granted on the basis of their employment in Slovenia. Their potential worries about safety and health are therefore often side-tracked and the main concern remains how to hold on to the job in order not to lose the right to residency in Slovenia.

Although systematic data on TCN posted workers' exposure to OSH risks and the extent of injuries and occupational diseases is lacking, individual recorded cases show that OSH risks are multiple. They start from the complete lack of training to superficial training and medical tests performed in the third country, to the lack of equipment and protective gear they sometimes have to pay for themselves, to language barriers to understand warning signs and information, to poor and crowded accommodations (Danaj et al. 2020). The risk of abandonment in case of injury and illness starts from the fact that some employers do not pay social contributions regularly or at all, do not provide sufficient health insurance, and when there are accidents do not report them as workplace accidents. There is a lot of pressure against incapacitated workers not to seek medical care, especially long-term care, in the receiving country, and efforts are made to return them firstly to the sending country and eventually to their country of origin, where due to no employment history and lack of health insurance, they do not receive any financial support and long-term care (Danaj et al. 2020). Moreover, many posted workers report on facing an excessive workload, conflicting demands, lack of involvement in decision-making, language barriers and ineffective communication, lack of representation and support, workplace mobbing and social isolation, which makes them at risk of

experiencing psychosocial risks that may lead to mental health and consequently physical health problems (European Agency for Safety and Health at Work 2007).

Efficient monitoring and enforcement of compliance with employment and OSH standards is crucial in this respect, but more attention should also be paid to preventive measures, such as awareness-raising about possible long-term consequences of work accidents and occupational diseases. Health-related, psychological and socio-economic consequences of work accidents should be made clearly evident to both employers and workers in an effort to make them pay more attention to safety and health when posting workers abroad. Leading by example (Aksorn, Hadikusumo 2008) is also important. This means that employers demonstrate a determination to adhere to safety standards no matter the cost or duration of employment, which will encourage workers to follow their lead. A strict stance by employers and site managers with regard to respecting the safety rules and their promotion of measures to eliminate health-related risks may be significantly more effective when they are themselves acting in accordance (Vah Jevšnik, Rogelja 2018). Finally, comprehensive and easily accessible information for posted workers relating to OSH-related risks, rights and obligations is of paramount importance. In the case of third country nationals recruited by Slovenian employers from BiH, informational material should already be handed out to workers at the employment centres in BiH or when applying for residency permits with the purpose of taking on employment in Slovenia.

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