

Posted workers

La condizione dei lavoratori in distacco transnazionale in Europa

a cura di Rossana Cillo e Fabio Perocco

Occupational Safety and Health Vulnerabilities of Posted Workers in the EU

Sonila Danaj

European Centre for Social Welfare Policy and Research, Vienna, Austria

Eszter Zólyomi

European Centre for Social Welfare Policy and Research, Vienna, Austria

Abstract This chapter focuses on the under-researched topic of occupational safety and health vulnerabilities (OSH) of posted workers across the EU. Through the lens of the layers of vulnerability approach, we present an account of the multiple OSH vulnerabilities and institutional challenges this segment of the labour force is exposed to and discuss how this is linked to their cross-border labour mobility within the European Union. The most frequently reported areas that produce OSH-related vulnerabilities in the nine countries include types of employer, employment and contractual arrangements, access to training, working conditions, access to healthcare and housing, and access to collective representation.

Keywords Posted work. EU. Occupational safety and health. Rule Enforcement. Language barriers.

Summary 1 Introduction. – 2 Posting and Labour Market Characteristics in Nine EU Countries. – 3 Regulating Posting and OSH in the EU. – 4 OSH-Related Vulnerabilities of Posted Workers. – 4.1 Types of Employer. – 4.2 Terms of Employment. – 4.3 Access to Training. – 4.4 Working Conditions. – 4.5 Access to Healthcare. – 4.6 Access to Suitable Accommodation. – 4.7 Access to Collective Representation and Regulatory Protection. – 4.8 Language Barriers and Access to Information. – 5 Enforcing OSH for Posted Workers. – 5.1 Division of Labour among Public Authorities. – 5.2 The Capacities of Enforcement Agencies and Language Barriers. – 5.3 Intra-Institutional Cooperation at the National Level. – 5.4 Cross-Border Cooperation. – 6 Conclusions.

1 Introduction

The vulnerabilities of migrant workers in the workplace have drawn the attention of the research community for a while, uncovering a list of factors that shape their working experience and produce poor and dangerous working conditions for this segment of the workforce. In an article published in 2009, Sargeant and Tucker built a comprehensive layers of vulnerability framework to assess the occupational safety and health of migrant workers. At the negative end of the vulnerability spectrum they saw temporary precarious migrant workers, linking their vulnerability to their employment status, their migrant characteristics and the characteristics of both the sending and receiving countries. Posted workers as a category of temporary cross-border service providers operate within the single European market and their mobility is regulated by transnational EU law (Posting of Workers Directive, 96/71/EC). While concerns that this mechanism for regulating temporary labour mobility in the common European market produces inequalities among posted workers and local workers and might leave the former exposed to poor terms and conditions, were expressed since the beginning (Cremers 2010; Cremers, Dølvik, Bosch 2007), it is only with the Eastern Enlargement and the eventual increase in numbers that the vulnerabilities stemming from their position as posted workers became more visible (Alberti, Danaj 2017; Berntsen, Lillie 2015; Caro et al. 2015; Cremers 2011; Lillie 2012; Wagner 2017). In this chapter, we focus on the occupational safety and health vulnerabilities (OSH) of posted workers across the EU, which, albeit frequently mentioned, have remained under-researched until recently. Through the lens of the layers of vulnerability approach (Sargeant, Tucker 2009), we present an account of the multiple OSH vulnerabilities and institutional challenges this segment of the labour force is exposed to and discuss how this is linked to their cross-border labour mobility within the European Union (EU).

In addition to the migration factors, we look into the structures, procedures, training, artefacts, as well as the behaviour of the actors involved in the process, which can produce or minimise OSH risks (Guldenmund 2000). This is particularly important in fragmented multi-employer workplaces, where OSH risks and the number of accidents are considered to increase along the subcontracting chain as companies operating at different points of the chain might have different knowledge, experiences, and resources, and therefore apply different OSH standards (Cox, Fletcher, Rhisiart 2014; Manu et al. 2009; Nenonen 2011; Swuste Frijters, Guldenmund 2012). There is already evidence in the literature indicating that at the end of the subcontracting chain the tension between safety and production efficiency is higher (Lingard 2013; Mayhew, Quintan, Ferris 1997) and it is harder, particularly for the smaller companies, to provide the appro-

appropriate OSH protection to their workers (Wadsworth, Walters 2018). Subcontracting often goes hand in hand with precarious employment and mobility, which are two other relevant social determinants of the health of workers (Benach et al. 2010, 2014; European Agency for Safety and Health at Work 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 (European Agency for Safety and Health at Work 2007; Benach et al. 2010; Schenker 2010).

Linguistic barriers have also been identified by previous research as an important factor contributing to the higher vulnerability of migrant workers. Language barriers can limit their access to OSH information, services and protection, information on local working conditions and compensation policies (Bust, Gibb, Pink 2008; Guldenmund 2000; Sargeant, Tucker 2009; Tutt et al. 2011, 2013), and their ability to communicate with co-workers and warn about potentially dangerous work situations (Premji et al. 2008). It has also been linked to difficulties with accessing health care, in particular in case of work-related injuries or illness (Premji, Messing, Lippel 2008; Moyce, Schenker 2018). In terms of labour mobility within the EU, language was identified as one of the biggest obstacles to cross-border labour mobility (Bonin et al. 2008; Bartz, Fuchs-Schündeln 2012; Friers-Tersch et al. 2018).

In this chapter we discuss how the health and safety of posted workers are affected in multiple ways across inter-related dimensions such as employment and contractual arrangements, access to training, working conditions, access to healthcare and housing, access to collective representation and language barriers. While every EU country has complex systems of OSH providing for both prevention of OSH risks and the protection of workers, posting as a form of transnational temporary employment presents challenges for national enforcement agencies in various aspects such as the division of labour among enforcement agencies, their human resource capacities, as well as intra-institutional cooperation at the national and transnational level.

The chapter is based on research conducted during 2017-18 in nine EU Member States: Austria, Belgium, Croatia, Germany, Italy, Romania, Slovakia, Slovenia, and Spain.¹ The selected case studies

¹ The research conducted in the framework of the project *Poosh - Occupational Safety and Health of Posted Workers. Depicting the Existing and Future Challenges in Assuring*

include predominantly sending and predominantly receiving countries from different rounds of enlargement and provide a comprehensive geographical coverage. The objective of the study was to examine how the interplay of EU-regulation and national OSH systems affects the health and safety of posted workers in a transnational workplace. We looked into the way OSH regulation is applied to posted workers and 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. The study is based on 95 semi-structured interviews conducted with national, regional, and workplace-level stakeholders (67), as well as workers (28) in three main posting sectors: construction, transport, and manufacturing.

The chapter is structured as follows: after the introduction we provide a concise overview of posting and labour market characteristics in the nine countries to be followed by an outline of the rules and regulations on posting and OSH. We discuss posted workers' OSH vulnerabilities in section 4, and the challenges authorities face in enforcing the OSH of posted workers in section 5.

2 Posting and Labour Market Characteristics in Nine EU Countries

The nine EU countries covered in the research represent countries receiving a relatively high number of posted workers, such as Austria, Belgium, or Germany, while others, such as Slovakia or Slovenia are predominantly sending countries. Other countries, such as Italy and Spain, have since the global financial and economic crisis of 2008 transformed from predominantly receiving into predominantly sending countries and the new Member States have been subjected to restrictive transitional periods into the common labour market, such as Romania (up to 2015) and Croatia (up to 2020). Nonetheless, there is incoming and outgoing posting in all nine countries [fig. 1]. Most posting is done among neighbouring countries, although the main target countries of Germany, Belgium and Austria receive workers from across the EU.

Decent Working Conditions and Wellbeing of Workers in Hazardous Sectors funded by the EaSI Programme of the European Commission (Project number VS/2016/0224; 2017-18), produced nine case study reports listed in bibliography.

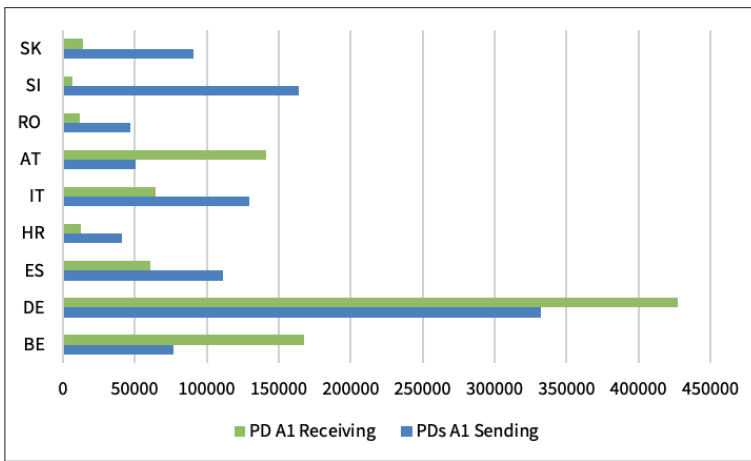


Figure 1 PD A1 issued as sending and receiving Member States, 2017 (De Wispelaere, Pacolet 2018)

Posting trends mirror to some degree the considerable variety among these countries in terms of their economic and labour market situation [tab. 1], which were also affected by the 2008 global financial and economic crisis. Italy, Slovenia, Spain, Croatia and Romania were among the EU countries most hardly hit by the crisis, which was reflected in a sizeable decrease in their GDP growth, while the impact was much less felt in Austria and Germany. Economic growth resumed in all nine countries and by 2015 all recorded a positive change in their GDP. Germany and Austria have the highest employment rate among the working age population in the nine countries (76.7% and 73.6%, respectively), which is well above the EU-28 average (69.2% in 2019). The level of unemployment among the working age population ranges from 3.2% in Germany, which was the second-lowest in the EU in 2019, to 14.2% in Spain. In terms of pay, in seven of the nine countries, there is a national statutory minimum wage in place, except for Italy and Austria where minimum wage levels are set in sectorial collective agreements (Eurofound 2020). The annual job vacancy rate in 2019 was highest in Belgium (3.5%) followed by Germany, Austria and Slovenia, and lowest in Spain (below 1%). 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, which explains why posting is used to supply labour, especially in construction and manufacturing.

Table 1 Key economic and labour market indicators, 2019 (Eurostat Database: <https://ec.europa.eu/eurostat/data/database>; Eurofound 2020)

	BE	DE	ES	HR	IT	AT	RO	SI	SK
GDP per capita (EUR)	35,900	35,840	25,170	12,480	26,860	38,250	9,130	20,490	15,890
Real GDP growth rate	1.4	0.6	2.0	2.9	0.3	1.6	4.1	2.4	2.4
Employment rate (15-64) (%)	65.3	76.7	63.3	62.1	59.0	73.6	65.8	71.8	68.4
Unemployment rate (15-64) (%)	5.4	3.2	14.2	6.7	10.2	4.0	4.5	6.7	5.8
Job vacancy rate ¹ (%)	3.5	3.3	0.9	1.5	1.4	3.0	1.1	2.3	1.1
Average weekly working hours ²	37.2	34.8	37.5	39.7	37.1	36.4	39.8	39.5	40.1
Average monthly earnings ³ (EUR)	2,956	2,620	1,829	1,033	2,337	2,494	512	1,571	908
Minimum wage ⁴ (monthly amount in EUR)	1,594	1,557	1,050	506	–	–	446	887	520

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

Moreover, 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 polarisation, job and income insecurity, inadequate social protection, and limited control over working time and work conditions. Posting as a form of non-standard employment fits to these current trends and the opportunities for temporary labour mobility afforded by the dynamics of an enlarged European market.

3 Regulating Posting and OSH in the EU

The temporary service provision across the EU labour market is regulated by the Posting of Workers Directive (96/71/EC), the Enforcement Directive of the Directive 96/71/EC (Directive 2014/67/EU), and a revised version of the Directive of the Posting of Workers passed in 2018 (EU 2018/957) which is about to come into force after July 2020. In addition, the Basic Regulation ((EC) No. 883/2004) on the coordination of social security systems, also regulates posting by guaranteeing posted workers' right to social protection and

health while they continue to be subject to the legal framework of the sending country during their posting assignment. Working conditions and occupational safety and health of posted workers are explicitly mentioned in Article 3/1 of the Directive (PWD) as part of their fundamental guaranteed labour rights. The Enforcement Directive, on the other hand, provides a set of measures and control mechanisms to guarantee genuine posting and prevent fraud, and addresses the issue of providing accessible information to a transnational and therefore multilingual workforce (Art. 5, 2c) that should facilitate better terms and conditions, including OSH. The Revised Directive focused on three main points: remuneration, temporary agencies and length of posting. These factors, especially inequality in pay and the ambiguities of agency work, were considered influential in the quality of work for posted workers with negative implications for their OSH (Meardi, Martin, Riera 2012).

The safety and health regulations are set at the EU and the national level. EU OSH policy has undergone substantial transformation throughout the decades, from a prescriptive approach to the more current goal-oriented and social dialogue approaches (Liu, Liu 2015). Health and safety are part of the Treaty on the Functioning of the European Union (Art. 153) and under the guidance of the European Agency for Safety and Health at Work (EU-OSHA), a number of directives have been passed throughout the years, ranging from an OSH Framework Directive to several topical directives, such as the one on *Workplaces, equipment, signs, personal protective equipment, Exposure to chemical agents and chemical safety, Exposure to physical hazards, Exposure to biological agents*, as well as additional provisions on workload, ergonomic and psychosocial risks and other sector-specific and worker-related provisions. Additionally, several *European Guidelines* on the implementation of the directives, EU standards and the *European Commission's Strategic Framework for Safety and Health at Work* (2014-20), all aim to improve and converge the OSH regulatory framework across the EU. EU countries have also adopted the International Labour Organisation (ILO) 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 the ILO's *Codes of Practice*. ILO's *Global Strategy on Occupational Safety and Health* as well as WHO's *Global Plan of Action on Workers' Health* (2008-17) also focus on prevention, inspection and education, drawing the attention particularly to vulnerable groups, such as migrant workers. While all these policies are considered well-developed, more effort is required on their enforcement (Del Castillo 2016).

Apart from transnational regulations, each country has developed its own complex OSH national legislative and institutional frameworks. All nine countries have laws on Health and Safety and on

Labour Inspection, and most of them also have national OSH strategies. The transposition of EU legislation varies among the nine countries. Eastern European countries seem to have undergone a substantial legal reform covering aspects of labour mobility and OSH and their enforcement as part of the accession process. For example, 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 No. 351/2015, ČI.II 4 (9)).

4 OSH-Related Vulnerabilities of Posted Workers

Research findings show that the health and safety of posted workers is affected in multiple ways and touch several interrelated dimensions. The main areas where OSH-related vulnerabilities were most frequently reported in the nine countries include types of employer, employment and contractual arrangements, access to training, working conditions, access to healthcare and housing, and access to collective representation [fig. 2]. Access to information and language barriers were identified as the most important cross-cutting issues influencing the OSH of posted workers. Cultural barriers and social isolation were also reported in several of the countries; however, they were referred to only very generally and mainly in the context of healthcare and housing. A common element in the identified areas is that they are all linked to the temporary, mobile and transnational character of posting and to the status of the posted worker. OSH-related vulnerabilities are also deeply embedded in the broader socioeconomic contexts and influenced by the institutions and the regulatory and policy processes of both the home and the receiving countries.

4.1 Types of Employer

There are important differences in the OSH protection of workers between larger companies and small and medium ones (SMEs). Companies with more than fifty workers invest more in OSH, appoint OSH specialists and establish internal bonus/sanctioning mechanisms to promote OSH in the workplace. However, most posted workers are employed by SMEs, which have to outsource OSH training and

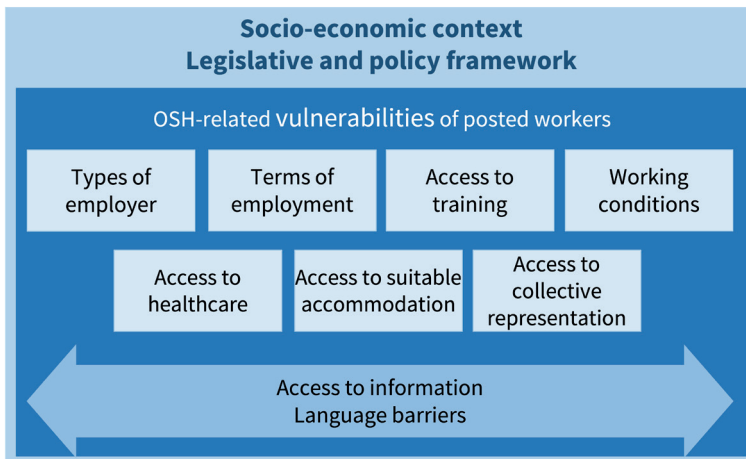


Figure 2 OSH-related vulnerabilities of posted workers

monitoring and because of the added costs, do not always abide by their obligations. Furthermore, in transnational workplaces with long subcontracting chains, it is sometimes difficult to say which employer along the chain is responsible for OSH. In most cases, this would be the direct employer, i.e. the subcontractor, and if they do not provide OSH protection, posted workers might simply remain exposed to OSH risks. Only Belgium, Italy, Spain, and Slovakia have chain liability regulations that make the main contractor share the responsibility for all workers with their subcontractors. However, joint liability does not always include OSH, as is the case in Slovakia, for example, where joint liability applies only to salaries and social contributions, or in the case of Belgium, where it clearly applies for social issues, but not unequivocally for OSH issues.

4.2 Terms of Employment

Vulnerabilities of posted workers were most apparent with respect to the employment and contractual arrangements. They included insufficient information about specific terms and conditions concerning their legal and employment status, and their rights and obligations as posted workers. Workers also tended to lack information about local working conditions, including OSH regulations and procedures, and details about their posting assignment. In Austria, Belgium, Germany, Slovakia and Slovenia, the issue of letterbox companies was specifically highlighted, while problems with irregular documen-

tation were mentioned in Germany and in connection with the illegal employment of third country nationals in Slovakia and Slovenia. In almost all the nine countries, wage and social dumping was cited as a significant factor in the occupational health and safety of posted workers. On the one hand, wage differentials between sending and receiving countries are the main reason why workers agree to be posted. On the other hand, this also becomes a major source of vulnerability insofar as it prompts posted workers to accept poor wages (often below the national minimum or the rates stipulated in collective and sectoral agreements) and consent to worse working conditions. The fact itself that posted workers are overwhelmingly employed in hazardous sectors such as construction and international road transport, where the posted workers interviewed for the purpose of this research also come from, carries a significant health and safety risk.

4.3 Access to Training

Posted workers were found to have only limited access to work- and OSH-related trainings, which was mostly linked to their status as posted workers, but also to language barriers, which often prevented posted workers from participating and benefitting from locally provided trainings. In Austria, Croatia, Italy, Romania and Spain, language barriers limited the actual amount and quality of the training received by posted workers. In Belgium, Croatia, Slovakia and Germany, posted workers had to have written proof of the training received. However, in the case of Belgium it was reported that workers did not always understand the language of the instructions, which they received through video or in written form. This appeared to affect smaller companies more than larger companies, which are able to offer better quality training (as reported in the German case), or, like in Slovakia, have made training mandatory by requiring workers to pass a test that also covers OSH.

4.4 Working Conditions

Irregular and long working hours, weekend work, frequent overtime and too short work- and rest breaks were the typical working time issues reported in most cases. Less frequently reported were the lack of or inadequate protective equipment. At the same time, there was indication that posted workers tended to downplay the importance of protective gears and equipment and were reluctant to raise the issue with their employers or to report violations to the authorities. Despite employers being legally obliged to ensure safe working conditions including protective gears for employees and working times

that are within the statutory limit, these are frequently overlooked when it comes to posting. In the case of posted workers employed in international road transport, lack of proper protective equipment was mentioned along with being pressured to drive for extended periods of time in order to meet delivery deadlines. Labour inspectors also reported various illegal practices used by sending companies such as exceeding the limit of permitted working hours, tampering with the tachograph and disregarding mandatory rest breaks.

4.5 Access to Healthcare

The main OSH-related vulnerabilities reported by posted workers in relation to healthcare were lack of knowledge about the receiving country's healthcare system and about entitlement to accessing health services, and problems with health and accident insurance. The latter mainly arise from the fact that often posted workers are not or only partially insured and covered. In some cases, posted workers were asked to pay because their European health card was not recognised and accepted by healthcare workers. Several examples showed that in the event of work accidents, the injured posted workers were highly dependent on the site supervisor and their coworkers about how accidents and injuries were handled. Frequently, work accidents were not reported immediately or went unreported. In a few particularly troubling cases, the injured worker was transported back to the country of origin instead of getting immediate treatment in the country where the work accident happened. Furthermore, because of their higher exposure to poor working conditions, posted workers are more prone to experience not only work injuries, but also psychosocial hazards such as work-related stress, anxiety, isolation and mobbing at the workplace. Concerns about psychosocial risks in the context of posting were reported in several of the countries.

4.6 Access to Suitable Accommodation

Posted workers frequently reported inadequate housing conditions. Accommodations provided or arranged by the employer were often of poor quality and sometimes located in isolated areas without access to public transportation and basic amenities (e.g. shops, banks). For posted workers, finding affordable and suitable accommodation was further limited by the relatively high housing costs in the receiving country which can mean a significant financial burden to them. This is especially the case if employers deduct housing costs from the workers' salaries, a practice that was reported by informants in Belgium and Spain, for instance. As a result, posted workers were of-

ten forced to live in substandard and overcrowded conditions that impact on their physical and mental health, which in turn can increase their exposure to work accidents. In the international road transport sector, where drivers typically travel large distances, access to proper sleeping accommodation can be literally a matter of life and death. Yet, drivers interviewed in Belgium and Romania reported that they received neither accommodation nor compensation for accommodation costs during their posting assignments, which generally left them with no choice but to sleep in their trucks. Due to the limited capacity of truck parking stations, however, it is becoming more difficult to find parking spots where drivers can sleep and rest.

4.7 Access to Collective Representation and Regulatory Protection

Posted workers were reported to have no or only limited access to collective representation or are not even aware where they should turn to for help, thus significantly increasing their exposure to exploitation and OSH-related violations. Lack of collective representation affected in particular smaller or non-unionised workplaces where posted workers often find themselves in. Where trade unions or work councils were present in the workplace, the situation appeared to be better, because they also tend to monitor OSH and 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 in various languages, and there are also organisations and institutions that can help with OSH-related matters. However, approaching such services for advice or support implies some degree of familiarity and knowledge about the local context, which posted workers often reported to lack.

4.8 Language Barriers and Access to Information

Language differences were cited as an important barrier to work safety and health conditions in the context of posting in all nine countries. Language barriers posed 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 were posted to. One aspect where language barriers most commonly manifested themselves was accessing information and materials about working conditions and specifically on OSH, as was the case in Austria, Belgium, Germany, Romania, Slovenia and Slovakia. Understanding training materials and statutory safety in-

structions was an additional hurdle faced by workers interviewed in Spain, Croatia, Italy, Austria, Romania and Slovenia. Problems with understanding work instructions, interacting with colleagues, coordinating work tasks, reading operating manuals and hazard warnings were frequently reported in Belgium, Germany, and Romania while in Italy language barriers were linked to communication difficulties in the event of work accidents.

Language barriers made it difficult for posted workers to seek information and legal assistance from respective authorities and also limited the ability of OSH or labour inspectors to communicate with the posted workers directly and to properly monitor working conditions and investigate OSH violations. Although in some countries such as Austria, Germany and Slovenia, counselling services and support are offered in various languages, their availability is often limited. In Belgium and Italy, trade unions and labour inspectorates reported using representatives who can speak the language of the sending countries to help with interpretation. Some countries also introduced policies and tools to address the language gap. For instance, in Austria it was made mandatory to have German-speaking work supervisors on site. Other examples include employing foreign language speakers in trade unions and labour inspectorates, as reported in the case of Belgium and Italy, making training materials accessible in different languages and using video materials, pictograms and language apps. To improve access to information, countries also set up specific websites where information and services relevant to posting are provided. In Austria and Slovenia, the website was made available in several languages, while other countries would have it in national language(s) and perhaps in one or two others; however, the information can often be insufficient even when language barriers are overcome.

5 Enforcing OSH for Posted Workers

Complex networks of institutions and agencies are involved in the monitoring, control, protection and compensation of different aspects of occupational health and safety and/or posting in the nine countries. Research findings show that posting constitutes a challenging form of employment for national enforcement agencies. The main challenges identified include: the division of labour among enforcement agencies, the capacities of enforcement agencies, intra-institutional cooperation at the national level, and cross-border cooperation. Because of the transnational cross-border and temporary labour mobility as well as the need for monitoring both posting and OSH, public authorities struggled to provide the same level of protection to posted workers as they would to locally hired ones.

5.1 Division of Labour among Public Authorities

There is a wide variety among the nine countries in what the duties of the enforcement authorities are when monitoring posted workers. While Labour Inspectorates (LI) are involved in all nine countries, in Belgium they have different divisions covering varied aspects, such as OSH, social protection, and employment, and a specific section on transnational labour (Cellules Travail Transfrontalier), whereas in Austria the LI covers only OSH and the Financial Police inspects terms of employment. In Italy, the Carabinieri (one of the police forces in the country) also share labour protection duties along with the Labour Inspectorate. Mandates also differ across countries: in most cases, enforcement agencies can issue administrative sanctions directly, in Italy they can issue criminal ones, while in Belgium they cannot issue any. Germany has a particularly fragmented system which has resulted in rudimentary legal enforcement in the area of labour law (DGB Deutsche Kommission Justitia et Pax 2017, 12). The division of labour might lead to fragmented interventions, and while one authority might be inspecting on OSH, they might not be inspecting on posting, and therefore miss the risk factors that make posted workers highly vulnerable in the workplace.

5.2 The Capacities of Enforcement Agencies and Language Barriers

Enforcing posting and OSH rules is also not simple because public authorities in the nine countries have reported insufficient numbers of inspectors to conduct site visits. In countries like Austria, Belgium, Romania, Slovakia, Slovenia and Spain, due to limited human resources, the number of pro-active inspections is insufficient, and most inspections are undertaken after an issue has been reported or there has already been an OSH-related accident. In addition, public authorities interviewed have spoken of the intricacies of posting and the confusion on the applicability of national laws, which lead to the need to improve the knowledge of enforcement agencies' personnel on the interpretation of the legal framework in regard to posting. Similarly, language barriers were also considered as a hindering factor in the inspectors' job, and alternative measures were taken, sometimes even through language apps (e.g. in Austria), to facilitate communication with the workforce.

5.3 Intra-Institutional Cooperation at the National Level

There is a wide variety of intra-institutional cooperative efforts in the nine countries. OSH tripartite bodies comprised of public authorities, trade unions and employer associations have been established in Austria, Germany and Slovakia, while Belgium has a separate organisation, the Social Information and Investigation Service (SIRS) in charge of coordination of public agencies involved in the fight against social fraud and undeclared work. Cooperative and/or knowledge exchange agreements are established among two or more national institutions in all countries, which sometimes also leads to joint inspections. In Belgium specific task forces (Cellules d'arrondissement) are established at the local level, whereas in Austria ad hoc inspections are jointly organised by the Labour Inspectorate, the Financial Police and, in the case of construction, The Construction Workers' Holiday and Severance Fund (BUAK). While collaboration is considered to be a good practice, public authorities across countries thought that it needs to be strengthened and efforts should be taken to overcome the tensions that might be caused by the diverse mandates and approaches each institution has during inspections. In particular, the fact that some authorities take a punitive stance towards posted workers with irregular documentation might sometimes have a counterproductive effect, as workers might be reluctant to come forward and report the irregularities to the authorities.

5.4 Cross-Border Cooperation

The transnational nature of posting makes cross-border cooperation necessary. A number of transnational mechanisms have been set up to support information sharing and exchange, namely: the Internal Market Information System (IMI) for posting specifically, the Senior Labour Inspectors Committee (SLIC) and their Knowledge Sharing System (KSS platform) for all labour-related matters, including posting and OSH. In addition, direct exchanges between representatives of public authorities and trade unions in different countries, especially neighbouring ones, were also common practice. Countries like Belgium, Germany, Slovakia, Slovenia and Spain have also signed special bilateral cooperation agreements with authorities of the main sending countries, often EU-bordering and third countries. A more institutional transnational cooperation has been established between insurance companies with the same structure and mission such as the one between BUAK in Austria (Bauarbeiter-Urlaubs- und Abfertigungskasse) and its counterparts in France (Union Des Caisses De France Du Reseau CIBTP - UCF), Germany (Service+Vorsorge für Bauwirtschaft - SOKA-Bau), and Italy (Commissione Nazionale

Paritetica per le Casse Edili - CNCE). According to the representatives of the public authorities interviewed, cross-border cooperation, through IMI or other channels, was considered a valuable practice, but not always expedient and efficient enough, considering the temporary and mobile nature of posting. The structural differences of enforcement agencies across countries also made cross-border communication and cooperation challenging at times, thus highlighting the need for more convergence in the EU.

6 Conclusions

Posted workers face multiple OSH-related vulnerabilities related to the characteristics of their employment as temporary, cross-border, and service provision (Danaj 2018; Danaj, Hollan, Scoppetta 2020). Located mostly at the end of the subcontracting chain, they are more exposed to cross-cutting OSH risks, that ultimately put them in a more precarious position to the rest of the workforce. The main areas where OSH-related vulnerabilities were most frequently reported in the nine countries include employment and contractual arrangements, access to training, working conditions, access to healthcare and housing, and access to collective representation. Despite the existence of complex systems of OSH providing for both prevention of OSH risks and the protection of workers in each of the nine EU countries studied here, posting still manages to present a challenge for national enforcement agencies in various aspects related to posting itself and their own capacities, such as the division of labour among enforcement agencies, their human resource capacities, as well as intra-institutional cooperation at the national and transnational level.

As posting of workers represents an increasingly important form of temporary and often short-term labour mobility in the EU, the topic of OSH is expected to become ever more relevant in the wake of recent labour market trends in favour of further fragmentation and non-standardisation of employment as well as the impact of the current COVID-19 pandemic. The latter has opened new challenges to the OSH of workforce, and more so to the OSH of precarious and temporary mobile cross-border workers, such as posted workers. Further research is needed in unpacking each of the various layers of vulnerability posted workers are exposed to, in particular how employers' typology and terms of their employment influence the level of OSH protection posted workers receive; how language barriers hinder not only access to information and protection measures but the overall work experience while posted; how additional migration factors, such as being a third country national posted from an EU country to another while bound to the sending country's visa and work permit regime produces further OSH-risks; and how the current pandemic is transforming OSH in

the workplace and labour mobility within the European Union. A deeper understanding of these factors would help EU and national policy-makers and other involved stakeholders, take the necessary steps to provide adequate protection for all categories of vulnerable workers.

Bibliography

Case Study Reports

Poosh Country Reports available at: <http://www.poosh.eu/resources/poosh-country-reports/>.

Cillo, R. (2018a). *Poosh Country Report. Belgium*.

Cillo, R. (2018b). *Poosh Country Report. Italy*.

Costea, A.M.; Farcaş, A. (2018). *Poosh Country Report. Romania*.

Diettrich, A.; Becker, F.M.; Lüders, S. (2018). *Poosh Country Report. Germany*.

Dodi, I.A.; Melenciuc, I.R. (2018). *Poosh Country Report. Spain*.

Hollan, K.; Danaj, S. (2018a). *Poosh Country Report. Austria*.

Hollan, K.; Danaj, S. (2018b). *Poosh Country Report. Slovakia*.

Rogelja, N.; Vah Jevšnik, M. (2018). *Poosh Country Report. Croatia*.

Vah Jevšnik, M. (2018). *Poosh Country Report. Slovenia*.

Other References

Alberti, G.; Danaj, S. (2017). "Posting and Agency Work in British Construction and Hospitality. The Role of Regulation in Differentiating the Experiences of Migrants". *The International Journal of Human Resource Management*, 28(21), 3065-88. <https://doi.org/10.1080/09585192.2017.1365746>.

Bartz, K.; Fuchs-Schündeln, N. (2012). "The Role of Borders, Languages, and Currencies as Obstacles to Labour Market Integration". *European Economic Review*, 56, 1148-63. <https://doi.org/10.1016/j.eurocorev.2012.05.008>.

Benach, J. et al. (2010). "Immigration, Employment Relations, and Health: Developing a Research Agenda". *American Journal of Industrial Medicine*, 53(4), 338-43. <https://doi.org/10.1002/ajim.20717>.

Benach, J. et al. (2014). "Precarious Employment. Understanding an Emerging Social Determinant of Health". *Annual Review of Public Health*, 35, 229-53. <https://doi.org/10.1146/annurev-publhealth-032013-182500>.

Berntsen, L.; Lillie, N. (2015). "Breaking the Law? Varieties of Social Dumping in a Pan-European Labour Market". Bernaciak, M. (ed.), *Market Expansion and Social Dumping in Europe*. Abingdon: Routledge, 43-60. <https://doi.org/10.4324/9781315766607-12>.

Bonin, H. et al. (2008). *Geographic Mobility in the European Union. Optimising Its Economic and Social Benefits*. IZA Research Report No. 19. http://ftp.iza.org/report_pdfs/iza_report_19.pdf.

Bust, P.D.; Gibb, A.G.F.; Pink, S. (2008). "Managing Construction Health and Safety. Migrant Workers and Communicating Safety Messages". *Safety Science*, 46(4), 585-602. <https://doi.org/10.1016/j.ssci.2007.06.026>.

- Caro, E. et al. (2015). "Posted Migration and Segregation in the European Construction Sector". *Journal of Ethnic and Migration Studies*, 41(10), 1600-20. <https://doi.org/10.1080/1369183x.2015.1015406>.
- Cox, A.; Fletcher, L.; Rhisiart, M. (2014). *Scoping Study for a Foresight on New and Emerging Occupational Safety and Health (OSH) Risks and Challenges*. European Risk Observatory. Luxembourg: Publications Office of the European Union.
- Cremers, J. (2010). "Rules on Working Conditions in Europe. Subordinated to Freedom of Services?". *European Journal of Industrial Relations*, 16(3), 293-306. <https://doi.org/10.1177/0959680110375138>.
- Cremers, J. (2011). *In Search of Cheap Labour in Europe. Working and living Conditions of Posted Workers*. Brussels: European Institute for Construction Labour Research.
- Cremers, J.; Dølvik, J.E.; Bosch, G. (2007). "Posting of Workers in the Single Market. Attempts to Prevent Social Dumping and Regime Competition in the EU". *Industrial Relations Journal*, 38(6), 524-41. <https://doi.org/10.1111/j.1468-2338.2007.00462.x>.
- Danaj, S. (2018). "Posted Work and Occupational Safety and Health. A Literature Review". *Dve domovini. Two homelands*, 48, 37-54.
- Danaj, S.; Hollan, K.; Scoppetta, A. (2020). "Labour Mobility and OSH Vulnerability of Posted Workers. The Cases of Austria and the Slovak Republic". Diaz Bretones, F.; Santos, A. (eds), *New Hazards, New Workers. Health, Safety and Well-being in Migrant Workers*. Cham: Springer, 115-36. https://doi.org/10.1007/978-3-030-52632-0_8.
- Del Castillo, A.P. (2016). "Occupational Safety and Health in the EU. Back to Basics". Vanhercke, B.; Natali, D.; Bouget, D. (eds), *Social Policy in the European Union. State of Play*. Seventeenth Annual Edition. Brussels: European Trade Union Institute, 131-55.
- De Wispelaere, F.; Pacolet, J. (2018). *Posting of Workers. Report on AI Portable Documents Issued in 2016*. Brussels: European Commission. <https://ec.europa.eu/social/BlobServlet?docId=19040&langId=en>.
- DGB Deutsche Kommission Justitia et Pax (2017). *Arbeitsinspektion in einer globalisierten Welt*. www.dgb.de/themen/++co++21af08a6-3c6a-11e7-b3b3-525400e5a74a.
- European Agency for Safety and Health at Work (EU-OSHA) (2007). *Literature Study on Migrant Workers*. https://osha.europa.eu/en/publications/literature_reviews/migrant_workers.
- Eurofound (2020). *Minimum Wages in 2020. Annual Review*. Minimum Wages in the EU Series. Luxembourg: Publications Office of the European Union.
- Fries-Tersch, E. et al. (2018). *2017 Annual Report on Intra-EU Labour Mobility*. Luxembourg: Publications Office of the European Union.
- Guldenmund, F.W. (2000). "The Nature of Safety Culture. A Review of Theory and Research". *Safety Science*, 34(1-3), 215-57. [https://doi.org/10.1016/S0925-7535\(00\)00014-x](https://doi.org/10.1016/S0925-7535(00)00014-x).
- Lillie, N. (2012). "Subcontracting, Posted Migrants and Labour Market Segmentation in Finland". *British Journal of Industrial Relations*, 50(1), 148-67. <https://doi.org/10.1111/j.1467-8543.2011.00859.x>.
- Lingard, H. (2013). "Occupational Health and Safety in the Construction Industry". *Construction Management and Economics*, 31(6), 505-14. <https://doi.org/10.1080/01446193.2013.816435>.

- Liu K.; Liu W. (2015). "The Development of EU Law in the Field of Occupational Health and Safety. A New Way of Thinking". *Management and Labour Studies*, 40(3-4), 207-38. <https://doi.org/10.1177/0258042x15624990>.
- Manu, P. et al. (2009). *Subcontracting Versus Health and Safety. An Inverse Relationship = Conference Proceedings of CIB W099 2009 Conference (21-23 October 2009)*. Melbourne: RMIT.
- Mayhew, C.; Quintan, M.; Ferris, R. (1997). "The Effects of Subcontracting/ Outsourcing on Occupational Health and Safety. Survey Evidence from Four Australian Industries". *Safety Science*, 25(1), 163-78. [https://doi.org/10.1016/s0925-7535\(97\)00014-3](https://doi.org/10.1016/s0925-7535(97)00014-3).
- Mearidi, G.; Martin, A.; Riera, M.L. (2012). "Constructing Uncertainty. Unions and Migrant Labour in Construction in Spain and the UK". *Journal of Industrial Relations*, 54(1), 5-21. <https://doi.org/10.1177/0022185611432388>.
- Moyce, S.C.; Schenker, M. (2018). "Migrant Workers and Their Occupational Health and Safety". *Annual Review of Public Health*, 39, 351-65. <https://doi.org/10.1146/annurev-publhealth-040617-013714>.
- Nenonen, S. (2011). "Fatal Workplace Accidents in Outsourced Operations in the Manufacturing Industry". *Safety Science*, 49(10), 1394-403. <https://doi.org/10.1016/j.ssci.2011.06.004>.
- Premji, S.; Messing, K.; Lippel, K. (2008). "Broken English, Broken Bones? Mechanisms Linking Language Proficiency and Occupational Health in a Montreal Garment Factory". *International Journal of Health Services*, 38(1), 1-19. <https://doi.org/10.2190/hs.38.1.a>.
- Sargeant, M.; Tucker, E. (2009). "Layers of Vulnerability in Occupational Safety and Health for Migrant Workers. Case Studies from Canada and the UK". *Policy and Practice in Health and Safety*, 7(2), 51-73. <https://doi.org/10.1080/14774003.2009.11667734>.
- Schenker, M.B. (2010). "A Global Perspective of Migration and Occupational Health". *American Journal of Industrial Medicine*, 53(4), 329-37. <https://doi.org/10.1002/ajim.20834>.
- Swuste, P.; Frijters, A.; Guldenmund, F. (2012). "Is it Possible to Influence Safety in the Building Sector? A Literature Review Extending from 1980 until the Present". *Safety Science*, 50(5), 1333-43. <https://doi.org/10.1016/j.ssci.2011.12.036>.
- Tutt, D. et al. (2011). *Migrant Construction Workers and Health & Safety Communication*. Construction Industry Training Board (CITB) – Construction Skills. Bircham Newton, King's Lynn, Norfolk, UK.
- Tutt, D. et al. (2013). "'In the Air' and Below the Horizon. Migrant Workers in UK Construction and the Practice-Based Nature of Learning and Communicating OHS". *Construction Management and Economics*, 31(6), 515-27. <https://doi.org/10.1080/01446193.2012.756145>.
- Wadsworth, E.; Walters, D. (2018). *Management of Occupational Health and Safety in European Workplaces. Evidence from the Second European Survey of Enterprises on New and Emerging Risks (ESENER-2)*. European Risk Observatory Report. Luxembourg: Publications Office of the European Union. <https://osha.europa.eu/en/tools-and-publications/publications/management-occupational-health-and-safety-european-workplaces>.
- Wagner, I. (2017). *Changing Regulations, Changing Practices? The Case of the German Meat Industry*. Report for the PROMO Project. http://www.solidar.org/system/downloads/attachments/000/000/702/original/2017_09_28_PROMO_briefing_paper_Wagner.pdf?1506505471.

