



Posting of Workers in the Western Balkans: The Case of Serbia*

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Introduction

Freedom of movement including labour mobility as a fundamental principle of the internal European Union (EU) market functioning, are part of the Republic of Serbia's Negotiation Process for EU membership. Although the corresponding chapters are still not opened for negotiation between EU and Serbia, the country has already been working on the approximation process to the *Acquis Communautaire*, in which the transposition of the Posting of Workers Directive (96/71/EC) is included.

Keywords:
**Posted Workers
Directive, labour
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The aim of this Policy Brief is to point out the current situation as regards the posting of workers in and from Serbia. An overview of the national legislation, the status of play on the Posting of Workers Directive's (PWD) implementation, and institutional challenges are presented so that experts in governmental and non-governmental institutions can better understand the process. Recommendations on adjustment of posting in Serbia with EU practice are also anticipated and are seen as possible options for further development of the process.

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What is posting?

A posted worker is an employee who is sent by the employer to carry out a service in another EU Member State on a temporary basis, in the context of a contract of services, an intra-group posting or a hiring out through a temporary agency. For example, a service provider may win a contract in another country and send his employees there to carry out the contract. Posted workers are different from EU mobile workers in that they remain in the host Member State only temporarily and do not integrate into its labour market.

Rights and rules for posted workers

The EU law defines a set of mandatory rules regarding the terms and conditions of employment to be applied to posted workers. These rules establish that, even though workers posted to a Member State are still employed by the sending company and subject to the law of that Member State, they are entitled to a set of core rights in force in the host Member State:

- minimum rates of pay;
- maximum work periods and minimum rest periods;
- minimum paid annual leave;
- the conditions of hiring out workers through temporary work agencies;
- health, safety and hygiene at work;
- equal treatment between men and women.

With the revision of the Directive, posted workers in all economic sectors are guaranteed equal pay to locally-hired workers based on rules set by national law or universally applicable collective agreements. However, if sending country terms and working conditions are more favourable, they become applicable to posted workers.

Relevant EU Legislation

- ❖ 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.
- ❖ Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation').
- ❖ Directive (EU) 2018/957 of the European Parliament and of the Council of 28 June 2018 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services.
- ❖ Regulation no 883/2004 on the coordination of social security systems.

Relevant National Legislation

- ❖ Labour Law ("Official Gazette of the Republic of Serbia", Nos. 24/05, 61/05, 54/09, 32/13, 75/14, 13/17 and 95/18 – other Law).
- ❖ The Law on conditions for posting employees to temporary work abroad and their protection entered into force in 2016 ("Official Gazette of the Republic of Serbia", No. 91/15, No. 50/18).
- ❖ Law on Health and Safety on Work ("Official Gazette of the Republic of Serbia", Nos. 101/05, 91/15 and 113/17 – other Law)
- ❖ The Law on Employment and Unemployment Insurance ("Official Gazette of the Republic of Serbia" Nos. 36/09, 88/10, 38/15, 113/17 – other Law and 113/17)
- ❖ The Law on Employment of Foreigners ("Official Gazette of the Republic of Serbia", Nos. 128/14, 113/17, 50/2018)
- ❖ International Agreement signed with the Federal Republic of Germany ("Official Gazette of SFRY – International Agreements", No. 11/89) on posting of Yugoslav workers on the basis of a contract for the execution of works.

Source: European Commission, Information on Posted Workers. Available at: <https://ec.europa.eu/social/main.jsp?catId=471#navItem-10>

Posting to and from the country

After the Law on Posting was adopted, the number of workers posted has increased from 607 in 2015 to 15,503 in 2018

Posting of workers from Serbia towards the EU Member States has increased considerably in the last 3 years, after the introduction of posting in legislation and the adoption of the Law on Posting. If only 607 workers were posted in 2015, the numbers jumped to 10,576 one year later in 2016, and have been increasing systematically every year with 15,503 Serbian citizens posted to the EU in 2018.

Table 1: Figures on posting in Serbia

Year	No. of Notices	No. of employers	No. of posted workers
Before the adoption of the Law on Posting employees to temporary work abroad and their protection			
2015	304	83	607
After the adoption of the Law on Posting employees to temporary work abroad and their protection			
2016	3,052	324	10,576
2017	4,149	371	13,916
2018	n/a	901	15,503
2019 (first two quarters)	n/a	638	7,022

Apart from private agencies, posting can also be conducted with the support of the National Employment Service (NES). With the assistance of NES in 2016, for example, 516 persons were employed abroad, mostly in Germany and Slovenia.

In terms of the posting of workers to Serbia from EU and other countries, the number of temporary working permits issued to foreigners in 2017 was 7,405, and that of permanent permits 240. The largest number of permanent permits was issued to citizens from China, the Russian Federation, Macedonia, Italy, Turkey and Greece. Although some of these workers have been posted, the official data do not distinguish between posted workers and other temporary foreign workers in Serbia.

Legal and institutional framework

The Posting of Workers Directive is not fully transposed to Serbian legislation. At the moment, the PWD is discussed among decision-makers, without consultation with stakeholders (non-governmental institutions and NGOs). According to the

available information, the *Posting of Workers in Eastern Europe (EEPOW)* project is one of the first efforts made by the Ministry of Labour, Employment, Veterans and Social Affairs (MOLEVSA), with the support of EU partners, to discuss EU legislation in the field of the free movement of workers.

There are strict legal obligations for employers who post workers from Serbia to the EU

In Serbia, posting of workers abroad is regulated by the *Law on conditions for posting employees to temporary work abroad and their protection* (2015 and updated in 2018) which clearly defines the duration of the posting of workers (i.e. up to 12 months with the possibility of extension), and provides strict obligations for employers who post workers from Serbia to EU countries. The employee must be employed for at least three months to be eligible for posting in another country. The employer is obliged to conclude an annex of the employment contract with the worker, where basic earnings are included, before the posting offer is made (National Assembly of Republic of Serbia, 2018). Employers must submit the notice about posted workers to the Central Register of Obligatory Social Insurance (CROSI) that collects data on posted workers, as well as on employers who post them. Furthermore, employers are obliged to request permission of the posting country when changing the insurance for posted workers.

Posting is also regulated by *International Agreement signed with the Federal Republic of Germany* as well as by bilateral agreements and by support of mediators: the National Employment Service (NES) and employment agencies (MOLEVSA, 2018).

Bilateral agreements for posting from Serbia – Serbia has signed several bilateral agreements with other countries on temporary employment abroad by which equal payment and conditions at work are guaranteed to Serbian citizens such as the residents of those countries. Social security insurance is also regulated with bilateral agreement signed (MOLEVSA, 2018).

International agreement signed with Germany for the detachment of workers from Serbia – There is an international agreement between Germany and Serbia; for the latter, to post workers via a detachment procedure to Germany. Annual quotas of workers are negotiated in advance between MOLEVSA and the Germany Bureau for Employment. According to a decision of MOLEVSA, the Chamber of Commerce and Industry of Serbia (CCIS) is the appointed institution responsible for the allocation of these quota, the management of records and the monitoring of the process. Business operators registered in Serbia are eligible to apply for distribution of the determined quota of workers.

The employment of foreigners in Serbia, on the other hand, is regulated by the *Law on Employment of Foreigners*. The legislation stipulates, among others, that

the types of permits that can be issued are for employment, self-employment and working education with the possibility to transfer employees abroad within the same company. However, a single document for residence and working permit does not exist yet, which means that there are two institutions responsible for issuing permits: the Ministry of Interior is in charge of issuing residence permits and the National Employment Service (NES) of issuing working permits (National Employment Service, 2018).

MOLEVSA, the Labour Inspectorate and the Directorate for Safety and Health at Work are the main responsible authorities for posting to and from Serbia

The Labour Law (2005, updated 2013, 2014, 2017 and 2018) also addresses the issue of illegal employment by imposing penalties and the suspension of an employer's business activities for a certain period of time. However, a criminal offence is not foreseen for the employment of irregular migrants.

Institutionally, labour mobility, employment and movement of workers come under the authority of MOLEVSA. The Labour Inspectorate (LI) and the Directorate for Safety and Health at Work (DSHW) are the main intermediate authorities responsible for posting abroad and employment of foreigners in Serbia. Further institutional actors involved in posting in Serbia include:

- The Health Insurance Fund (HIF), which cooperates with the Institute for Social Insurance on the international social insurance agreements signed and the implementation and reimbursement of health care expenses occurred during the posting abroad or in case of employment of foreigners in Serbia. Electronic exchange of social security data is available with most of the Western Balkan Countries;
- The Central Register of Obligatory Social Insurance (CROSI), which is responsible for maintaining the register of obligatory social insurance of workers and regularly submits the reports to MOLEVSA; and
- the NES that acts as a mediator in employment of Serbian citizens abroad on foreign employers' request and is in charge of issuing working permits to foreigners.

The NES and private employment agencies with the appropriate licence, are acting as mediators in the employment of Serbian citizens abroad and vice versa. On employers' demand, the NES announces the job vacancies whereas the requirement process is settled between employer and job-seeker. The NES is not involved in the process of selection of candidates. They also provide information to potential working migrants from and to Serbia on the risks of irregular migration, procedures for legal employment abroad, access to health care, education abroad, and so on.

Institutional challenges

Although the legal framework on posting exists, changes in the law and by-laws on labour mobility were introduced several times in the last few years. MOLEVSA as the line ministry for labour mobility should better anticipate priorities and deadlines for further harmonization of legislation and involve the relevant stakeholders in order to avoid possible problems in implementation. There is a need to include these priorities in the National Programme for the adoption of the Acquis Communautaire for the next period, as the revision of this document is sometimes used as reason for postponing the harmonisation of laws and by-laws with EU Directives and Regulations. The timeline for full harmonization of national legislation with the PWD is also not yet defined, which can be a challenge for the accomplishment of this objective.

Inter-institutional cooperation is established at the operational level between MOLEVSA and other line ministries (foreign affairs, interior affairs, finance, tax administration) as well as with the employment office on labour mobility. At the decision-making level, however, there is no overall plan for implementation of joint actions on posting from Serbia. Liaison officers responsible for communicating and coordinating activities related to posting have not been established. Therefore, in the forthcoming period it will be challenging to introduce a single (residence and work) permit for the employment of foreigners in Serbia, as this procedure will require institutional changes.

Cooperation between Serbia and EU Member States on the full coordination of social security systems and implementation of the European Health Insurance Card is still missing. Moreover, cooperation with international partners lacks a systemic approach and is usually limited to an exchange of information without any mutual actions.

Improvement of the legal and institutional framework, capacity building, the inclusion of social partners and awareness raising on posting are necessary

A further challenge concerns the lack of trained staff in institutions in charge of labour mobility and movement of workers. There is a strong need for the employment of additional staff because of the unfavourable existing age structure. Further, specialization of staff dealing with labour mobility does not exist and it is necessary to introduce trainings for experts from different institutions involved in the process of labour mobility. Finally, there is a need to improve the overall working conditions for the staff of implementation and enforcement agencies (earnings, equipment, space, training etc.).

The consultation process with stakeholders on labour mobility is weak. Social partners, institutions and NGOs are involved in the improvement of legislation on an irregular basis. Existing networks and cooperation mechanisms that

national stakeholders have with foreign partners, are not recognised as potential channels for enhancement of cooperation with institutions abroad. Because social partners as organizations with a national mandate cannot protect Serbian workers outside the territory of Serbia, collaboration with their sister organizations in the countries where Serbian workers are posted can be used for exchange of information and provision of support. Social tripartite dialogue and collective bargaining, which could be used to discuss issues related to posting is also not well enough developed. This prevents trade unions, for example, to advocate for the interests of workers in a desirable manner.

Finally, public awareness and visibility of posting and what it entails is still not developed enough. Without joint activities of all stakeholders and focused public campaigns, it will be difficult to prevent illegal migration, inform people on the legal framework for the posting of workers, and promote EU best practices.

Recommendations

The continuous increase of posted workers' numbers from Serbia to the EU in the last three years makes posting an important policy area for the country. Positive trends on legislation improvements and simplification of procedures for labour mobility and posting of workers are evident but harmonization with EU legislation should be continued. A number of recommendations have been drawn in coordination with representatives from various institutions and other stakeholders:

- For a more successful implementation of the Posting of Workers Directive in Serbia, the country needs to complete its legislative framework and better anticipate the priorities for further harmonisation of the national legislation with the EU's *Acquis Communautaire* on labour mobility. The PWD is still in the phase of public discussion and the timeline for its transposition should be more precisely defined.
- The responsible authorities need to have clear mandates and strengthen their inter-institutional cooperation. Even though cooperation between line ministries exists at the operational level, it should be focused on the decision-making level and performance of joint activities in order to reduce overlapping of assignments between national institutions. Furthermore, cooperation with international partners should be extended, from exchange of information to implementation of joint actions that should be agreed on at the decision-making level. The existing structure for exchange of information and cooperation (e-inspectors, networks, etc.), should be used in a more effective manner.

- More should be done for the specialization of public servants and for the reduction of multiple duties assignments. Additionally, public servants' and inspectors' working terms (salaries) and conditions (equipment, space, trainings, etc.) should be improved. Specialized trainings on labour mobility and employment are needed at all levels, i.e. of decision-makers, stakeholders, employers and employees.
- The involvement of stakeholders (social partners, NGOs, the public) in the drafting of employment and mobility policies needs to become more concrete. They should be more involved in the negotiation process for EU membership as well as in changing and adopting legislation from the early phases of legislation-drafting onwards in order to minimize the problems in implementation. Further, best practices of EU countries in collective bargaining and tripartite social dialogue should be used as models to be adopted in Serbia.
- Joint activities of institutions and stakeholders are needed in order to promote legal labour migration and increase the visibility of good practices in the posting of workers.
- And finally, although Serbia has improved ranks on some of the aspects of public governance, institutions should be more focused on their fight against corruption.

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