

Con3Post – Posting of Third Country Nationals. Mapping the trend in the construction sector
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REGIONAL CASE STUDY

From Bosnia and Herzegovina to Austria via Slovenia: migration and posting of third country nationals in the EU

Work package 5

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Table of Contents

List of tables.....	3
List of Abbreviations	3
Executive summary.....	4
1. Introduction	5
2. Literature Review on Posting of Workers in the Region.....	7
3. Methodology	11
4. Results.....	15
4.1. Regional labour market dynamics and labour shortages.....	15
4.1.1. General economic and labour market conditions.....	15
4.1.2. Economic and labour market conditions in construction.....	17
4.2. Labour migration and posting trends	20
4.2.1 Posting Trends	27
4.3. Labour rights, violations and representation of posted workers who are third country nationals	29
4.3.1 The protection of TCN posted workers.....	32
4.3.2 Access to information	37
4.4. Social welfare, occupational safety & health and vulnerabilities of posted workers.....	40
4.5. Managing transnational workplaces.....	43
5. Conclusions and Forward-Looking Perspectives.....	44
5.1. A glimpse at the future?	48
FORESIGHT 1. Emigrants out, immigrants in – new paths of development in an uncertain political future for Bosnia and Herzegovina	49
FORESIGHT 2. Anti-immigrant sentiment, labour shortages, and the Chinese solution for the Slovenian market	50
FORESIGHT 3. Moderate growth, sustainable demand and supply of migrant labour, and the risk of social dumping in Austria.....	51
6. Policy Recommendations.....	52
7. References.....	57

List of tables

Table 1: Details of the fieldwork, June-September 2019	13
Table 2: Overall labour market dynamics.....	16
Table 3: Regional labour market dynamics in the construction sector.....	19
Table 4: General labour migration and posting trends and migration and posting trends in construction.....	24

List of Abbreviations

AT – Austria
BiH – Bosnia and Herzegovina
BUAK – Austrian Construction Workers’ Annual Leave and Severance Pay Fund
EESSI – Electronic Exchange of Social Security Information
EFBWW – European Federation of Building and Woodworkers
ESS – Employment Services of Slovenia
EU – European Union
EU MS – European Union Member State
EU OSHA – European Agency for Safety and Health at Work
FIEC – European Construction Industry Federation
FG – Focus Group
FS – Foresight
GBH – Austrian Trade Union for Construction and Woodworkers
GDP – Gross Domestic Product
JV – Joint Visit
IOM – International Organization for Migration
ILO – International Labour Organization
IMI – Internal Market Information System
IRSD – Labour Inspectorate of Slovenia
LI – Labour Inspectorate
MDDSZ – Ministry of Labour, Family, Social Affairs and Equal Opportunities of Republic of Slovenia
NGO – Nongovernmental Organization
OSH – Occupational Safety and Health
PDs A1 – Portable Documents A1 Form
PWD – Posting of Workers Directive
TCN – Third Country National
SI – Slovenia
WKÖ – Austrian Economic Chamber
VET – Vocational Education and Training
ZZZS – Health Insurance Institute of Slovenia

Executive summary

In this report we investigate the main characteristics of the trend of posting third country nationals to work in the EU construction sector. The report focuses on the specific regional labour mobility patterns between Bosnia and Herzegovina (BiH) as a third country, Slovenia as a sending country, and Austria as a receiving country. The report is based on the insights provided by representatives of the national policy-making and enforcement authorities (ministries of labour, labour inspectorates, public employment agencies, agencies for social protection), trade unions and employers' organizations, NGOs, and research institutions in Austria, Bosnia and Herzegovina and Slovenia.

The main findings of this report indicate that there are strong push and pull factors between the country of origin, the sending country and the receiving country. BiH workers come from an experience of economic and political instability and insecurity that drives their mobility and migration plans to neighbouring Slovenia that provides relatively easy access to its labour market for workers from the former Yugoslavia. Employers in the construction sector in Slovenia have used these third country national (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. We find that despite the fact that Slovenia and, more so, Austria have stronger employment regulations in place, including universally applicable collective bargaining agreements in the case of Austria, irregular and exploitative employment relations practices are transferred from the country of origin to the sending and the receiving EU countries.

Despite the mechanisms for control and enforcement of national/EU standards, the vulnerability of TCN posted workers persists due to the cloaking effect of the posting employment characterized by subcontracting, cross-border mobility and temporary service provision. Therefore, more efforts should be made at the workplace, industry, national, and regional levels to strengthen the legal framework and its enforcement, as well as cross-border collaboration, in order to increase the level of protection of posted workers who are third country nationals.

1. Introduction

Recent research suggests that the posting of workers, already a highly politicised form of cross-border service provision, is not only increasing but developing new forms of recruitment that now include the posting of third country nationals (Bogoevski, 2016; Cimerman, 2017; Danaj and Zólyomi, 2018; Rogelja et al., 2016; Rogelja & Mlekuž, 2018). These authors already provide evidence of the particularly vulnerable circumstances third country nationals (TCN) might find themselves in while posted, which can transform, at times, into unfree forms of labour (Novitz and Andrijasevic, 2020). The current country report presents the regional labour mobility patterns between Bosnia and Herzegovina as a third country, Slovenia as a sending country, and Austria as a receiving country. While these countries have a long history of cross-border labour mobility because of their geographical proximity and other historical reasons, in this study we focus on contemporary short-term labour mobility, especially through posting. We trace how BiH workers move to Slovenia and study the conditions of their recruitment and employment both in the country of origin and in Slovenia, as well as their onward mobility to Austria, and describe the main characteristics of posted third country nationals in the EU construction sector¹.

In this report, posting of workers is defined as the sending of workers by their employer in one Member State of the European Union (EU MS) to provide a service for a definite period of time up to 12 months to another EU MS. This service provision is generally regulated by the Posting of Workers Directive (96/71/EC), but various forms of irregular posting have already been identified in the literature (Berntsen and Lillie, 2015). In this report, we take into account both forms of formalized and less formalized posting assignments, in order to identify the vulnerabilities faced by posted workers that are also third country nationals. The latter category is defined as workers that are citizens of countries outside the European Union (EU).

The research question for this study is: What are the main characteristics of the trend of posting of third country nationals to work in the EU construction sector? The main areas of the study include: 1. regional and EU labour market dynamics and shortages (labour and skills shortages and the dynamics of supply and demand); 2. labour migration and mobility trends (labour migration policies, recruitment strategies and posting practices of third country nationals); 3. labour rights, violations and representation of posted workers who are third

¹ We use the term construction according to the Statistical Classification of Economic Activities in the European Community classification, i.e. NACE F.

country nationals (access to information, main violations, and protection mechanisms); 4. social welfare and OSH vulnerabilities of posted workers, who are third country nationals; and 5. managing transnational workplaces (management challenges and practices in the receiving countries).

The findings are based on primary and secondary resources. We used so-called joint visits to collect the data. Each joint visit was conducted in 2019 and was composed of a focus group discussion, a foresight exercise, and an international seminar. We conducted three joint visits, one per each country involved. Therefore, this study contains the insights provided by 22 focus group participants, 16 foresight participants, and 10 presentations delivered in the joint visits. Participants include representatives of the national policy-making and enforcement authorities (ministries of labour, labour inspectorates, public employment agencies, agencies for social protection), trade unions and employers' organizations, NGOs, and research institutions in Austria, Bosnia and Herzegovina and Slovenia.

The main findings of this report indicate that there are strong push and pull factors between the country of origin, the sending country and the receiving country. BiH workers come from an experience of economic and political instability and insecurity that drives their mobility and migration plans to neighbouring Slovenia that provides relatively easy access to its 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. We find that despite the fact that Slovenia and, more so, Austria have stronger employment regulations in place, including universally applicable collective bargaining agreements in the case of Austria, irregular and exploitative employment relations practices are transferred from the country of origin to the sending and the receiving EU countries. Despite the mechanisms for control and enforcement of national/EU standards, the vulnerability of TCN posted workers persists due to the cloaking effect of the posting employment characterized by subcontracting, cross-border mobility and temporary service provision.

This report is structured as follows: it starts with a concise review of the existing literature on the posting of workers in the region, followed by the detailed description of the methodology. The results are divided into five sections, each according to the research sub-questions, i.e. regional labour market dynamics and labour shortages; labour migration and posting trends; labour rights, violations and representation of posted workers who are third country nationals; social welfare, occupational safety and health of posted workers; and,

managing transnational workplaces. In the end, we draw some concluding remarks, one foresight scenario for each of the three countries, and provide some policy recommendations.

2. Literature Review on Posting of Workers in the Region

The review of the literature on the posting of workers in Austria and Slovenia has shown that, while there is a growing number of publications on posting in both countries, there is very little research on the posting of third country nationals specifically.

Academic and grey literature on the posting of workers in Austria has been mainly interested in the trends and developments from the receiving country perspective. Early publications (Afonso, 2012; Krings, 2009; Menz, 2003, 2005) were mostly focused on the national responses to the EU-induced liberalization of the labour market and the role social partners (employers' associations and trade unions) played in shaping these responses. Austria as a strong neo-corporatist country where interest groups have a strong long-standing cooperation, took protective measures for its own labour market, deciding early on that Austrian wages should be paid to posted workers as well. In addition, an anti-dumping law (Lohn- und Sozialdumping-Bekämpfungsgesetz – LSD-BG) was passed in 2011 to enforce the equal pay principle on all companies – foreign and domestic. Austrian employers seem to have also favoured the protection of national standards, which according to Afonso (2012) has to do mostly with the fact that the Austrian business organizations are dominated by small, inward-oriented firms with protectionist preferences. Austrian trade unions were also in favour of the transition periods to the free movement of labour from the Eastern European Member States upon their accession, which they argued was not an anti-immigrant stance but rather aimed at protection of local labour standards that would be challenged considerably by the high cost differentials between the sending and the receiving countries (Krings, 2009).

Austria has been one of the main receiving countries for posted workers ranking between 4th to 6th since 2010, while experiencing a continuous increase in the overall number of postings from one year to the other (until 2018, when the numbers decreased, for more see 4.2.1). Despite the protectionist measures, instances of social dumping, in particular cases of wage dumping have been reported by various studies (Hollan and Danaj, 2018; Krings, 2019; Riesenfelder et al., 2012; Schmatz and Wetzel, 2014). The wage or social dumping issue seems to particularly affect the construction sector (Hofstadler et al., 2016), which is also the main sector where workers are posted to in Austria. Authors like Haidinger (2016) or Schmatz and Wetzel (2014) consider subcontracting and the challenge of enforcing legal obligations along

the subcontracting chain also due to non-comprehensive chain liability regulation as the main factors for wage dumping practices in the country. Furthermore, while there are cases of unequal pay reported by posted workers to the authorities or identified by the enforcement agencies such as the Financial Police, the main form of wage dumping in Austria is underpayment, which results from irregularities in documenting work, e.g. declaring less hours than actually performed, or declaring workers as unskilled in order to pay them lower wages (Krings, 2019; Schmatz and Wetzel, 2014), which makes it more difficult for enforcement authorities to investigate cases of abuse.

Recently, researchers have looked more closely into the vulnerabilities and the enforcement of labour rights for posted workers. Hollan and Danaj (2018) wrote on the vulnerabilities of posted workers with a special focus on occupational health and safety risks. They found out that posted workers are in general less informed on OSH risks and receive less training than local workers due to the negligence of the employers and workers but also due to language barriers. Even when posted workers are exposed to any irregularities or OSH risks, they often do not report their employers, out of fear of losing their job. These authors are among the first to identify third country nationals, most of whom from the countries of the Western Balkans such as Bosnia and Herzegovina, Serbia and North Macedonia, as a particularly vulnerable group of posted workers in Austria. In their research, they found out that the intersection of the migration and employment regimes enhanced the vulnerabilities of posted TCN workers, who do not defy or report their employers, on whom they depend not only for employment but also for the renewal of their work and residence permits in the sending country.

Apart from the overall report on construction in Austria by Hofstadler et al. (2016), where posting is discussed as one of the ways employers use to undermine national wage standards, we could find only one report on posting in construction in Austria produced by EFBWW and FIEC (Moghadam, 2009), which mostly focused on informing workers on their entitlements and about authorities where they can address their grievances to.

Despite the fact that in comparative perspective Austrian authorities are doing relatively better in their effort to protect national standards and the rights of posted workers, both Haidinger (2018a) and Hollan and Danaj (2018) identify a number of challenges faced by enforcement agencies in their work. Austrian authorities have good cooperative relations, and joint inspections on transnational workplaces have also been conducted. However, different authorities have different mandates and approaches, which sometimes can lead to confusion and tensions, as is the case of the labour inspectorates who investigate employers and protect the workers, whereas the financial police also investigate workers. Transnational cooperation,

while it exists, is mostly ad hoc or project-based and concentrated in the border areas. Austrian authorities also make use of IMI to gain information about EU companies who post their workers in Austria; however, the communication and information exchange is also not always fast enough to keep the pace with the hypermobility of posting companies and posted workers.

Posted workers in Austria receive most of their support from the Chamber of Labour and the trade unions. Most posted workers do not qualify for union membership if they have not worked in the country for at least six months, so trade union support comes mostly at the policy level, where the unions lobby to guarantee equal pay – including collective bargaining of pay rates and benefits – to all workers including posted workers and fight against any form of abuse and exploitation. The Chamber of Labour, a public authority that protects the rights of all workers in Austria, has been more directly involved in providing support for individual grievances and pursuing court cases of underpayment and other forms of unfair treatment (Haidinger 2018b; Hollan and Danaj, 2018). Access to information is provided through the national posting platform (<https://www.postingofworkers.at/>), one of the most comprehensive national platforms across the EU offering information in the seven main languages (including German) workers posted to Austria speak (Danaj and Zolyomi, 2018). Unions and project-based initiatives have also been constantly providing information to workers, yet direct communication with workers remains relatively scant, and they continue to receive most of the information from colleagues and by word of mouth (ibid).

Similarly to the literature review on posting to Austria, despite the relatively high number of posted workers abroad and several cases of infringements of the rights of posted workers, especially from third countries, exposed by the media and the ensuing heated public debates, researchers in Slovenia have been investigating this phenomenon only in recent years. In both academic and grey literature, information on the posting of TCNs is discussed as part of general questions on posting, a side issue, in most cases as an added layer of vulnerability, an example of extremely bad practice, and/or as particular challenges to enforcing posting rules and providing protection.

The topic of posting in the Slovenian literature is mostly discussed from the sending country perspective. The main characteristics of posting of workers from Slovenia, i.e. legal framework, access to information, monitoring and transnational cooperation, among others, are mostly depicted in reports/results of projects on labour mobility (Renar, 2014; Rogelja et al., 2016; Vah Jevšnik & Cukut Krilić, 2016;). A specific topic developed recently is the OSH of posted workers in Slovenia (see e.g. Vah Jevšnik, 2018; Vah Jevšnik & Rogelja, 2018). Furthermore, the posting of workers from Slovenia has raised the interest of Slovenian scholars

from the perspective of labour law, finances and taxation, as can be seen in different articles/papers published over the last 15 years, (Draškovič, 2011; Kuralt, 2016; Mercina, 2015; Pal, 2015, 2017, 2018; Škof 2019; Sojč, 2018; Šubelj, 2006). The topic of posting is often discussed in specialized journals like *Delavci in delodajalci* (Employees and Employers) published by the Faculty of Law at the University of Ljubljana (Kresal Šoltes, 2017; Mišič, 2018; Pustovrh Pirnat, 2012, 2013; Risak, 2017; Snoj, 2017). Out of this set of literature only a minor part is focused on posting to Slovenia (Šubelj, 2006; Umek, 2008).

The posting of TCNs from Slovenia is discussed in the literature on posting from Slovenia to other EU Member States (Bogoevski, 2016; Cimerman, 2017; Rogelja et al., 2016; Rogelja & Mlekuž, 2018) and in the literature on working and living conditions of migrant workers in Slovenia (Medica & Lukič, 2011; Mozetič, 2009). In both sets of literature, the posting of TCNs (mainly from the territories of former Yugoslavia: Bosnia and Herzegovina, Serbia, Kosovo, North Macedonia) from Slovenia to other EU Member States is exemplified as bad practice. Slovenia is labelled a transit country for workers from BiH and posting is the area or process where the consistent violation of workers' rights takes place (Bogoevski, 2016; Cimerman, 2017; Mozetič, 2009; Rogelja & Mlekuž, 2018). Posting is also referred to as a business model where "exporting foreign workers" is the most profitable. Several authors point out that working conditions for TCNs posted from Slovenia to Germany and other EU countries are still largely exploitative, which is particularly emphasized in the case of workers from BiH and Serbia (Bogoevski, 2016; Cimerman, 2017; Mozetič, 2009; Rogelja & Mlekuž, 2018).

A small compendium of literature on health and safety issues in regard to the posting of workers (Rogelja & Toplak, 2017; Teraž, 2014; Vah Jevšnik & Rogelja, 2018; Vah Jevšnik, 2017) deals with the vulnerabilities of posted workers, including TCNs (employment conditions – undeclared work, language barrier, lack of information, socioeconomic situation of posted workers, etc.). Posting of TCNs has in a few cases been discussed from the perspective of labour law and taxation (Mercina, 2015; Pal, 2015). It is noteworthy that there is a lack of assessment of best practices in the posting of workers of all nationalities. Also, apart from student theses in social sciences, financing and law (e.g. Gajšek, 2019; Teraž, 2014), the posting of construction workers to Slovenia is analysed in only one country-specific report on posting to Slovenia in construction sector by Renar (2014) published online by EFBWW and FIEC.

3. Methodology

The research design for this study is based on the comparative multiple-case studies approach. The project has produced three regional case study reports. Each report covers a sending, receiving and third country perspective. The current country report focuses on Bosnia and Herzegovina as the third country, Slovenia as the sending country, and Austria as the receiving country. The main research question we posed for this study is:

What are the main characteristics of the trend of posting of third country nationals to work in the EU construction sector?

The research question is broken down into five thematic questions, each with its own specific sub-questions as outlined below:

1. Regional and EU labour market dynamics and shortages

- *What is the extent of labour and skills shortages in the EU construction sector in general and in the explored regions in particular (sending, receiving and third countries)?*
- *What are the dynamics of supply and demand of workers in the EU construction sector in general and in the explored regions in particular (sending, receiving and third countries)?*

2. Labour migration and mobility trends

- *What is the extent of recruitment/posting of third country nationals to work in the construction sector in the explored regions and what are the projections for the future?*
- *What are the strategies used to recruit workers from third countries to work in the construction sector in the explored regions?*
- *How are public policies relating to labour migration/mobility and recruitment of workers responding to imbalances in the labour market in general and the construction sector in particular?*

3. Labour rights, violations and representation of posted workers who are third country nationals

- *What are the main violations of posted TCN workers' rights in the explored regions?*
- *What are the (policy) responses and other measures in place to safeguard posted TCN workers working in the construction sector in the explored regions?*
- *What are the main channels that TCN posted workers in construction use to acquire information? How can information/communication channels be improved?*

4. Social welfare, OSH and vulnerabilities of posted workers who are third country nationals

- *What are the main vulnerabilities of workers who are third country nationals and are recruited to work in the construction sector in the explored regions?*

- *What are the legal mechanisms and practices in place in case TCN posted workers experience work-related accidents or develop occupational diseases? How is their safety and health affected if they are posted by letter-box companies?*
- *What measures can be introduced at the policy level to reduce identified vulnerabilities of TCN posted workers?*

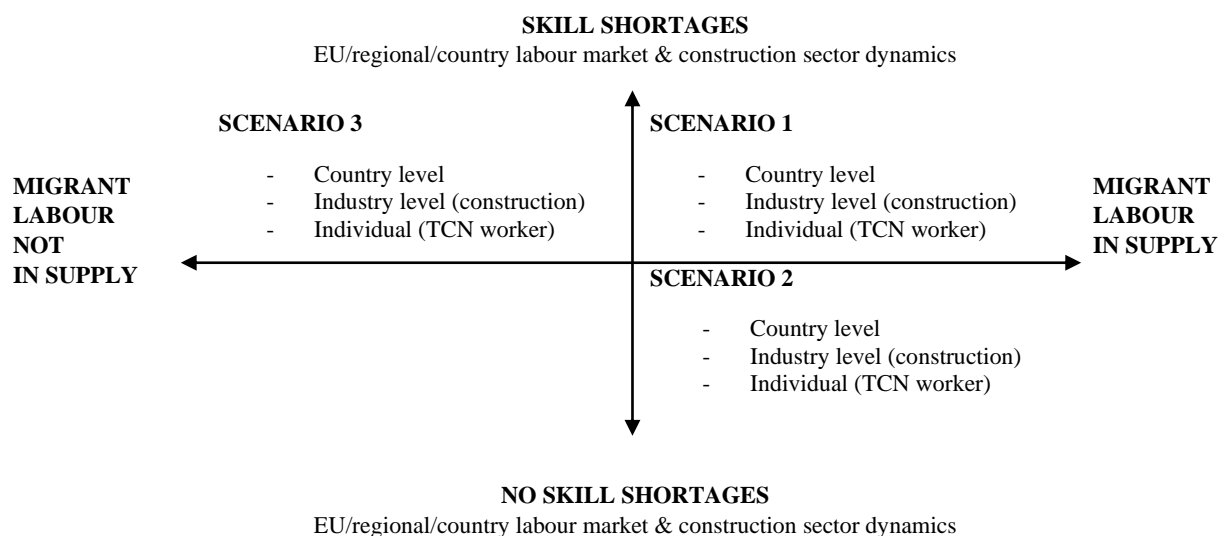
5. Managing transnational workplaces

- *What are the main challenges encountered by managers of transnational workplaces in the construction sector and how are they managed?*

The findings in the reports are based on secondary resources such as academic and grey literature on posting to and from the countries included in the study and primary empirical data collected through Joint Visits (JVs) organized with representatives of national policy-making institutions, enforcement agencies, social partners and NGOs that have direct experience and knowledge of posting and/or labour migration to and from their country. Each Joint Visit had three parts with different objectives. They started with focus group discussions, which were the main source of data collection guided by the Con3Post research questions. After the focus group, an international seminar was conducted, where the perspective of the different stakeholders on the posting trends and issues related to third country nationals were delivered through presentations and discussions open to the public. Finally, foresight workshops were conducted on the second day, which followed a classic scenario-building methodology using the techniques that are participatory, creative, and multidisciplinary, geared at generating systemic understanding, and aimed at generating insights on the dynamics of change, future challenges and options (Da Costa et al., 2008). The aim of the foresight was to develop scenarios/narratives about plausible futures concerning expected dynamics of the EU and regional labour markets in the construction sector, supply and demand of skilled labour, and labour migration/mobility/posting dynamics in the region and in each individual country. The guiding question was what could happen in their country/region in the field of our interest by 2035.

Scenarios were built around two axes providing the overall scenario logic. The vertical axis represented ‘Skill supply and demand on the EU/regional/country level’, the extremes of the axis being a) significant skill shortages and b) no skill shortages. The horizontal axis represented the availability of migrant/posted workers, the extremes of the axis being a) migrant/posted labour not in supply and b) migrant/posted labour in supply (see Figure 1 below). The participants outlined the drivers for all four scenarios but chose to develop one that they deemed most likely to happen.

Figure 1: Scenario building



The JVs for this report were conducted during the period June-September 2019. The details of each JV and its events are presented in the table below.

Table 1: Details of the fieldwork, June-September 2019

	JV1 Slovenia	JV2 Bosnia and Herzegovina	JV3 Austria
Place and dates	5-6.06.2019 Ljubljana	16-17.09.2019 Ljubljana	23-24.09.2019 Vienna
No. of participants in the Focus Group	7	7	8
Stakeholders participating in the FG	Policy-makers Employment agency Labour inspection Trade union, Employers' association Researchers	Federal Employment Institute, Sarajevo Employment Service of Slovenia Trade unions in Slovenia Researchers (from BiH and Slovenia)	Policy-makers Enforcement agencies Social partners NGOs Researchers
No. of participants in the Foresight workshops	6	4	6
Stakeholders participating in the FS	Social partners NGO Researchers	Researchers (from BiH and Slovenia) Journalist (specialized in the topic) Federal Employment Institute, Sarajevo	Policy-makers Social partners Researchers
No. of presentations in the International Seminar	3	3	4

The report at hand provides results from an exploratory qualitative perspective. The empirical material was mostly collected via the joint visits, specifically the three focus group discussions, the three foresight exercises, and the three international seminars. The empirical data, therefore, comes from insights provided by 22 focus group participants, 16 foresight participants, and 10

presentations delivered in the seminars held in Ljubljana and Vienna². The participants in the Joint Visits were representatives of the national policy-making and enforcement authorities (ministries of labour, labour inspectorates, public employment agencies, agencies for social protection), trade unions and employers' organizations, NGOs, and research institutions in Austria, Bosnia and Herzegovina and Slovenia (Table 1). In addition, during the international seminars, presenters offered both an international EU perspective as well as insights on the national circumstances³.

Hence, the input received is mainly gathered from the knowledge and experience of the participants. One of the challenges of the fieldwork was the process of selecting the participants, i.e. finding the representatives of the envisaged institutions and organizations that were knowledgeable about not just the posting of workers but also about third country nationals (preferably from Bosnia and Herzegovina, but not only) who were posted from Slovenia and to Austria in the construction sector. The participants in the Bosnian JV also had the physical challenge of coming to Slovenia, which means we had to work hard to have the right balance of perspectives and depth of knowledge on these topics combined. While we did not interview posted workers themselves, we collected data about their vulnerabilities from advocates for their rights (trade unions), NGO employees who provide counselling, labour inspectors who shared specific cases with us, and secondary literature.

² The JV on Austria was moderated by Leonard Geyer, Anette Scoppetta and Sonila Danaj. The JVs on BiH and Slovenia were moderated by Sanja Cukut Krilić, Kristina Toplak & Mojca Vah Jevšnik.

³ The seminar held in Slovenia on June 5, 2019 under the title 'A new chapter in the posting of workers' included a presentation with the same title, i.e. 'A new chapter in the posting of workers' by Nancy Segers from the Federal Public Service Employment Labour and Social Dialogue, Belgium, a speech by Werner Buelen, European Federation of Building and Woodworkers on EFBWW complaints against Slovenia and a presentation on 'Experiences and trends in posting of workers: case of Slovenia' by Grega Malec from the Slovenian Ministry of Labour, Family, Social Affairs and Equal Opportunities.

The seminar held in Slovenia on September 16, 2019 under the title 'Posted workers from Bosnia and Herzegovina' included a presentation by Jasmin Hasanović from the University of Sarajevo, Bosnia and Herzegovina, entitled 'Labour migration and political organizing of workers in Bosnia and Herzegovina', a presentation by Omer Korjenić of the Federal Employment Institute, Sarajevo, Bosnia and Herzegovina, with the title 'Impact of migration on the labour market in Bosnia and Herzegovina' and a presentation from Marko Tanasić, Association of Free Trade Unions of Slovenia, Ljubljana, Slovenia, with the title 'International Project – Fair working Conditions – protection of rights and assistance to posted workers'.

The seminar held in Austria on September 23, 2019 under the title 'The Future of Posting: Third Country Nationals in the Spotlight' comprised a session on 'Posting and Third Country Posting: The Austrian experience' with presentations from Sonila Danaj, European Centre for Social Welfare Policy and Research and Johannes Peyrl, Arbeiterkammer Wien and a session on 'The EU institutions and social partners' perspective on posting' with an intervention by Federico Pancaldi, European Commission, as well as a presentation by Werner Buelen, European Federation of Building and Woodworkers.

4. Results

4.1. Regional labour market dynamics and labour shortages

The labour mobility flow from Bosnia and Herzegovina to Slovenia and eventually to Austria that we are tracing in this report is shaped by the socio-economic conditions in each of the countries.

4.1.1. General economic and labour market conditions

The three countries show marked differences between them as the headline indicators on the economic and labour market situation in Table 2 show. In 2018, per capita GDP adjusted for purchasing power in Austria was \$56,871 which was about 1.5 times the amount of Slovenia (\$38,749) and close to four times the level of income in BiH (\$14,962). Average monthly gross wages were 3,929€, 1,631€ and 709€ respectively. With regard to the labour market, a strong division between Austria and Slovenia on the one hand, and BiH on the other, is visible. Over the last years, Austria and Slovenia had strong and improving labour markets with low unemployment rates of around 5-6% and employment rates of 70% or higher. Similarly, the job vacancy rate in both countries was above two and rising between 2016 and 2018. In contrast, the labour market in BiH performed much worse according to several indicators. The employment rate was significantly lower with 44.0% while unemployment was more than three times the level of Austria and Slovenia. Similar differences between the countries exist also with respect to male employment and unemployment as well as youth unemployment.

Both Slovenia and BiH saw higher economic growth rates and faster decreases in unemployment from 2016 and 2018 than Austria. This suggests that before the COVID-19 crisis, some slow economic convergence between the countries might have been taking place. Nevertheless, the significantly lower wages and the less favourable labour market prospects provide strong incentives for workers in BiH to (temporarily) move to Slovenia or Austria for employment.

In addition to economic ‘pull’ factors from Austria and Slovenia, there are complex factors that shape the country’s labour market dynamics and push workers from Bosnia and Herzegovina to leave their country. Because of a number of political and economic reasons (See Box 1 below) labour market trends in BiH remain quite discouraging. There were 308,000 unemployed in Bosnia and Herzegovina in 1991 and there were 405,000 unemployed in 2019, which, considering the depopulation trends of the last decades, is a significant increase (Con3Post seminar, Ljubljana). Of particular concern and with implications for the future of

the country is the issue of youth unemployment, their low levels of activity, high early school drop-out rates, and long-term unemployment (Čavalić, 2016).

Table 2: Overall labour market dynamics

	AT	SI	BiH ⁴
Annual per capita GDP in \$, in PPP ⁵ : 2018	56,871	38,749	14,962
GDP real (annual growth in %) ⁶ : 2018/Average 2016-2018	2.4/2.3	4.1/4.0	3.6/2.9 ⁷
Employment rate, population aged (15-64) (%) ⁸ 2018/Average 2016-2018	73.0/72.2	71.1/68.7	44.0/42.4
Job vacancy rate (industry, construction, services) ⁹ 2018/Average 2016-2018	2.9/2.4	2.5/2.3	NA
Unemployment rate, population aged (15+) (%) ¹⁰ 2018/Average 2016-2018	4.9/5.5	5.1/6.6	18.5/21.6
Male employment rate (15-64) (%) 2018/Average 2016-2018	77.4/76.3	74.5/72.0	54.7/53.0
Male unemployment rate (15+) (%) 2018/Average 2016-2018	5.0/5.8	4.6/6.0	17.3/19.6
Youth unemployment, population aged 15-24 (%) 2018/Average 2016-2018	9.4/10.1	8.8/11.7	38.8/46.3
Informal employment as share of total non-agricultural employment (%) ¹¹	N.D.	N.D.	18.34 %
Average monthly gross wage ¹² (in EUR)	3929/3840	1631/1576	1388 km/709,77 EUR, last quarter of 2018 ¹³
Monthly gross minimum wage ¹⁴ (in EUR)	-	843/813	

During the focus group discussion, the situation on the labour market in Bosnia and Herzegovina was described as experiencing ‘tectonic changes’, even an ‘exodus’ [of the qualified labour force] (Federal Employment Institute) mainly due to (e)migration. There is evidence that employed and unemployed, highly qualified and unqualified persons are now leaving from Bosnia and Herzegovina. These outgoing trends are creating considerable labour shortages and even structural unemployment (a lack of workers in specific sectors), as is the case for international transport. Furthermore, there is a mismatch between education and skills. During the post-conflict transition period, education has been deeply underfunded and unable to provide students with appropriate labour market skills (ILO, 2011). The low mobility of the

⁴ Unless indicated otherwise, data for BiH is from the World Bank (GDP) and the BiH 2018 Labour force survey, p. 39 (employment and unemployment numbers)

http://bhas.gov.ba/data/Publikacije/Bilteni/2018/LAB_00_2018_Y1_0_HR.pdf

⁵ World Bank <https://data.worldbank.org/indicator/NY.GDP.PCAP.PP.CD>

⁶ Eurostat: NAMA_10_GDP

⁷ <https://data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG?locations=BA>

⁸ Percentage of total population, resident population concept – LFS. Eurostat [LFSI_EMP_A]

⁹ Eurostat [jvs_a_rate_r2]

¹⁰ Eurostat [LFSQ_URGAED]

¹¹ <https://data.worldbank.org/indicator/SL.ISV.IFRM.ZS>

¹² Average single person with no children. Eurostat [EARN_NT_NET]

¹³ http://bhas.gov.ba/data/Publikacije/Saopstenja/2019/LAB_05_2018_Q4_0_BS.pdf

¹⁴ Eurostat [EARN_MW_CUR]

labour force within the country caused by ethnic discrimination of workers and difficulties of transfer of social benefits between administrative territories has further hampered labour market adjustments (Kačapor-Džihic & Oruč, 2012). Furthermore, the labour market prospects and institutional support for workers – for example through trade unions – in BiH remain low compared to Slovenia or Austria.

The combination of push and pull factors resulted in a significant outflow of workers and labour shortages in BiH, which have forced some companies to offer better pay and working conditions in order to retain the workforce, but with little lasting effects, as emigration trends continue to persist.

4.1.2. Economic and labour market conditions in construction

The construction sectors of all three countries are roughly similar in terms of their contribution to national employment and added value (see Table 3 for 2018 data). In terms of employment, the construction industry is largest in Bosnia and Herzegovina (8.6% of employment) followed by Austria (8%) and Slovenia (5.8%). In terms of gross value added, construction contributed most to the national economy in Austria (6.69%), followed by Slovenia (5.74%) and Bosnia and Herzegovina (4.69%).

However, the medium-term growth rates of the sector vary strongly. The Slovenian construction sector was one of the economic sectors that was hit the most by the economic crisis (2008-2010) and is still far behind in growth compared to other sectors in Slovenia. From 2012 to 2017, the sector grew by only 0.3%. In 2017 and 2018, the Slovenian construction sector experienced growth in all areas, but turnover has not yet returned to what it was in pre-crisis times (European Commission, 2018). The Austrian construction sector has benefited from robust growth and low interest rates in recent years. Total turnover in the Austrian construction sector in 2017 was EUR 48.5 billion which represents a 13.9% increase since 2012. In Bosnia and Herzegovina, construction, which relies heavily on infrastructural projects at the local level, grew the strongest, i.e. 25.4% over the same period.

All three countries have been experiencing shortages of construction workers in recent years. In Austria, employment in construction increased by 13.9% from 2010 to 2017 (European Commission, 2019) while the vacancy rate in construction increased from a low of 1.7 in 2014 to 4.6 in 2018,¹⁵ which is 1.7 points above the vacancy rate of the Austrian economy. The growth in employment was mainly due to an increase in the number of

¹⁵ Eurostat [JVS_A_RATE_R2]

professionals. In contrast, the share of managers and low-skilled workers decreased (European Commission, 2019). Austria has a generally well-developed VET system, but the training of new construction workers has fallen. The number of apprentices in construction companies decreased consistently from 3,420 in 2010 to 2,752 in 2018 (WKÖ, 2019: 18) as the industry struggled to attract young people (European Commission, 2019). Furthermore, training in at least one construction-related profession, such as iron benders, is no longer provided in Austria because this task is usually carried out by specialised workers from other EU countries (Con3Post Focus Group, Vienna). The increased demand for construction workers and insufficient training have contributed to significant and increasing skills shortages. Furthermore, before the outbreak of the COVID-19 crisis, growth in the construction industry and demand for construction workers was expected to continue for the foreseeable future (European Commission, 2019; Con3Post Focus Group, Vienna).

In Slovenia, the job vacancy rate in construction was even higher with 6.7 (2018), and a shortage of skilled labour was reported as one factor constraining construction companies¹⁶. The slow but continuous growth in the construction sector in the period 2016-2018 caused a rather large increase in the workforce (IMAD, 2019). The number of people employed in construction grew from January 2018 to January 2019 by approximately 9%, to 58,900 persons, of which 65% worked in specialized construction activities. In the last five years the number of workers in construction has increased by 15%.¹⁷ Now, skills shortages are particularly acute with regard to blue-collar workers. In 2018, a less educated workforce prevailed, as around 76% of employees in the construction sector were workers with secondary education.¹⁸ There is a lack of masons, carpenters, electrical engineers and electricians (Focus Group discussion). Discussants in the Focus Group in Slovenia emphasized that these labour shortages are rooted in problems deeply embedded in society. The main reasons are negative demographic trends, low interest among young people for occupations in the construction sector and the sector's bad reputation due to low wages, low scholarships, long working hours, seasonal work (in low season, during the winter, many workers are made redundant and have to apply for unemployment assistance), and low added value. In short, jobs are difficult, dirty, and most often dangerous (3 Ds). Another problem connected to skill shortages is the fact that Slovenia does not have an effective apprenticeship system for workers in construction, as, for example, Germany does.

¹⁶ <https://www.stat.si/StatWeb/en/News/Index/8278>

¹⁷ <https://www.stat.si/StatWeb/en/News/Index/8004>

¹⁸ <https://www.stat.si/StatWeb/en/News/Index/8278>

In Bosnia and Herzegovina, growth in construction is also held back by labour shortages (Federal Employment Institute, Con3Post foresight). The lack of workforce is considerable, also in many occupations directly or indirectly linked to construction, such as ceramicists, welders, builders, water-workers, carpenters, and others. The shortages have forced employers to change their attitude towards workers. If in the past they could treat workers unfavourably due to their high supply, this is no longer the case. To retain workers, some Bosnian companies are now offering incentives such as scholarships, apprenticeships, professional training, and capacity building. Despite the observed change in employers' attitude, economic development and employment opportunities remain poor. The country suffers from the lack of proper investments and the lag in external trade exchange, especially with Germany. The country has become a supplier of cheap labour not only through migration but also through the establishment of production lines of big foreign companies, especially in the textile sector (Federal Employment Institute, Con3Post foresight).

Table 3: Regional labour market dynamics in the construction sector (all data for 2018 unless otherwise indicated)

	AT	SI	BiH
Annual growth in turnover in construction 2016-17/2012-17 (%) ¹⁹	3.6/13.9	12.5/0.3	7.0/25.4
Total turnover in construction in 2017 (in billion EUR) ²⁰	48.5	4.8	1.8
Gross value added by construction industry (in percent of total added value)	6.69%	5.74%	4.69%
Employment in construction (total/share of employees aged 15-64) ²¹	340,200/ 8.0%	55,800 /5.8%	37,395 ²² (2017)/ 8.6% ²³
Job vacancy rate in construction; 2018/Average 2016-2018 ²⁴	4.6/3.4	6.7/5.7	N.D.
Full-time employment in construction, share of employees aged 15+ ²⁵	90%	95%	N.D.
Self-employment in construction, share of employees aged 15+ (%)		17 % ²⁶	N.D.
Hourly labour costs in construction (compensation plus taxes minus subsidies) ²⁷	34.6€	14.4€	3.7€ (2016)
Monthly gross minimum wage in construction	N.D.	886,6€ ²⁸ (2019)	909 KM / 464.42€ ²⁹ (2018)

¹⁹ Eurostat [TIN00149] <https://ec.europa.eu/eurostat/databrowser/view/tin00149/default/table?lang=en>

²⁰ Own calculation based on Eurostat data [nama_10_a10]

²¹ Own calculation based on Eurostat data [lfsa_esegn2]

²² http://www.bhas.gov.ba/data/Publikacije/Bilteni/2019/NUM_00_2018_TB_0_BS.pdf

²³ Own calculation based on ILO [EMP_2EMP_SEX_ECO_NB_A]

²⁴ Eurostat [jvs_a_rate_r2]

²⁵ Own calculation based on Eurostat [lfsq_epgan2]

²⁶ <https://www.stat.si/StatWeb/en/News/Index/8004>, ref. year Jan. 2019 (10. 3. 2020)

²⁷ Eurostat [LC_LCI_LEV]

²⁸ <https://www.gov.si teme/minimalna-placa/> ref. year 2019 (8. 3. 2020)

²⁹ Data for the last quarter of 2018 from

http://bhas.gov.ba/data/Publikacije/Saopštenja/2019/LAB_05_2018_Q4_0_BS.pdf,

In terms of wages and labour costs, the three countries show the same pattern in the construction industry as in the overall economy. Hourly labour costs are by far the highest in Austria (34,6€), followed by Slovenia (14,4€) and Bosnia and Herzegovina (3,7€). In other words, labour costs in Austria are nearly 10 times as high as in Bosnia and Herzegovina. The contrast with regard to wages is similar. The minimum monthly gross wage in construction in Bosnia and Herzegovina was 909 KM (464€) for the last quarter of 2018. In Slovenia, the minimum monthly gross wage in construction is the same as the minimum wage in other sectors, i.e. 843€ in 2018 and 887€ in 2019. Austria does not have a statutory minimum wage. However, wages and overall labour costs in construction are high compared to other European countries. The hourly employment costs including taxes and social contributions of a construction worker in 2018 were estimated to be 34,6€ compared to an average of 24,9€ in the EU 28. The total costs consist of wages (23,9€) and non-wage costs like taxes and social contributions (10,7€). The share of non-wage costs (30.8%) in the Austrian construction sector is comparatively high (EU 28 average 23.7%)³⁰. This not only means that the construction workers tend to earn significantly higher wages in Austria than in Slovenia and even more so Bosnia and Herzegovina, but also that hiring construction workers posted to Austria can be beneficial for employers because they can benefit from lower social contribution payments in sending countries like Slovenia.

4.2. Labour migration and posting trends

The three countries in this posting flow have, of course, different migration trends. As Table 4 indicates, net migration is positive for both Austria and Slovenia, while it is alarmingly negative for Bosnia and Herzegovina. From the three countries, we can see that BiH is mostly a country of origin for immigrants whose preferred destinations are EU and neighbouring countries. Slovenia has become a destination country, especially for TCN workers from several Balkan countries, while outgoing migration is mostly towards the EU. Whereas Austria seems to be predominantly a receiving country for both EU and TCN workers, mostly coming from its neighbouring states. Below we present a more detailed account of the migration trends and the factors that influence these trends in each of the three countries.

Statistics on migration in BiH are difficult to obtain since according to the director of the Agency for Statistics of Bosnia and Herzegovina, there are no mechanisms to assure a

³⁰ Eurostat [LC_LCI_LEV] https://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=lc_lci_lev&lang=en

quality database of (e)migration also due to politically motivated speculations about its extent (see Čičić et al., 2019, and *Migracioni profil*, 2019). Nevertheless, the estimates available give us a sense of the overall trends. The number of individuals from BiH, who have obtained a residence permit in 32 countries of Europe in 2018, is 54,107, while the number for the last 10 years is 228,230 individuals. The number of permits increased by 45% between 2018 and 2017 and by 37% between 2017 and 2016, which indicates a strongly growing emigration trend. Most permits were issued in Germany, Croatia, Slovenia, and Austria (Čičić et al., 2019). Interestingly, 42,6% of residence permits were issued for a limited period of 3 to 12 months, and less than 10% of those who leave deregister their residence in Bosnia and Herzegovina, which suggests a considerable share of emigration is circular/temporary (most probably also posting). The distribution of this temporary migration among destination countries is unclear, with the exception of emigration to Croatia and Montenegro, which, as previous research confirms, is mostly temporary, as many BiH workers in construction and hospitality return home at the end of summer (Kačapor-Džihčić & Oruč, 2012). The increase in the number of permits can also be linked to the relatively easier mobility for BiH citizens to the EU enabled by the visa facilitation agreement between BiH and the EU, i.e. the *AGREEMENT between the European Community and Bosnia and Herzegovina on the facilitation of the issuance of visas*³¹ since 2007 and the eventual removal of the visas for the Schengen area since 2010.

For all three countries, most emigrants and immigrants are of working age (Table 4), which might indicate also that the main reason for their mobility is labour migration. However, in the case of BiH, economic reasons are not the only main motivation. Except for family reunification after the war, student emigration, and economic migration, emigration is also increasingly caused by the general climate of insecurity and political tensions in the country (see Box 1: *The political and demographic drivers of emigration in Bosnia and Herzegovina*; but also Čičić et al., 2019, Con3Post Focus Group, 2019; Kačapor-Džihčić, 2012; MDG Achievement Fund, n.d.). The results of a large-scale survey among 2,028 respondents residing in Bosnia and Herzegovina (Čičić et al., 2019) corroborate these findings: 49% reported work as the main reason for emigrating (to find a better-paid job or to find a job outside the country), whereas 38% stated ‘general security’ as their main reason. Of all respondents, 34% stated they would permanently leave Bosnia and Herzegovina, 24% would leave temporarily and only 22% expressed no intention to emigrate. They perceived unemployment, nepotism, corruption,

³¹ <https://www.auswaertiges-amt.de/blob/286858/7d400ce193ce935890fd6e3037b52708/eu-bih-abkommen-data.pdf>

the poor living standards, and political issues as the main problems in the country. Institutional discrimination of ethnic minorities is also a highly relevant reason for migration in a post-conflict BiH society (Efendic et al. in Čičić et al., 2019). Another important migration trend is internal migration from rural to urban areas, which according to the European Council on Foreign Relations report is higher than international migration (Vracic, 2018).

Box 1: The political and demographic drivers of emigration in Bosnia and Herzegovina

The economic development in BiH has been strongly influenced by the collapse of Yugoslavia, the subsequent state-building process, and the transition to a market economy. As elsewhere in the Western Balkans, economic growth has been quite volatile with the early twenty-first century slight improvements curtailed by the economic crisis of 2009 (ILO, 2011). The principal challenges to economic development include the collapse of key industries of Yugoslav times, the limited range of in-country production, and high dependence on foreign markets and their imports. In addition, the instability of the newly introduced political and economic system has resulted in a sharp increase in unemployment, low living standards, and weak social security systems (ibid.). High unemployment and poor-quality employment are due to skill mismatches and to the lack of jobs in Bosnia's weak economy, especially in the formal private sector (Friedrich Ebert Stiftung, 2020).

Politically, the country is highly fragmented, which means that although there is a Department of Labour Legislation at state level within the Ministry of Civil Affairs, labour legislation and policies are designed and enacted at the regional level of both entities and the Brčko District. Likewise, social dialogue takes place primarily at the level of entities and the Brčko District, and all have formed their own Economic and Social Councils (ILO, 2011). This is strongly influenced also by the ethno-national divisions in the country and its overly complex administrative (entity and cantonal) structures (Federal Employment Institute, researcher 1, Con3Post foresight). The complicated political and administrative structure is intertwined with the limited competence of national institutions and the weak interest of Bosnian political elites to comply with EU recommendations and move past the longstanding institutional deadlock (Huszka, 2020).

The demographic composition of the population has largely been affected by the war causing a significant process of depopulation in the country. Although migration from Bosnia and Herzegovina, mostly to Western Europe, took place long before the outbreak of the war in 1992, during the 1992-1995 war an immense territorial redistribution of the population occurred (Kadusic & Suljic, 2018). Bosnia and Herzegovina had 4,377,033 inhabitants in 1991, whereas in 2013, when the latest census was conducted, the number was 3,531,159³² (Con3Post seminar, Ljubljana).³³ Apart from the war, the reduction of the population is attributed to both natural decline and the negative migration balance. Around 2.2 million people were displaced from their pre-war settlements and around 1.2 million have sought refuge and other kinds of protection in different countries (Pasalic & Pasalic, 2016). After the war, the administrative division of the country into entities and ethnic homogenization has further deepened the political instability and hindered its economic and social development (Kadusic & Suljic, 2018). Current population trends in Bosnia and Herzegovina continue to be discouraging: falling fertility rates, negative natural increase (a higher number of deaths than births), depopulation (decrease in the number of the population), negative net migration, and rapid ageing (Kadusic and Suljic, 2018; Čičić et al., 2019). And since there are no institutionalized population policies in the country, similar demographic trends could be expected in the future (Kadusic and Suljic, 2018).

Qualitative research has also revealed that the decision to migrate links the lack of a sense of security to the perception of an uncertain future (Čičić et al, 2019), which has resulted in a strong intention to emigrate also among employed individuals and even those with 'good' jobs (Čičić et al., 2019). In terms of 'brain drain' (percentage of students and highly-educated

³² Methodologies of censuses are not directly comparable. From the Second World War until 1991, also persons temporarily working abroad and their family members residing there were included in the population of Bosnia and Herzegovina which was in accordance with the concept of de iure population vs. usual place of residence (Čičić et al., 2019).

³³ For the official source see also: <http://www.bhas.gov.ba/Calendar/Category/14#>

individuals that are going abroad), Bosnia and Herzegovina is the fifth-‘worst’ country in the world, followed only by Serbia, Burundi, Haiti and Algeria (Barnes & Oruc, 2012; Con3Post seminar, Ljubljana). According to the World Bank estimates (in Čičić et al., 2019), the percentage of emigration from Bosnia and Herzegovina is 44.4%, which positions the country on 16th place among the 214 countries they collect data on. According to the Ministry of Human Rights and Refugees and the Ministry of Security of Bosnia and Herzegovina, the number of emigrants born in Bosnia and Herzegovina and residing in other countries is 1,691,350, and according to the World Bank, this number is 1,638,113, since they only take into account the first generation of migrants (in Čičić et al., 2019). The Ministry of Security estimates that the total number of BiH emigrants and their descendants is around 2 million (*Migracioni profil*, 2019).

Labour emigration is facilitated by public agencies, such as the Labour and Employment Agency of Bosnia and Herzegovina, in cooperation with the employment services of both entities and the Brčko district, which has signed bilateral agreements with Germany, Slovenia, Serbia and Qatar, and therefore acts as an intermediary for the employment of BiH citizens to these countries. The agreement with Germany is specific to the health sector and only for individuals who have completed their secondary education, passed a professional exam, and have a B1 level of German.

Immigration to BiH remains small-scale due to the limited opportunities for employment as well as its complex bureaucracy (IOM, 2014). Long-term immigrants seem to have equal social and economic rights to the rest of the population, while temporary migrants do not always have immediate access to the labour market and cannot change jobs (Vankova, 2014). The foresight discussion participants confirmed the country is largely unprepared for recent ‘refugee’ arrivals as well as labour-related migrations. The number of issued permits for temporary stay has been increasing steadily from 2009 to 2015 but has been decreasing from 2015 to 2018 due to the interruption of infrastructural works (e.g. electricity plant building and the highway Turcin-Sarajevo) and the decline in the number of students from Turkey (*Migracioni profil*, 2019). In 2018, 10,756 permits for temporary stay were issued, mostly (59%) for citizens of Serbia (2,101), Turkey (1,990), Croatia (970), Montenegro (737) and Northern Macedonia (511). Only 23,88% were issued with a work permit, while the rest was issued for family reunification or education. According to the representative of the Federal Employment Agency, the statistics demonstrate that there is no systematic recruitment of workers in specific sectors into Bosnia and Herzegovina, since most work permits are issued to education and cultural staff, entrepreneurs and/or managers (Con3Post foresight).

Participants in the joint visit were somehow sceptical that either refugees or other groups of foreign workers would be willing to reside and work in Bosnia and Herzegovina. They viewed Bosnia and Herzegovina as a transit country on the way to the West, also because they have invested large sums of money into their journey, often through exploitative practices of employers and/or their recruiters (trade union representative 1, 2; researcher 2). This is in line with the fact that Bosnia and Herzegovina, as the other Western Balkans countries, has granted only hyper-temporary protection (Sardelić, 2017) to the transiting individuals both during the so-called refugee crisis in 2015/2016, as well as currently, providing only very minimal standards of protection and inclusion for these individuals.

Table 4: General labour migration and posting trends and migration and posting trends in construction (all data for 2018 unless otherwise indicated)

	AT	SI	BiH
General labour migration and mobility trends			
Net migration ³⁴	38421	14928	-107,926 ³⁵
Total number of emigrants	67212	13527	4113 ³⁶
Total number of immigrants	105633	28455	34,803 ³⁷
Total EU migrants received	65327	3381	ND
Total TCN migrants received	30553	20720	ND
Share of immigrants of working age (19-65 years old) (in %)	74,90%	79,20%	ND
Share of emigrants of working age (19-65 years old) (in %)	75,70%	76,10%	ND
Main countries of destination	Germany, Switzerland	Germany, Austria, BiH, Croatia, Serbia	Germany, Austria, Croatia, Slovenia, Serbia
Main countries of origin ³⁸	DE, RO, HU, Serbia, Croatia	BiH, Serbia, Kosovo, N. Macedonia, Croatia, BG	Serbia Turkey, Croatia, Montenegro, Northern Macedonia
Total number of outgoing posted workers (Art. 12 estimate)	88,117	58.917 ³⁹	-
Total number of incoming posted workers (Art. 12 estimate)	119,907	9.173 ⁴⁰	-

³⁴ Eurostat [migr_imm1ctz] and [migr_emi1ctz]

³⁵ <https://data.worldbank.org/indicator/SM.POP.NETM?locations=BA>, ref year 2017

³⁶ <http://www.msb.gov.ba/PDF/010720191.pdf>

³⁷ <https://data.worldbank.org/indicator/SM.POP.TOTL?locations=BA&view=chart>, reference year 2015, international migrant stock

³⁸ Statistik Austria (2020).

https://www.statistik.at/wcm/idc/idcplg?IdcService=GET_NATIVE_FILE&RevisionSelectionMethod=LatestReleased&dDocName=076742

³⁹ De Wispelaere et al., 2020, individual persons, reference year 2018.

⁴⁰ De Wispelaere et al., 2020, ref. Year 2018

Labour market share of incoming posted workers	2.0%	1.0%	-
Total number of TCN posted workers (national data)	15,296 ⁴¹ (2019)	ca. 25.172 ⁴² (2019)	-
Main countries of destination for posted workers	DE, IT, CH, FR	Germany (60 %), Austria, Belgium Croatia, Italy ⁴³	-
Main countries of origin of posted workers received	DE, SI, SK, IT	Croatia, Germany, Austria ⁴⁴	-
Main countries of origin of TCN posted workers received	BiH, Serbia, Ukraine, Turkey, N. Macedonia, Kosovo, Belarus	BiH, Serbia, Kosovo ⁴⁵	-
Labour Migration and mobility trends in construction			
Total number of immigrants in construction		30 % ⁴⁶	ND
Total number of incoming posted workers in construction (numbers and/or %)	64,3% (2017) ⁴⁷	26,4% (2017) ⁴⁸	-
Total number of outgoing posted workers in construction (numbers and/or %)	45.6% (2017) ⁴⁹	59,4 % ⁵⁰	-
TCN incoming posted workers in construction (numbers and/or %)	15.4% ⁵¹	N.D.	-
TCN outgoing posted workers in construction (numbers and/or %)	N.D.	30–50 % ⁵²	-

According to the Statistical Office of Slovenia (SURS, 2020), there has been an increase in the number of people who have immigrated to Slovenia from 16,623 in 2016 to 18,808 in 2017 to 28,455 in 2018, including 4,354 Slovenian return migrants. As only 13,527⁵³ individuals moved out of the country in 2018, the country had a positive net migration rate. Slovenia received a total of 6,762 EU migrants and a total of 17,338 TCNs. The share of immigrants of working age was 67%, while the share of emigrants of working age was 47.3%. The main countries of origin of immigrants are BiH, Serbia, Kosovo, North Macedonia and Germany. The last is also one of the main countries of destination for people leaving Slovenia.

⁴¹ National data on posting to Austria is collected by the financial police based on forms which employers have to submit in line with the national anti-dumping law (LSD-BG). The data includes data on posted workers (ZKO3) and seconded workers (ZKO4). Data supplied by the Federal Ministry of Finance.

⁴² ZZZS, correspondence, (25. 3. 2020)

⁴³ ZZZS, correspondence, reference year 2019, (26. 3. 2020)

⁴⁴ De Wispelaere et al., 2020: 24; reference year 2018, only valid for PW send under article 12.

⁴⁵ ZZZS, correspondence, reference year 2018, (25. 3. 2020)

⁴⁶ <https://www.stat.si/StatWeb/en/News/Index/8278>, ref. Year 2018 (11. 3. 2020)

⁴⁷ De Wispelaere & Pacolet, 2019: 32.

⁴⁸ Ibid.

⁴⁹ De Wispelaere et al., 2020: 30.

⁵⁰ De Wispelaere et al., 2020, reference year 2018.

⁵¹ According to BUAK, 4,614 construction workers were posted to Austria of which 711 were from third countries. The BUAK numbers are significantly lower than the estimates by De Wispelaere & Pacolet (2019) and De Wispelaere et al. (2020) because BUAK uses a narrower definition of 'construction industry'.

⁵² ZZZS, correspondence, reference year 2018, (25.3.2020)

⁵³ The official figures include only those persons who have checked out of their tax residence, regardless of nationality.

Other countries of destination are Austria, BiH, Croatia and Serbia (SURS, 2018). Several countries are both countries of destination and origin. The reason for these trends could be the historical ties between Germany and Austria on the one hand, and the republics of the former Yugoslavia on the other.

The extensive labour migration from the Western Balkans to Slovenia is a result of historical reasons, geographical proximity, and the comparatively better economic situation of the receiving country. After joining the EU, Slovenia was growing economically and receiving more migrant workers from the region, a trend that declined during the economic crisis of 2009 and restarted in 2015 (SURS, 2020). The Slovenian government supported the recruitment of workers from the region by signing a bilateral agreement on the employment of workers with Bosnia and Herzegovina⁵⁴ (March 2013) and later with Serbia⁵⁵ (September 2019). Conditions for their recruitment include registration with the Employment Office in the country of origin, a justifiable demand for labour outside the domestic market, a one-year contract with a Slovenian employer, which upon completion gives them unrestricted access to the Slovenian, and eventually EU, labour market.

Workers from Bosnia and Herzegovina are recruited via both formal channels (e.g. through employment services) and informal channels (e.g. through individual workers, personal acquaintances or family ties) (Federal Employment Institute). While most workers from Bosnia and Herzegovina go to Germany, Austria, Croatia and Serbia, a considerable number also go to Slovenia. Focus group participants argued the reason was that it was easier to obtain residence and work permits in Slovenia, in comparison to, for instance, Germany, where procedures at the embassy are supposedly much slower. They also believed that companies were using the swifter procedures to Slovenia as a pull factor that has over time developed into a sort of a business model, in which Slovenian companies recruit workers from the former Yugoslav republics (not only from Bosnia and Herzegovina, but lately also from Kosovo) in order to send them to other EU countries, often through posting.

Like Slovenia, Austria is also receiving more immigrants than has people emigrate. Despite a restrictive labour migration regime, since 2011 immigration from Central and Eastern Europe to Austria has doubled, if we consider long-term and temporary migration (Fuchs et al., 2018). Nonetheless, TCN labour migration that aims to fill labour shortages is supported by the Austrian government. For example, Austria included several construction sector

⁵⁴ <https://www.uradni-list.si/1/objava.jsp?sop=2012-02-0086>

⁵⁵ <https://www.uradni-list.si/glasilo-uradni-list-rs/vsebina/2019-02-0033?sop=2019-02-0033>

occupations including technicians, roofers, concrete constructors, carpenters and tilers in a list of shortage occupations to increase migration from non-EU countries in 2018 (European Commission, 2019). The total number of immigrants in Austria for 2018 was 105,633, out of whom 65,327 were EU citizens and the rest were TCNs (30,553). The significant differences in wage levels between Austria and new EU Member States as well as non-EU countries in the Western Balkans (see Table 4), create strong incentives for labour migration, even if immigrants are not always paid Austrian collective agreements' rates (Gagawczuk, 2019; Krings, 2019).

4.2.1 Posting Trends

Although many BiH workers might, at some point in their working life and sometimes immediately, be posted, their posting is not conducted directly from their country of origin but can be traced in the overall data of workers posted from and to the different EU Member States. Therefore, in this section we discuss posting trends in Slovenia and Austria, and where possible the presence and numbers of BiH workers posted from Slovenia and to Austria.

Slovenia is both a receiving and a sending country for posted workers. The number of received posted workers, however, is much smaller than those sent from Slovenia to other EU countries. For example, in 2018, the number of incoming posted workers was 9,173. Differently from 2017, when Slovenia issued the highest number of portable documents A1 forms also referred to as PDs A1⁵⁶ (almost 191,000), in 2018 only 127,059 PDs A1 were issued, or 12,4 % of the employed population in Slovenia (De Wispelaere et al., 2020: 20, 21), which in relative terms makes it one of the main sending countries. The sudden decrease between 2017 and 2018 could be ascribed to regulatory changes such as the new law on transnational provision of services (i.e. posting of workers) that came into force in January 2018. Although there is still no official analysis of the legal implications of this law in practice, the focus group participants, in particular the representative of the Ministry of Labour, strongly emphasized that stricter conditions for issuing PD A1 make Slovenian employers more cautious in deciding whether or not to post workers abroad. However, the negative trend was short-lived as in 2019

⁵⁶ According to Article 19 of the Implementing Regulation (EC) No 987/2009) a certificate, also known as the portable document A1 form, is provided by the Member State where an employer is registered to at the request of that employer or a person employed by them, which establishes that the holder is properly affiliated to the social security system of the Member State which has issued the certificate. PDs A1 are used for various cases: pursuing activities in another Member State on the basis of Article 12; pursuing activities in two or more Member States on the basis of Article 13. Most of the data on posting are estimates based on the number of PDs A1 issued by the sending countries (for more see De Wispelaere et al., 2020).

the number of issued PDs A1 again rose to 146,157.⁵⁷ Slovenia is among those Member States that send more than 40,000 PDs A1 to one country. In 2019, the main countries of destination for posted workers were Germany, with over 59% of posted workers, Austria, Belgium, Croatia, and Italy. The main countries of origin of posted workers that Slovenia received in 2018 were Croatia, Germany, and Austria (De Wispelaere et al., 2020: 23-24).

According to the Slovenian *Employment, Self-employment, and Work of Foreigners Act*, even TCNs that obtain a residence and work permit, and have a signed contract valid in Slovenia, can be posted and work temporarily in another EU Member State. Data provided by the Health Insurance Institute of Slovenia (ZZZS) indicate that the total number of TCN posted workers in 2019 was around 25,200,⁵⁸ out of whom more than 50% are from BiH (almost 17,000), 6,181 from Serbia, and around 2,000 from Kosovo. The rest are mostly from North Macedonia and Montenegro.

The dominant posting sector for Slovenia is construction. In 2018, 59,4% of the workers in the Slovenian construction sector were posted (De Wispelaere et al., 2020: 34). That year, only 70% of persons employed in construction were Slovenian citizens.⁵⁹ The ratio changed in 2019, as there were 62% of Slovenian citizens and 38% of foreign citizens employed in the construction sector,⁶⁰ of whom 22% were from Bosnia and Herzegovina, 8% from Kosovo, 3% from North Macedonia, and 6% other nationalities.⁶¹ 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.⁶²

Posting to Austria increased consistently from 2010 (59,642) to 2017 (141,046)⁶³. From 2017 to 2018, however, the number of posted workers to Austria decreased to 119,907. Posting from Austria occurs at much lower levels but follows the same upward trajectory from 25,957 in 2010 to 88,117 in 2018. Most posted workers come from Germany (60,753) followed by Slovenia (17,405), Slovakia (9,645) and Italy (7,193). Posting from Austria primarily occurs to Germany (26,108), Italy (3,638), Switzerland (3,274) and France (2,561). The few data available indicate that most posting to and from Austria occurs in construction: 45.6% of workers posted from Austria in 2018 and 64.3% of those posted to Austria in 2017 (De Wispelaere & Pacolet, 2019). However, the real share is likely to be even higher. Focus group

⁵⁷ E-mail correspondence with Health Insurance Institute, March 26, 2020.

⁵⁸ E-mail correspondence with Health Insurance Institute, March 26, 2020.

⁵⁹ <https://www.stat.si/StatWeb/en/News/Index/8278>

⁶⁰ <https://www.stat.si/StatWeb/en/News/Index/8004>

⁶¹ <https://www.stat.si/StatWeb/en/News/Index/8004>

⁶² E-mail correspondence with Health Insurance Institute, March 26, 2020.

⁶³ Unless indicated otherwise, all numbers are from De Wispelaere et al., 2020.

participants said that in order not to pay the mandatory contributions to the Construction Workers' Annual Leave and Severance Pay Fund (BUAK), employers through specialized consultants manage not to declare all workers, a circumstance that workers are likely not aware of.

Posted workers play a significant role in the Austrian construction sector. While posted workers account for only 2% of the labour force, posted workers made up an estimated 21% of total employment in construction in 2017 (De Wispelaere & Pacolet, 2019). Further, posting is becoming increasingly important as a form of labour migration. Foreign labour has always played an important role in the Austrian construction industry. However, between 2011 and 2016, the number of migrants directly employed by Austrian construction companies increased by 20% while the number of construction workers posted to Austria doubled (Krings, 2019: 29). As in the case of individual migration, the comparatively higher wages that construction workers would receive in the country, even if they are not collective bargaining rates, might be the main incentive for posted workers in general, and TCN posted workers in particular, to agree to be posted to Austria.

Apart from the PD A1 forms, Austria also collects national posting data based on the number of posting notifications (so-called ZKO4 forms for the transport sector and ZKO3 forms for all other sectors) submitted to the Austrian Financial Police by employers who intend to post workers to Austria in accordance with Article 19 Paragraph 3 of the Austrian Act to Fight Wage and Social Dumping (LSD-BG). The ZKO figures differ from the PD A1 figures, as there were 657,289 ZKO3 notifications in 2017 according to data provided by the Austrian Financial Police, while the number of PDs A1 reported was 141,046. The ZKO3 figures for 2018 and 2019 have been lower, 206,209 and 212,233 respectively, which make 2017 a particularly high traffic year for Austria's incoming posted workers. ZKO3 data also clearly show that most TCN posted workers to Austria come from BiH with 38,107 BiH workers posted to Austria in 2017, 3,176 in 2018, and 6,138 in 2019. Other relatively important third country nationalities posted to Austria are Serbian, Kosovar, and North Macedonian workers, but the figures are much smaller than for BiH workers.

4.3. Labour rights, violations and representation of posted workers who are third country nationals

There are multiple labour rights violations reported in Bosnia and Herzegovina, mostly attributed to the high degree of informality in employment relations, i.e. many workers operate outside the scope of the legal framework. In 2009, a third to half of all employment in the

country was believed to be informal, although around 5% of overall payroll contributions in Bosnia and Herzegovina are lost in total through informal employment, as many informal workers also receive social security benefits (ILO, 2011; Schneider, Buehn & Montenegro, 2010). Informal employment is more widespread in non-urban areas, and around 40% of all construction workers work informally, while semi-informal salary schemes are also common in construction. Forms of informal employment include: working while receiving unemployment benefits, working informally while not receiving any form of social protection, and informal networks of formal workers who work on mainly smaller and private construction sites informally (for example, the small housing and reconstruction market) (ILO, 2011). Semi-informal salary schemes include: cash-based operations such as small and minor construction works, paying wages as part of the profit or dividend of a company where only 10 instead of 34-40% payroll tax is deducted, and registering workers as students and paying them through student work centres which only tax income by 12%. Criminal practices such as money laundering have also been identified. Although there are no more recent data, the participants of the focus group believe these issues continue to persist to the present day.

Workers are often unaware of the implications and possible consequences of working informally and they have a weak bargaining position in relation to their employers. Furthermore, the very complex government structure and the overlapping competencies of agencies and different levels of government make drafting and enforcement of coherent and targeted policies highly challenging, costly, non-efficient and non-effective, as well as burdened with different negative trends and decision-making bottlenecks (Kačapor-Džihic & Oruč, 2012; see also ILO, 2011). Trade union representatives in the focus group further suggested that the complexities of the system are also politically oriented towards the facilitation of social dumping and the exploitation of 'leased' BiH workers from EU countries.

While the informal economy in Slovenia is not as widespread as in Bosnia and Herzegovina, multiple irregularities are identified in terms of the implementation of the legal framework for the employment of Slovenian and TCN workers posted from Slovenia (IRSD, 2018), in particular in construction (Focus Group). Breaches in the law include failure to register the employment of workers in Slovenia at the ESS before they actually start working, and failure to provide statutory documentation on demand by foreign companies operating in Slovenia. IRSD recorded 156 cases of violations in 2017 and 73 other cases in 2018, according to the *Employment Relationship Act* on the mandatory components of the employment contract for workers who are posted abroad, namely the supplementary provisions where duration, holidays, minimum annual leave, salary and the currency in which it is paid, additional health

insurance, other entitlements, the manner of protecting workers' rights, and the conditions of return are stipulated (IRSD, 2018). Other violations include double employment contracts, double pay slips, the application of sending country salary pay rates, i.e. the Slovenian minimum wage while part of the salary is paid out as other revenues (e.g. per diem), non-payment, and poor accommodations (Focus Group; IRSD, 2018). The representative of the Ministry of Labour, Family, Social Affairs and Equal Opportunities emphasized that the main issue in posting is unlawful provision of workforce (and not provision of services) performed on the basis of the business cooperation contracts, where workers that should be posted formally work for the client under their supervision and with their equipment, thus depriving workers of their posting entitlements.

A particular challenge pose letterbox companies, who manage to avoid inspections by regularly changing the seats and appointing virtual representatives of companies, especially foreign nationals against whom it is difficult for Slovenian enforcement agencies to conduct proceedings (IRSD, 2018: 63). The representative of the Ministry of Labour, Family, Social Affairs and Equal Opportunities emphasized that the new Transnational Provision of Services Act of 2018 is going to prevent or at least limit such bad practices. He also suggested that the decrease in the number of postings from Slovenia is due to the new law, but no analysis of the impact of the Transnational Provision of Services Act is available yet.

The representatives of the Slovenian trade unions and NGOs are also openly opposing the working permit condition of one-year commitment to the same employer, as they have recorded violations of workers' rights during that one year. Workers become highly dependent and therefore compliant with the employer, as any form of resistance is threatened by the interruption of the contract and the loss of the permit. Nonetheless, contrary to the belief that TCN workers use posting via Slovenia as a springboard to the larger EU market (IRSD, 2018), the ESS representative stated that TCNs prefer working as posted workers via Slovenian employers, because they can work more hours, earn more, and do not have to deal with arranging travel and accommodation.

Informality per se is also minimal in Austria, but violations of labour rights exist and in the case of posted workers are mainly in terms of working hours, social contributions and wages. Restrictions on maximum work hours are ignored and/or work hours are not fully paid, e.g. full-time workers are declared as part-time. Allowances, supplements and special payments like holiday payments or sick pay are sometimes omitted or partially paid. Posted construction workers are entitled to holiday benefits under the collective agreement for the construction sector but do not often claim them, either because they are unaware or because the employers

do not declare them as skilled construction workers and do not pay the contributions to BUAK (Focus Group). In addition, some employers charge posted workers high rents for accommodation or other expense fees to reduce the effective wage (Schmatz & Wetzel, 2014). Austrian collective agreements stipulate surcharges of up to 30% for work in certain areas, which posted workers often do not receive, and in other cases they are falsely classified as unskilled to lower their pay (Krings, 2019; see also Gagawczuk, 2019).

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 Austria is another problematic practice (Gagawczuk, 2019; Haidinger, 2018b; Krings, 2019). The workers never leave Austria, but on paper are employed in Slovenia. Fake postings also occur in the field of TCN workers. 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, a practice our focus group participants find quite commonly used by Slovenian companies that post TCN workers from the Western Balkans to Austria.

According to participants of the Austrian focus group, there is a whole ‘posting industry’ consisting of letter box companies and specialised consultancies in Slovenia which help Austrian construction companies to reduce costs by paying only the lower Slovenian social contributions for the workforce they employ. These firms provide ‘full service’, which includes starting the company and providing all required documents:

“I can tell you the names of three law firms right away which serve you well when you are an employer and you want to found a company in Slovenia to post workers to Austria” (GBH)

“They provide you with folders with all the necessary forms and papers [posting companies have to provide to Austrian enforcement agencies] for the right collective agreement” (Financial Police).

Fake postings increase the vulnerability of posted workers in particular when posting occurs through letter box companies, especially when they go bankrupt and fail to honour their obligations such as unpaid wages. Even when chain liability 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.

4.3.1 The protection of TCN posted workers

The high levels of informality and unemployment have contributed to the degradation of workers’ rights and massive violations of these rights by employers in Bosnia and Herzegovina.

According to Demir (2011), it is difficult to even talk about the notion of decent work in Bosnia and Herzegovina, since many union representatives describe the state of the labour market in the country not as a struggle to earn more or have better labour market conditions, but simply as a struggle to save the mere right to work. This attitude is combined with a general low trust in unions which are often perceived as incompetent organizations that tend to be corrupt, weak, politically biased, with no financial and professional capacities, and not supported by any political forces in the country (Demir, 2011; Foresight discussion, 2019; Kečo, 2018). The lack of a tripartite dialogue at the national level and disharmonized socio-economic policies between the entities further weaken the role of trade unions and consequently the position of workers in the country (Demir, 2011). Apart from the inability of the unions to organize workers, especially in the private sector, and the general disinterest and scepticism towards unions, the fear of trade union organizing is also an issue, as many employers, including multinational companies, directly and indirectly pressure workers not to join any unions and actively obstruct their unionization efforts (Con3Post foresight, researcher 1). Therefore, trade union density is, according to estimates, around 50%, although accurate data are not available, since there exist many companies where workers have not received salaries for months and years, therefore payment of union membership fee is not an accurate predictor of trade union membership. In construction, 30% of the formal workers are unionized, although 75% to 80% of construction workers make use of union structures and services without contributing to the union on a regular basis. Similarly, about 15% of employers are organized in the construction sector, but only 30 to 40% of these pay regular membership fees (Kečo, 2018).

The other available protection mechanism is the judicial system, which is equally dysfunctional, as there is a large backlog of labour dispute cases, lengthy and expensive court procedures, widespread corruption and problematic executions of court decisions (ibid.).

In Slovenia, public authorities, trade unions and NGOs are providing workers' protection and collective representation. Relevant national authorities in the area of posting of TCN workers are the Ministry of Labour, Family, Social Affairs and Equal Opportunities (MDDSZ), the Labour Inspectorate (IRSD) and Employment Service of Slovenia (ESS), the Health Insurance Institute of Slovenia, the Ministry of Interior and Administrative Units. MDDSZ prepares laws and other regulations related to employment, including that of foreign workers and posting. The bodies under MDDSZ active in posting are: Labour Inspectorate and ESS. Labour Inspectorate supervises the implementation of employment relations laws and other regulations such as collective agreements, while ESS is competent for accepting the applications for providing services using posted workers and for issuing approvals of the single

residence and work permit for posted workers. The Health Insurance Institute of Slovenia (ZZZS) is responsible for healthcare as well as the A1 Certificate. Other competent authorities are Administrative Units that issue single work and residency permits for cross-border providing of service with posted workers, based on Article 45 of the Aliens Act which stipulates the conditions required for the worker to obtain a single work and residency permit as a posted worker. Administrative Units also issue single work and residency permit for TCNs who can be posted to EU Member states.

The Labour Inspectorate monitors workplaces and investigates reported irregularities and violations of (posted) workers' rights. IRSD is the key Slovenian monitoring authority and user of the IMI system, and although they do not have inspectors specialised on posting and are understaffed, inspectors still pay special attention to posting. The Association of Free Trade Unions of Slovenia – Trade Union of Workers in the Building Sector is collectively representing domestic and foreign construction workers at the policy level, as well as by providing information and offering free legal advice to its members. In addition, its officers are involved in transnational projects and networks on posting, e.g. the Fair Working Conditions network. The Independent Trade Union of Slovenia, established in 2016, is also an eager and progressive actor in protecting workers' rights in Slovenia by providing information and legal counselling. However, the most active in workers' protection and collective representation in Slovenia is the Counselling Office for workers, which is dedicated to advocating, protecting, promoting and developing the labour, social and status rights of workers and other vulnerable groups, with particular attention to respect for the rights of posted workers. Since its foundation in 2016, this NGO has helped many Slovenian and TCN posted workers who were left in Germany or Belgium by their Slovenian employer, without payment and without any money to return to Slovenia or to their home countries.

Foreign workers are under-represented in the unions and even the Counselling Office is approached mainly when workers have dire circumstances (FG discussion). According to the focus group and foresight participants, the position of trade unions in Bosnia and Herzegovina could help us also understand why some of the migrant/posted workers are reluctant to approach union assistance, have little confidence in the work of trade unions and are reluctant to join them. In addition, most posting recruitment is done on networks of trust, which means that unless the employer breaks the trust, workers would not go to Slovenian authorities and/or unions (Focus Group).

Austria has the most complex and advanced system of worker protection. As a corporatist country, collective agreements play a central role, and only in construction there are

19 different collective agreements. Each collective agreement includes definitions of occupations and task (e.g. apprentices, unskilled workers, skilled workers) and the minimum hourly and monthly wage to be paid for each occupation, the level of benefits like holiday pay, weekly and monthly work hours and overtime rules (WKÖ, 2019)⁶⁴. Much of the regulatory framework is geared towards preventing wage and social dumping, i.e. the undercutting of Austrian wages and social security systems through the employment of workers at conditions below the standards set by Austrian laws and collective agreements. In particular, the adoption of the Law Against Wage and Social Dumping (*Lohn- und Sozialdumping-Bekämpfungsgesetz* – LSD-BG) in 2011 specified the equal payment rule for domestic workers and posted workers (Krings, 2019: 33). An update in the national anti-dumping law, in force since 2017, enables posted workers to sue the contracting party of their employer for unpaid wages (Gagawczuk, 2019a). In practice, it has been very difficult for workers to effectively use this mechanism, because: it is often very difficult for workers to identify the contractor who hired their firm; they have a short period of eight weeks to make the claim; they have language barriers and lack of knowledge of the Austrian legal system.

Labour rights in the Austrian construction sector are enforced jointly by the financial police, the labour inspectorate (*Arbeitsinspektorat*), the BUAK and the Competence Centre against wage and social dumping (*Kompetenzzentrum Lohn- und Sozialdumping* – LSDB) of the Austrian health insurance fund (*Österreichische Gesundheitskassen*)⁶⁵. The Financial Police controls workplaces to ensure that foreign and posted workers are registered, that their wages and employment conditions comply with the legal requirements, and it controls the social security status of posted workers (Haidinger, 2018a; BMF, 2020). As of 2017, the financial police had 450 inspectors. However, its leadership argued that at least 600 inspectors would be required for the financial police to fulfil its mandate (Haidinger, 2018a). The labour inspectorate enforces OSH regulations such as compliance with safety requirements at the workplace and regulations on working time and rest periods. The labour inspectorate consists of one central office, 17 regional offices, and two specialized offices: one competence centre for the transport sector and one for the construction sector in Vienna and Lower Austria (Hollan & Danaj, 2018a). BUAK administers holiday and severance payments as well as other benefits for construction workers, and has been authorised by the LSD-BG to carry out inspections of

⁶⁴ https://www.wko.at/service/kollektivvertrag/baugewerbe-bauindustrie-kv-angestellte-2019.html#heading_8_Beschaeftigungsgruppeneinteilung

⁶⁵ Until 01.01.2020, the Competence Centre was organized by the Vienna Regional Health Insurance Fund (Wiener Gebietskrankenkassen – WGKK). Effective on 01.01.2020, all regional health insurance funds have been merged into one nation-wide health insurance fund.

construction sites to enforce the equal payment of wages and benefits to construction workers and to ensure that employers and employees pay their contributions to the fund (ibid; Haidinger, 2018a). The competence centre LSDB supports investigations by the financial police against fake posting by working with the social insurance funds of the sending countries to assess the validity of social insurance contributions and keeps a register of firms which have violated the LSD-BG (Gesundheitskasse, 2020⁶⁶). However, social insurance funds in sending countries are often reluctant to cooperate (Haidinger, 2018a).

The enforcement of labour rights for TCN posted workers is difficult for several reasons. Firstly, because subcontracting is intentionally used by some Austrian employers to evade legal risks regarding the employment of non-EU workers. Irregular employment of TCN workers comes with stringent penalties such as the exclusion from public contracts. That is why, as a representative of the financial police explained, you only find third country nationals employed at the subcontractor level. Secondly, most posted workers do not come forward in reporting any violation, because they still earn comparatively more than in their country of origin and are often pressured to sign waivers relieving their employers of all wrongdoings. Thirdly, even when they do file lawsuits against their employers, they are put under significant pressure and even threatened by their employers to withdraw their claims (Focus Group).

In addition, it rarely happens that employers are found guilty and forced to compensate underpaid workers (Gagawczuk, 2019; Haidinger, 2018a; Krings, 2019, Focus Group). Civil lawsuits from posted workers against their employers usually require the cross-border exchange of legal documents, cross-border collection of evidence and the cross-border enforcement of payment claims, which prolong lawsuits, increase their costs, and add uncertainty to the outcomes (Gagawczuk, 2019: 108). Even when cases are won, the penalties for companies are very low. In the worst-case scenario, employers have to pay workers the outstanding payments and cover the worker's legal costs – without any additional penalties (Gagawczuk, 2019).

The recuperation of unpaid wages in cases of bankruptcy is also problematic. Posted workers are protected by insolvency funds in the sending country. These funds, however, often only cover payments in line with average, if not minimum, domestic wages of the sending country, which are usually much lower than in the receiving country. This means that in the case of bankruptcy of their employer, posted workers may only receive part of the wages owed

⁶⁶ <https://www.gesundheitskasse.at/cdscontent/?contentid=10007.818465&portal=oegkdgportal>

to them. The difference between the wage they were supposed to earn in the receiving country and the average wage in the sending country will be lost (Gagawczuk, 2019: 108).

When it comes to disputes with their employers, posted workers do not have the same legal counselling that is guaranteed to all individuals employed in Austria by the Chamber of Employees (*Arbeiterkammer*). Nonetheless, the Chamber usually provides counselling to posted workers involved in labour disputes (Gagawczuk, 2019a). The construction trade union, GBH, offers legal protection to its members as well. However, only members who have paid union dues for at least six months are eligible for this service. As such, posted workers – who rarely join Austrian unions anyways (Hollan & Danaj, 2018) – are unlikely to qualify. Union representation is therefore offered to posted workers at the policy level.

The internal market information system (IMI) introduced by the Enforcement Directive was regarded by several members of the Austrian focus group as a useful albeit insufficient tool. The IMI itself was appreciated by representatives of Austrian enforcement agencies. However, they also complained that the system does not provide the exchange of information between different national social insurance providers, which is necessary to prevent fake postings. Thus, representatives of BUAK and the Austrian financial police suggested that an automatic exchange of social insurance information should be introduced. It was suggested that IMI should be expanded to also cover social insurance information (Focus Group). Similarly, the electronic information exchange through the Electronic Exchange of Social Security Information (EESSI) system was described as a step in the right direction by the Austrian Chamber of Labour (Gagawczuk, 2019). However, this practice has not yet been fully implemented.

4.3.2 Access to information

Research on labour violations for posted workers indicates that they are partially a result of the lack of information from the side of the employers and most importantly the workers. The most pressing need highlighted in the focus group, especially with the experts from the country of origin and the sending country, is to inform workers before they migrate by raising awareness on possible abuses through the media, relevant stakeholders, or the embassies. The focus groups revealed that there are already a number of formal and informal information channels available to posting employers and posted workers in the three countries. In countries of origin like Bosnia and Herzegovina, the employment services and their migration centres provide information on life and work abroad in local languages. Different online information and

employment platforms⁶⁷ or employment agencies that connect foreign employers (e.g. Slovenian companies) and job candidates in Serbia, BiH and other states, as well as job fairs, such as those organized by the Employment Service of Slovenia in Bosnia and Serbia, have also provided some information. Slovenian companies established in these third countries also provide some information, but their position of recruiter might influence the type of information they share with potential employees. Slovenia has made efforts to inform workers not only in their countries of origin but also in Slovenia.⁶⁸ Info Points for Foreigners were established by the Employment Service of Slovenia in 2010, shut down in 2015 due to the lack of funding, and then reinstated in September 2019.⁶⁹ Information on employment, workers' rights and living conditions in Slovenia is also made available by them online but only in Slovenian. In Austria, the main source of information is the national website on posting (*Entsendeplattform.at* or *postingofworkers.at*) that provides information in several EU languages on labour and posting law, applicable minimum wages and collective agreements. Between April 2016 and November 2018, the website received approximately 7,000 visitors per month (Murr, 2019), although there are some concerns that the website is being used mainly by employers (Haidinger, 2018a), and it does *not* cover the languages of third country nationals like Bosnians, Albanians or Serbs. National embassies are also involved: those of Slovenia provide information in the countries of origin, whereas the Romanian embassy in Austria has been cooperating with the Austrian construction union, GBH, to provide information to Romanian workers before they move or are posted to Austria.

Finally, workers can also get information from labour inspectors and representatives of NGOs/trade unions, who also act in an advisory capacity. Slovenian unions have tried to do this by talking to workers in front of Slovenian embassies as well as through their own information dissemination campaigns in Slovenia. The Austrian trade union for construction workers, GBH, actively tries to inform posted workers including TCN about their rights. They have established one office on the Austrian-Slovenian border and one on the Austrian-Hungarian border in the *Burgenland* region, which provide information in Slovenian and Hungarian respectively. Over the last years, the Slovenian office has increasingly provided

⁶⁷ Mojedelo.com at <http://sajamzaposljavanja.com/>

⁶⁸ The national website on posting of workers <http://www.napotenidelavci.si/en/> is mainly used by employers, but many useful information is also available for workers.

⁶⁹ The Info Point for Foreigners arose out of the need to provide migrant/posted workers with information at the onset of the economic crisis in Slovenia, during which these workers were also extremely affected and exposed to violations of labour legislation. The basic principle of the Info Point was that workers should receive information, if possible, in a language they understand and consultations were also provided on site, for example in collective accommodations, at work (e.g. construction) sites.

information services also to individuals from Bosnia and Croatia (Focus Group). GBH also cooperates with BUAK in informing posted workers about their rights. BUAK has the responsibility to inform construction workers quarterly about the entitlements they have accrued⁷⁰. Occasionally, BUAK attaches information material provided by the social partners to these letters. There was one case when BUAK and the regional office of GBH of *Styria* provided targeted information that encouraged Slovenian construction workers registered with BUAK to review their contracts to ensure they were paid adequately, but the initiative had limited results (Focus Group).

NGOs have also played an important role in both Slovenia and Austria in providing information and support to various categories of labour migrants. In Slovenia, the Counselling Office for Workers, which started as an office for migrants, also serves as an information centre. In Austria, UNDOK operates a hotline and in-person counselling in several languages on employment and social matters for undocumented and other irregular migrant workers⁷¹. UNDOK does not specifically focus on posted workers but they do support TCN posted workers, who may have problems with their employer. MEN VIA,⁷² on the other hand, provides information and support to victims of human trafficking and forced labour, in various languages including Bosnian. Other NGOs in Austria reach out to immigrant workers through social and cultural communities established in Austria, such as the Filipino community church. However, there were no similar examples of outreach via ethnic or religious communities to TCN nationals posted to the Austrian construction industry. Successful outreach campaigns have been conducted in the agricultural industry where union members and other volunteers went into fields to proactively inform informally employed harvest workers about their rights. The campaign also included large-scale billboards along the roads leading to the fields with information on the level of applicable minimum wages (Focus Group).

Despite these many formal channels, informal information-sharing through relatives, friends and fellow countrymen remains the more efficient way, as many workers do not have access to internet or the digital skills to find useful and reliable information. The need for more systemic information dissemination measures was highlighted in all three focus groups.

⁷⁰ § 24 of the Bauarbeiter-, Urlaubs- und Abfertigungsgesetz (BUAG).

⁷¹ <https://undok.at/de/ueber-uns/>

⁷² <http://www.men-center.at/via.html>

4.4. Social welfare, occupational safety & health and vulnerabilities of posted workers

One of the main violations observed among TCN workers from Bosnia and Herzegovina employed abroad was the non-payment of social contributions and health insurance, which has direct negative consequences on their occupational safety and health. They also reportedly lack information on OSH, are not familiar with how to use the equipment, or how to ensure safety at the workplace. There are even cases when they sign that they have been trained on OSH when in reality no training has been provided. The most problematic in this regard are companies formed on an ad hoc basis (trade union representative 1). When the participants in the focus group discussed the safety and health of workers from Slovenia in, for instance, transport, they believed the situation was somewhat similar for all workers, except, perhaps, for the language barrier.

Irregular payment of social contributions for TCN workers was also reported by the Slovenian focus group, underlining in particular the unemployment benefit. By paying TCN posted workers the Slovenian minimum wage and paying the rest as other revenues (e.g. per diem), the unemployment benefit is then calculated on the minimum wage, which means much lower than it should be. No or insufficient healthcare insurance coverage is also common, but unfortunately uncovered in worst-case scenarios such as accidents or illness. Representatives of trade unions and the Counselling Office for Workers reported several cases of injured TCN posted workers with no insurance unlawfully removed from the accident site, so that they would not be reported as workplace accidents, or cases of TCN posted workers with huge hospital bills to pay, because their insurance was insufficient or the employer refused to take responsibility for the costs of medical treatment.

The issues with the OSH of TCN posted workers from the Western Balkans, especially from Bosnia and Herzegovina and Serbia, are corroborated by the focus group with Slovenian experts as well as the existing literature. TCN workers posted from Slovenia to other EU countries often have no or insufficient training on OSH or the use of equipment, due to the employers' negligence and ignorance of OSH. Slovenian labour inspectors also reported on OSH trainings conducted superficially or only on paper and cheap and fast medical examinations for posted workers. Many TCNs are also posted to other EU MS immediately after they sign the employment contract without any proper knowledge or awareness of the importance of OSH training. Bosnian workers frequently sign contracts they do not understand although they might not comply with Slovenian labour legislation because of the language barriers (Rogelja and Mlekuž, 2018: 114). Workers from BiH, Serbia, Kosovo, or North Macedonia are usually less equipped and trained than workers from EU Member States and

because they do not receive any OSH training prior to being posted or at the beginning of their posting assignment, they are more prone to accidents and injuries. Language barriers while posted also mean that they do not understand OSH instructions at the construction site, and are not able to access the information on the local healthcare system. Likewise, they are in no position to report any violations of their rights to labour inspection in the receiving country. As other posted workers in general do, they are also more prone to turning a blind eye to OSH irregularities in order not to jeopardize their employment (Vah Jevšnik, 2018: 12, 21; Focus Group discussion). The labour inspector in the Focus Group stressed that determining responsibility is a major problem when dealing with accidents involving posted workers. The Slovenian Labour Inspectorate is frequently collaborating with Labour Inspectorates in other EU Member States, exchanging information on Slovenian employers, and is, thus, able to impose penalties on violators of posted workers' rights.

Long working time was reported as a specific condition TCNs agree to when they are posted, which increases their chances of exhaustion and accidents at work in a dangerous sector like construction. They are also provided bad living conditions and/or inadequate accommodation in remote places, preventing any social connection to local society. TCNs are also likely to work when ill or lightly injured, as they need money and want to finish their work. Representatives of employers' associations stated that presenteeism is characteristic for the construction sector in Slovenia, as many workers stay at work even if they are injured or ill (Focus Group discussion). Injured workers that can no longer work are taken to a hospital and the next day taken across the border to avoid expenses, sometimes without the doctors' knowledge or approval (Vah Jevšnik, 2018: 21). The Counselling Office for Workers reports several cases of permanently injured workers being left without any legal support or financial compensation from the state after initially being returned to Slovenia and later to their country of origin (Lukič, 2017). The most problematic cases and the most exposed among posted workers have been those from Bosnia and Herzegovina, Kosovo, Serbia, and North Macedonia.

Notwithstanding the reports from both Bosnia and Herzegovina and the Slovenia focus groups, the OSH situation of TCN posted workers was presented differently in the third focus group held in Austria. According to representatives of BUAKE, financial police and GBH, there are no differences between Austrian workers and TCN workers when it comes to OSH in the narrow sense of preventing serious accidents. They explained that using TCN workers for more dangerous tasks would be practically not possible. As one of them put it: "This is not how work sites operate". Further, workplace safety provisions (wearing helmets, putting guardrails in place to prevent falls, etc.) could not be applied for one group and not for others at the same

workplace. However, it was mentioned that TCN workers may pay for their own safety equipment because they do not know that the employer is obliged to provide it. Meanwhile, as indicated by the Slovenian experts, cramped and unhealthy housing as well as excessive working hours were reported as problems (Focus Group).

Earlier research also indicates that temporary migrants and posted workers are more vulnerable to OSH-related problems. Hollan and Danaj (2018) identified several ways in which the temporary migration states affect the health and safety of those workers. First, employers paid less attention to training those individuals in safe work procedures. Second, their temporary work status made them more vulnerable to exploitation. Thirdly, due to the short duration of their stay, temporary migrants themselves were less motivated to gather information on their rights in Austria. A lack of information on local procedures, language barriers and strong economic dependence on their work income add to the vulnerability of such workers and make it more difficult for them to refuse dangerous activities such as working overly long hours or to report injuries when they occur.

TCNs tend to be even more vulnerable because they often depend on work visa issued by the sending countries. Losing their employment can result in the automatic loss of the visa and their right to stay in the European Union. For example, Hollan and Danaj (2018) recount the case of a Bosnian construction worker posted to Austria who was severely injured at work. He was hospitalised and underwent surgery in Austria. After leaving the hospital, he remained unable to work and in need of additional medical support. At this point, his employer started trying to convince him that medical care in Slovenia is superior and to persuade him through a middleman to sign a form stating that he wished no further medical treatment in Austria. The worker declined but later found out that such a request had been made to his health insurance provider by his employer without his knowledge. This created a problematic situation for this worker because remaining in Austria provided him access to sickness benefits that he was financially dependent on. However, his continuing stay in Austria was dependent on a work visa provided by the Slovenian company he was involved with. As such, he felt vulnerable to legally challenge his employer over the issue of health care coverage.

Similarly, posted workers often do not receive health benefits in case of illness. The representative of BUAK explained it in the following words:

“The only thing we notice is that workers who become ill – ill, not because of an accident – that they are simply deregistered [from BUAK] and no longer receive their wages. So, going on holidays means being deregistered and falling ill means being deregistered.”

Findings from Slovakia suggest that long subcontracting chains further increase the vulnerability of posted workers especially when letterbox companies are involved (Hollan & Danaj, 2018b). Subcontracting is used to reduce costs and thus naturally increases the cost pressure for the companies and workers at the end of the contracting chain. As a consequence of the cost pressures, these companies tend to pay less attention to OSH training and may not provide all necessary safety equipment.

4.5. Managing transnational workplaces

The mobility of workers from Bosnia and Herzegovina (or other countries of the Western Balkans for that matter) to Slovenia has two purposes: to work in the country and to be posted, as the data reported in section 4.1 indicate. Yet, their presence in the Slovenian labour market is quite manageable and we did not receive any insights from the research participants on the management of multi-ethnic workplaces. The literature on labour migration to Slovenia indicates that the main problem in Slovenian construction workplaces is the transience of workers. While many experienced Slovenian construction workers went to work in Germany and Austria during the crisis of 2009, they were replaced by unskilled workers from the Balkan countries, who often lack the necessary knowledge and experience in both construction and occupational health and safety (IRSD, 2018: 45).

However, it is only in Austria that some of the workers from the Western Balkans might become posted workers from Slovenia. The primary concerns with regard to the management of transnational workplaces reported in the focus group relate to language barriers and contentious relations between TCN posted workers and officials of enforcement agencies. Representatives of BUAK, the Financial Police and the GBH union stated that construction foremen are struggling with the challenges arising from managing transnational workplaces. Language barriers caused by the lack of German language skills among many construction workers and the lack of a common language among workers on site in general, make it difficult for foremen, supervisors and other workers to communicate daily needs or inform on occupational safety.

In a previous study on language barriers as regards occupational safety in transnational workplaces (Hollan & Danaj, 2018a), it was reported that due to language barriers it was uncertain if posted workers had received the appropriate OSH training and information. The language barrier was also a challenge for labour inspectors and representatives of other enforcement agencies to monitor and control the working terms and conditions of posted

workers in Austrian workplaces. General efforts were made through the national website on posting that provides information in seven languages, including German, or with flyers and posters in the main languages where posted workers came from. In the workplace, the assistance of one person or worker that served as an interpreter to other posted workers was employed by managers and other supervisors in daily communication and even language mobile apps were used by inspectors during their field inspections (ibid). However, TCN posted workers might be posted from a particular EU member state such as Slovenia, but they do not necessarily speak the language of the sending country, especially if they were recruited to be posted, which poses again the problem of language barriers. While in Slovenia, although different languages, there are enough similarities and knowledge of the common language of the former Federal Republic of Yugoslavia to get by, in Austria they are faced with a completely different language.

Another challenge was reported by representatives of BUAK and the financial police which was the concern over the increasing levels of aggression from construction workers towards officials from their enforcement agencies. The representative of the financial police recounted one case when one of their employees was attacked by a construction worker with a hammer. Some members of the focus group link the rising number of such occurrences to the different work cultures of the workers from third countries. They argued that in some other countries, enforcement institutions that monitor and control workplaces – such as is the case of BUAK, the labour inspectorate or the financial police in the Austrian context – are perceived differently and the relations between construction workers and these institutions are more antagonistic. It is uncertain how widespread these instances of aggression are among TCN construction workers, and whether it is TCN posted workers or TCN workers recruited differently who show such an attitude. Further research is necessary to examine the scale of the problem, the circumstances under which foreign construction workers react in this way in transnational workplaces in Austria, and their motives.

5. Conclusions and Forward-Looking Perspectives

In this report we investigated the main characteristics of the trend of posting of third country nationals to work in the EU construction sector. The report focused on the specific regional labour mobility patterns between Bosnia and Herzegovina as a third country, Slovenia as a sending country, and Austria as a receiving country. The main areas of the study included: 1.

regional and EU labour market dynamics and shortages (labour and skills shortages and the dynamics of supply and demand); 2. labour migration and mobility trends (labour migration policies, recruitment strategies and posting practices of third country nationals); 3. labour rights, violations and representation of posted workers who are third country nationals (access to information, main violations, and protection mechanisms); 4. social welfare and OSH vulnerabilities of posted workers, who are third country nationals; and 5. managing transnational workplaces (management challenges and practices in the receiving countries). We will summarize our findings for each of these sub-questions below.

Our findings indicate that there are marked differences in terms of their economic developments, labour market dynamics and labour shortages. BiH has experienced some growth after the Yugoslav wars, however, its economic development is halted by political instability and tensions among the various levels of governance that oftentimes lead to deadlock and by the persistent levels of informal employment relations. As a result, BiH is having a worrying and growing number of citizens emigrating abroad, thus further increasing the labour shortages. The construction sector seems to be particularly affected by informality and labour skills shortages, despite some modest efforts to incentivize workers to remain, such as increased wages or apprenticeships for young workers.

The labour markets of the other two countries seems to attract many of the BiH workers. Despite the fluctuating growth and some labour shortages, Slovenia remains the forerunner of the former Yugoslav republics and one of the preferred countries of destination for workers from BiH. Cross-border labour mobility between BiH and Slovenia is also facilitated by regional labour mobility agreements, which make it easier for BiH and other neighbouring Balkan countries' workers to receive work permits in Slovenia. While Slovenian wages are considered medium, especially compared to Austrian ones, they are nonetheless higher than in BiH. Even in the Slovenian construction sector, which was hit by the 2009 economic crisis and is now growing again since 2015, there is a high demand for skills supplied by workers of the region. Skills and labour shortages are a result of Slovenian workers' individual migration to other EU countries as well as the fact that Slovenian companies have become quite active in the wider European labour markets providing services through posting. Meanwhile, Austria has experienced the most robust growth and has a fairly strong labour market with low unemployment and the highest wages of the three. The construction sector has also been growing and has a high demand for new projects that has led to an increase in the overall number of the workforce.

The analysis of labour migration and posting trends confirms that Bosnia and Herzegovina is a source country for skilled and low-skilled migration in the region and the wider EU. The economic and insecurity reasons discussed in the previous paragraph are the main push factors. Recruitment patterns are a combination of personal channels, but also public employment services are involved in regular migration. Slovenia experiences positive net migration with more incoming than outgoing labour migrants. Similar to BiH, both public and private labour market actors are involved in labour migrants' recruitment, with employment services mostly involved in support of regular immigration. Slovenia is a target country for the Western Balkans but at the same time one of the main countries for provision of services through posting, which has led to the development of a so-called posting industry. In the case of the construction sector, 31% of the construction workforce is posted abroad, which in relative terms has made Slovenia the main sending country. Within the category of posted workers, Slovenia is also posting third country nationals, among whom BiH workers are the main group. BiH workers are also the largest group of posted TCN workers in Austria, which from our analysis is mainly a receiving country, and the fifth-ranked country receiving the most posted workers. Neighbouring countries, such as Slovenia, provide most of the posted workers, especially in the construction sector, where 21% of the workforce are posted workers.

BiH workers are exposed to several vulnerabilities and many experience labour rights violations at home and while working abroad. The most serious violations are reported 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 on unions, as well as a dysfunctional juridical system, all of which providing poor levels of protection to the workforce in general. Even in the case of emigrants and posted workers, we find that the main channels of recruitment are informal and there is a lack of a more systematic information on what to expect and what to do when working abroad. While the current research cannot confirm this finding, there is a possibility that gangmasters are involved.

While in Slovenia and Austria informality is low, there are still cases of irregular contracts in Slovenia, especially in the case of TCN workers. The most vulnerable TCN workers are those that are posted. Our findings indicate that TCN posted workers often have irregular contracts, receive irregular salaries, e.g. they are paid sending country minimum wage, and their contributions and health insurance are unpaid or irregularly paid. TCN posted workers do receive support from the Slovenian trade unions, the enforcement agencies and the NGOs, especially the Counselling Office for workers, but the short-staffed enforcement and

protection organizations are outmatched by the increasing flows of a posting industry and letterbox companies. From a receiving country perspective, Austria does better than other countries, however, contractual irregularities with TCN posted workers are reported in this country as well. The main forms are irregular reporting of working hours, irregular reporting of workers' profession, skill level, and/or sector, unpaid/irregularly paid contributions and health insurance. Here, too, there is a posting industry and fake posting under development, especially with Austrian companies establishing firms in Slovenia with the purpose of posting their workers back to Austria at cheaper costs. Differently from the other two countries, Austria has a complex corporatist system – with 19 CBAs in the construction industry alone – and a strong network of enforcement and protection organizations both public and private. However, the Austrian protection system is also challenged by the transnational dimension of posting and a more systematic information that would help navigate the complex Austrian system is still missing, especially in the languages of TCN posted workers.

Regarding OSH, there are two main findings: TCN posted workers are exposed to high OSH risks at work, and they are commonly abandoned to their fates in cases of injury and illness. OSH risks are multiple and 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. 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 to not 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.

TCN workers in Slovenia integrate to some degree in the labour market, and the management of transnational workplaces was not reported as a concern, although it was mentioned that the workers from the Western Balkans, who are replacing emigrating Slovenian workers, do not always have the same level of skills required in the different professions of the construction sector. It is only in Austria that these workers become posted, and the main challenges of managing and monitoring transnational workplaces reported by the informants relate to language barriers and aggression towards the employees of the enforcement agencies. The issue of language barriers already reported in previous studies (Danaj & Zólyomi, 2018;

Zólyomi & Danaj, 2019) is a challenge of communication among workers, between posted workers and their foremen/managers, and between posted workers and the enforcement agencies that inspect transnational construction sites. The issue of aggression was reported as a recent occurrence explained as a result of the antagonistic experience TCN workers have with authorities in their country of origin. Nonetheless, more in-depth research is necessary to examine the scale of the problem, the circumstances under which foreign construction workers react in this way in transnational workplaces in Austria, and their motives.

The main findings of this report indicate that there are strong push and pull factors between the country of origin, the sending country and the receiving country. BiH workers come from an experience of economic and political instability and insecurity that drives their mobility and migration plans to the neighbouring Slovenia that provides relatively easy access to its labour market for workers from 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. We find that despite the fact that Slovenia and, more so, Austria have stronger employment regulations in place, including universally applicable collective bargaining agreements in the case of Austria, irregular and exploitative employment relations practices are transferred from the country of origin to the sending and the receiving EU countries. Despite the mechanisms for control and enforcement of national/EU standards, the vulnerability of TCN posted workers persists due to the cloaking effect of the posting employment characterized by subcontracting, cross-border mobility and temporary service provision.

5.1. A glimpse at the future?

Apart from the data collection, in this study we also conducted foresight exercises based on a pre-prepared matrix, in which participants could elaborate on possible scenarios for each of the countries in this report. The project organizers invited informed individuals from different institutions, such as academia, public authorities and social partners, to share their opinion on how the situation could evolve in Bosnia and Herzegovina, Slovenia and Austria. Each discussion focused on one country, and the participants had to consider four circumstances that could be possible in 2035: there will be skill shortages, there will be no skill shortages, migrant labour will be in supply, and migrant labour will not be in supply in their country. These circumstances would then need to be combined and participants had to consider the most likely scenario and elaborate on how that scenario would look like at the country level, at the industry

level, i.e. construction, and at the individual TCN worker level. In this report, we present their joint narratives. These, however, certainly depend on the composition of the panel but still offer some interesting insights into the specific issues each country faces in the present and how that might affect their future. This was particularly evident in the development of the scenario for Bosnia and Herzegovina, during which the participants really struggled with portraying a possible future and repeatedly went back to discussing the current obstacles to the country's development, which they considered insurmountable, or at least paramount to be addressed before anything else was considered.

The scenarios are presented below, but we can summarize them as follows. In two of the three scenarios elaborated, i.e. in BiH and Slovenia, the participants think that there will be skill shortages but not labour migrants in supply, whereas in Austria they think that there will be shortages but also migrant labour in supply. So, the situation in BiH in 2035 will continue to be one where people will emigrate, while the country will try to attract immigrants to respond to the increasing demands of the labour market without managing, also due to a growing anti-immigrant sentiment. In Slovenia, too, the anti-immigrant sentiment is considered to be growing, while the labour demand in the country will continue to increase as more and more people will leave and workers from the neighbouring countries will not want to come, thus leading the authorities to look for solutions in more distant countries, such as China. The Austrian scenario, on the other hand, is moderately positive, as the growth, the demand and the supply are considered to continue in similar fashion to the present. What concerns the participants is the risk of social dumping, which they fear might grow if measures to prevent it are not strengthened in the present time. In other words, these scenarios mirror to some degree the current situation in each of the national labour markets, but also highlight some of the concerns for the future.

FORESIGHT 1. Emigrants out, immigrants in – new paths of development in an uncertain political future for Bosnia and Herzegovina

What stood out in the foresight discussion was the participants' 'inability' to construct a coherent scenario for the future, especially due to the bleak present situation in the country about which the participants seemed to be quite pessimistic. After some hesitation and confusion, they choose the scenario in which there will be no lack of labour force and there will be migrant labour in supply. Migrant labour provides the potential for the development of the country and it also enriches the cultural life in the country. However, the participants were unable to identify the specific group(s) of migrants who might fill the labour shortages in terms

of country of origin, structure, and so on. They were also somehow unable to imagine the administrative and political organisation of the country in 2035. They mentioned the involvement of Bosnia and Herzegovina into regional migration/mobility networks, but stressed that also neighbouring countries, such as for example Serbia, may also have lost most of their labour force due to migration by 2035. However, they did not envisage arrivals from more ‘distant’ countries. The climate in the country can be inclusive towards migrants, but also ‘local’ workers may still be leaving which may lead to further an anti-migration climate in the country. The political climate in general is pro-European. Also, the skills of migrants may be different from those of the ‘local population’. The future for Bosnia and Herzegovina will be ‘green policies’ and the utilisation of natural resources, meant not only in terms of ecology, but in a wider sense, referring also to the organisation of the (political) system. The development of the technology (robotization and informatisation, etc.) will lead to the loss of certain types of jobs, but new opportunities for employment will be created (e.g. ecological agriculture, ecotourism, and further development of the tourism sector). There are possibilities for migrants to work in sectors where labour shortages exist.

FORESIGHT 2. Anti-immigrant sentiment, labour shortages, and the Chinese solution for the Slovenian market

In Slovenia in 2035 there will be a shortage of skilled labour and migrant labour is not available. The shortages are due to an overwhelming lack of interest in construction-related professions. In fact, in the entire Europe there is a widespread conviction that manual labour (especially 3D professions: dirty, dangerous and difficult) is to be done by migrant workers from third countries. This devaluation of certain professions is also because they are considered as migrant professions/jobs and hence enrolment in vocational training and schools is at its lowest. While robotization is blooming in some other EU countries, in Slovenia this is not yet a possibility due to high start-up prices. Hence, there is still a tremendous demand for workers in Slovenia. The ruling political party is right-wing, thus anti-immigrant, neoliberal and favourable to the Catholic Church, and above all very nationalistic. The welfare state is slowly disintegrating, which means that poverty is increasing, while the socio-economic status of an increasing share of the population is declining. The quest for economic growth is ruthless and not sustainable. People are increasingly more fearful of immigrants coming into the country, and there is a lot of worry that immigration will have a negative effect on all Slovenian matters – language, culture, heritage, etc. But Slovenia still needs workers, so it is a bit of a deadlock situation: ‘We need workers, but we don’t want to welcome migrants (especially from other continents)’. At

the same time, there are no migrants available or willing to work in Slovenia. Until the final breaking point will be reached and there will be a collapse in certain sectors because of labour shortages, Slovenians will stubbornly stick to their own beliefs. Shortages of labour will also increase prices. If we have in mind the real-estate market, the prices will hit the roof and consumers will be paying much more for labour than they are now, making it increasingly difficult to secure decent housing. While the right-wing government in power will continue to act as a scare-monger towards immigration, it will simultaneously open the door to Chinese investors. The Chinese will penetrate Slovenian economy, they will buy out Slovenian companies and bring with them Chinese workers. That is how and from which country immigrants are going to arrive and settle in Slovenia.

FORESIGHT 3. Moderate growth, sustainable demand and supply of migrant labour, and the risk of social dumping in Austria⁷³

A slightly positive scenario was developed for Austria. In 2035, Austria will be undergoing a restrained development that includes a moderate economic situation with labour surpluses and low interest rates which benefit the construction sector. The experts expect an increase in large orders from the public but limited regulations in the social field due to restricted effects for highly regulated issues. The economic potentials are regarded to be utilized by firms; even new upcoming forms/sub-types of posting are practised so that an increase of social dumping is most likely. EU Member States like Austria must continuously reflect on their role in the European labour market and adjust to current and upcoming changes until 2035. The most pressing issues include: enhancing the compatibility of their social systems, tightening employers' liability measures, increasing transparency in subcontracting practices, and/or reducing the practice of subcontracting. The scenario foresees an even higher need for regulations regarding subcontracting. The experts believe the role of the states must be strengthened. This is particularly required for supporting the implementation and enforcement of legal rights of posted workers. The experts expect good profit margins for large enterprises in the construction sector, but greater pressure for SMEs than today. On the one hand, the envisaged system will increase the demands for highly-skilled workers, while providing them with good job opportunities. However, finding and keeping workers at firms will be more difficult by 2035. On the other hand, additional stress will be put on the low-skilled labour force. The likely scenario at this distinct level also implies a danger for a "dualism" of the trade

⁷³ The Austrian Foresight Exercise was moderated and conducted by Anette Scoppetta, who also prepared the longer version of this narrative.

unions. Experts regard it most likely that there are only few changes happening at the level of the individual compared to the situation in 2019. They identify wage dependency as a crucial factor for 2035. Austria will be attractive for posted workers since they will receive (still) higher salaries in Austria than in their countries of origin or the sending countries. Thus, social dumping will be a “lived practice” also in 2035. The situation will improve if national social protection systems are aligned. This, however, is not expected to happen although the experts suggest an increase in support for posted workers from trade unions as well as from NGOs dealing with this specific form of work.

6. Policy Recommendations

The posting of workers is viewed differently along the posting “flow”. Therefore, different policies need to be recommended for sending, posting, and receiving countries. In this section of the report we provide several recommendations that were offered or inferred from our research. They will be presented according to the level of intervention: workplace and industry level, national level, regional level and in response to the five research topics explored in this report.

At the workplace level

Most of the findings in this report indicate that while rules and regulations might be in place, they are not necessarily applied in the workplace. Therefore, a closer monitoring and control of workplace practices should be conducted in all three countries. Authorities in BiH have to fight against considerable levels of informality and irregular salary schemes, whereas in Slovenia and Austria, they have to pay particular attention to the employment conditions of TCN workers. In order to do that, more frequent inspections might be necessary.

Yet, because of the alleged aggression some inspectors have faced during their visits in transnational workplaces, such as those reported in Austria, there is a need to establish better relations with the workforce, through information campaigns and other activities that will help familiarize the workers with the enforcement agencies. At the same time, institutions should transform or clarify their position from punitive organizations to enforcers of workers’ rights, in order to be able to obtain their collaboration.

At the industry level

Construction is a particular sector that presents similar challenges in all three countries, although at different degrees. Because of its project-based nature, contractual arrangements are always shifting and workers are often mobile following projects within the country and abroad. Better efforts should be made to control contractual arrangements, in particular in ensuring that workers are formally employed and according to the proper standards. In the case of posting, receiving country entitlements should be applicable, and enforcement agencies in both sending and receiving country should make sure that workers are employed according to the rules. Measures such as those applied by the Austrian institutions, which require companies to declare their posted workers to the authorities prior to their arrival, should also be made mandatory for companies in the sending country. A closer collaboration between sending and receiving countries' authorities would also make verification easier in order to prevent any forms of abuse.

In order to improve the supply of domestic and foreign workers in the construction sector in BiH and Slovenia and prevent the pressure on emigration and/or posting, measures for the revitalisation of the national construction sector and the improvement of its reputation in the wider society should be developed. Such measures might include efficient apprentice systems that should start already in primary schools, or incentives for sectoral workers to remain in the country rather than seek employment abroad.

In addition, ways to increase the social responsibility of employers should be considered. This could be done through the promotion of best practices and the issuing of a "certificate" for trustworthy employers (white list of good employers), which should then be made available to posted workers.

At the national level

Bosnia and Herzegovina should develop a stimulating economic, cultural, and social environment to retain its workforce while providing accurate and reliable information on emigration matters like rights and the working conditions in other countries. Economic development strategies at the state, regional and local level should be used to create opportunities and support a more even economic development throughout the country. Such strategies should also address disparities between urban and rural areas. There is a need for better and more detailed data on emigration from BiH to inform policy-making. Overall, there

should be a re-thinking of the concepts of ‘brain drain’ and ‘brain regain’. A new look should be taken at how circular migration could contribute to the development of sending countries like BiH.

At the same time, as the posting of workers is viewed in the context of domestic skills mismatches and a lack of economic development, which contribute to emigration and brain drain which, in turn, again hamper economic growth in BiH, there is a need for a multisectoral approach that includes stakeholders from the areas of education, social partners, and policy-makers to address the mismatch between education and skills. Curricula should be improved and the practical application of knowledge should be increased

In Slovenia and Austria, there is a need to improve the enforcement of existing legislation. For example, the capacities and human resources of labour inspectorates and OSH enforcement agencies should be increased. To ensure posted workers’ rights and make monitoring of posting in Slovenia more efficient by covering a bigger terrain in the country, a mobile labour inspection unit accompanied by FURS (Financial Administration of the Republic of Slovenia) representatives should be established. Likewise, Austrian authorities also raise the need for more inspections and more personnel to conduct these inspections.

Furthermore, enforcement agencies and employee organisations in Austria approach the posting of workers largely from the perspective of safeguarding national employment and social standards. One core concern is the fight against fake postings and the binding nature of A1 forms. Representatives of the enforcement agencies voiced their frustration that under the current laws and jurisprudence, they have no means to directly challenge the validity of postings. If a worker has a valid A1 form issued by the social insurance provider of another EU member state, that person cannot be forced to pay into the social insurance system of the receiving country. Austrian agencies can ask the issuing social insurance provider to review the case and, if it turns out to be a form of fake posting, nullify the A1 form. However, this process is extremely complicated and, in the view of the Austrian agencies and workers’ organisations very ineffective. Hence, the recommendation would be to simplify procedures of verification and nullification of A1 forms in cases that are evidenced as irregular or fake. These measures would also require a closer and more efficient collaboration among the authorities across both sides of the border.

At the regional level

Recommendations at the regional level aim to support posted workers before and during their posting assignments. So, the first step to empower workers leaving BiH to be posted from one EU country to another EU country and to improve their wellbeing, should be to provide them with accurate and reliable information on their rights and what to expect in the receiving countries. As this report indicates in section 4.3.2, there are already several points of information provided by the embassies of the receiving countries in BiH, physical and online information points or at job fairs. However, the main source of information remains informal and personal channels, which means that more efforts should be made to make information available in more systematic and easily accessible ways. While general information campaigns and information points are relevant to informing the public, more direct information should be provided to workers who are about to emigrate or to posted workers who are about to be posted. Informative leaflets with addresses to more detailed information as part of the posting documentation package already applied by BUAK, for example, have proven rather successful in increasing awareness among posted workers in the Austrian construction sector.

In addition, several actors support reforms to help posted (TCN) workers claim their rights *vis-à-vis* employers. To this end, informing posted workers about their rights should be combined with reforms to expedite cross-country civil lawsuits, increased insolvency protection to ensure that workers do receive the full amount of wages owed to them in cases of employer bankruptcy, and higher financial penalties for employers underpaying posted workers. Stronger chain liability rules would also be necessary to enforce workers' rights across the subcontracting chain.

To fight fake postings, Austrian actors are also advocating for a better exchange of information between social insurance providers. For example, the representatives of BUAK and the financial police suggested that the Internal Market Information system (IMI) should be extended to allow for the exchange of social security information. The new European Labour Authority (ELA) should have the right to enforce cooperation between different national insurance providers should those agencies be unresponsive or slow to respond to requests from their counterparts.

Other enforcement proposals included weakening the binding nature of A1 forms. For example, developing a list of obvious forms of fake postings might help authorities to immediately invalidate an A1 form. In this way, each case of obvious posting would not have to be tested on its individual merits.

More far-reaching proposals include changing the calculation of social contributions so that all contributions must be based on the wages/labour costs in the receiving country.

Cooperation could also be taken one step further. Following the examples of some EU Member States, joint (paritarian) social funds for construction industry⁷⁴ would also help posted TCN workers from Slovenia (and other workers as well), especially in case of OSH-related issues, and improve their pension funds.

In addition to awareness-raising about the rights and responsibilities of workers and the enforcement of cross-border institutional cooperation, the organizational capacity of workers should be improved in both the receiving and the sending country. Specifically, the trade union membership of posted workers should be strengthened both in their home country and in the country they are sent to work. Recognition of their union membership between the sending and receiving country would also encourage workers, especially TCN workers, to become union members and address the unions in both sending and receiving country with any grievances they might have and be able to benefit from their support. This might be particularly useful in the case of workers posted to Austria, who in order to be able to benefit from union support, should have worked in the country for at least six months, and therefore are often unable to join because of their shorter posting assignments. A cross-border union membership recognition would help overcome such a challenge.

Finally, several non-governmental organizations are doing their part to support TCN posted workers. Most of their initiatives are project-based. Therefore, there is a need to make their services more sustainable through funding from public authorities at the national and/or regional level.

⁷⁴ Such paritarian funds are already established in Austria, Belgium, Denmark, Germany, Bulgaria, France, Italy, Netherlands, etc. The funds are funded and managed by the social partners themselves and often fulfill a complementary role to the existing governmental structures, mainly in the area of vocational training, health and safety, sectoral pensions and paid holiday schemes (<http://www.paritarian-funds-construction.eu>).

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