

## EEPOW Peer Review

# Guaranteeing posted workers' rights: The Austrian approach to the implementation of the Enforcement Directive

Vienna, Austria, 28 February 2019

### Executive Summary

The Peer Review provided the opportunity to discuss and exchange information on guaranteeing the rights of posted workers and their access to social welfare. The discussions focused on the implementation of the Enforcement Directive, through the provision of information to posted workers and posting employers and cross-border/transnational exchange of information and collaborative intervention between enforcement public authorities of the sending and receiving countries. The experience and challenges encountered with the instruments used to facilitate access to information, in particular the official national websites for posting, as well as the national and transnational cooperation among enforcement agencies were explored in detail. Additionally, the role of social partners in providing information and support to posted workers was also discussed. Finally, suggestions and recommendations on how to improve existing mechanisms in the EU Member States and build them in the candidate countries were exchanged.

The event was hosted by the European Centre for Social Welfare Policy and Research in co-operation with the Austrian Federal Ministry of Labour, Social Affairs, Health and Consumer Protection. The event brought together representatives of policy-makers, labour inspectorates, social partners, civil society and the research community from the host country, Austria, and seven peer countries: Germany, Italy, Slovenia, Serbia, Albania, Montenegro and North Macedonia.

### Key learning messages from the Peer Review

The peer review revealed that the participating countries had different experiences with posting. Austria and Germany are predominantly receiving countries, although they also have large numbers of workers posted towards other Member States. The trends between sending and receiving have been fluctuating in Italy due to the financial crisis, but the country has experience with both patterns. Meanwhile Slovenia is predominantly a sending country, which includes the posting of third country nationals, making Slovenia a transit country as well. There is variation among the candidate countries as well. Serbia has already experienced substantial posting with thousands of workers sent in the recent years, while North Macedonia has some experience with posting to Germany, and Montenegro or Albania having not used posting so far to send workers to the EU. Despite the fact that the Member States and the Candidate countries have different experiences with posting, in the peer review similarities in terms of information dissemination instruments and inter-institutional and cross-border cooperation were also identified.

### *On the instruments used to facilitate access to information to posted workers and posting employers*

- Facilitating access to information for posted workers and posting employers is an important step to guaranteeing the rights of posted workers and their access to the welfare system. Article 5 of the Enforcement Directive stipulates the provision of information free of charge and in an accessible and transparent way through an official national website as well as other ways. This includes also having the information available not only in the language of the member state by also in the most relevant languages. The participating member states, i.e. Austria, Germany, Italy and Slovenia all have websites with information on posting. In comparison, the Austrian website has more comprehensive information in seven languages, while the other three Member States do not. The German website provided by the Customs unit is underdeveloped, not user-friendly and in only three languages. The site of the Federal Employment Agency with basic information on wages laid down in universally applicable collective agreements is only available in German. In Italy, information dissemination is also fragmented, with the official website offering generic information and other stakeholders providing partial information on their sites. There is also project in Italy, PostLab, that is experimenting with an information platform. In Slovenia, there is a national website, as well as other institutional websites that provide some information on posting.
- In the candidate countries of Albania, Montenegro, North Macedonia and Serbia, on the other hand, there is no online platform specific for posting, and despite the fact that the Directive has been transposed in national law, and that there is already posting from Serbia and North

Macedonia, accessible information on posting is missing, and even public authorities are not always fully informed on the specificities of posting. Due to the considerable migration from the region towards the EU, there is, however, a platform of migrant service centres which could be extended to inform on posting.

- In addition to online information, posted workers are also offered information and support by the social partners in the four Member States. The Austrian case is peculiar as there are two social partners to provide support: Chamber of Labour that represents all workers in Austria; and the trade unions, who represent their union members. The Austrian Chamber of Labour offers consultations in various languages on labour law and other work-related grievances posted workers might have. In Italy, trade unions have established information points. In Germany and Slovenia, unions have established counselling offices, which have been quite effective in providing information and support for mobile posted workers. Other project-based initiatives have also provided information and support to posted workers but once their funding ran out, they stopped operating, which indicates the issue of sustainability of such initiatives.
- In the candidate countries, social partners have been involved in projects with awareness raising goals, however, they do not provide information and support to posted workers from their countries yet. The migrant service centres abovementioned operate offline as well, but with different degrees of success. For example, in Albania there are 36 migration sportels/migration centres, an integral part within the Albanian Regional and Labour Offices, that provide information on regular migration and labour law in EU country-based information packages, whereas in North Macedonia there are only four such centres but it is not clear whether they are still operational.

### *On cooperation at the national and international level*

- At the national level, cooperation among public authorities on matters related to posting can be challenging. In the Member States there is a degree of confusion about responsibilities and protocols of exchange between institutions at the national level, but also between the different levels of governance. In the candidate countries lack of an effective and transparent collaboration is more evident.
- Transnationally, Austria has had good collaboration with their counter-parts in the sending Member States and the use of the Internal Market Information (IMI) system, whereas Germany is only sparsely using the IMI system and in general does not reply to specific IMI-requests for notification or recovery of penalty decisions. In Slovenia, the IMI is used, however, its functioning has been problematic in terms of the limited scope of use, the slow response, and the lack of human resource capacities to use it. Furthermore, third countries, including the candidate countries, do not have IMI, which makes information exchange between public authorities very challenging.

### *Recommendations for future action*

- There is a need for a holistic approach to labour mobility in general, which means that information on posting has to be integrated in a comprehensive dissemination and information strategy. Diversification and coordination of the channels of information would lead to better results. These channels could be: one-stop shops, online platforms and mobile applications, and offline information centres. Online tools have to become more user-friendly and interactive. Complex matters, such as calculating wages according to collective bargaining criteria, for example, could be made more accessible and understandable for all audiences. Furthermore, informal channels of information distribution could also be used.
- Research is necessary to understand the impact of posting generally or the existing channels and tools for information and cooperation, in order to provide evidence-based policy adjustment or change.
- There is a need to establish functioning cooperation at the national level, as well as clarifying the competencies of each individual institution. Additionally, more training and information should be provided to policy-makers, enforcement agencies and street-level bureaucrats in order to build their capacities in guaranteeing the rights of posted workers.
- Transnational exchange and institutional collaboration also need to be further strengthened and EU-level organisms, such the European Trade Union Confederation and the European Labour Authority, should be given a more pro-active role in terms of transnational sectoral agreements (ETUC) and transnational enforcement (ELA), for example. The use of IMI needs to be streamlined, and the system should also be established in the candidate countries to facilitate exchange with the public authorities in these countries.
- Preventative measures should also be adopted, such as providing information and support to workers and employers prior to their posting.
- A lot of good initiatives, especially in terms of providing information and support to workers are short-lived due to their project-based nature. More needs to be done in order to guarantee the financial sustainability of good practices.