



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

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Introduction

In contrast to migrant workers who live abroad on a regular basis, posted workers are sent by their employers from one EU Member State to another on a temporary basis to carry out a service (see the Info Box below for more details about the definition and conditions of posting).

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As non-EU citizens, Montenegrin citizens are currently posted to work in EU Member States via another EU Member State. This makes them doubly vulnerable: first, as migrant workers that work and reside in an EU Member State and later, as posted workers that are sent to perform services in another EU Member State. However, with the accession of the country into the EU, posting of workers from and to Montenegro will also gain increased policy significance. The Posting of Workers Directive (PWD) is among the key policy documents concerning the free movement of services to be transposed into national law. In this respect, the aim of the Policy Brief is to present the existing institutional capacities as well as the needs and requirements for the transposition of the PWD into national legislation in Montenegro.

Posting to and from Montenegro

Although foreigners living and working in Montenegro come from more than 80 countries, the country is still deeply embedded into regional mobility and migration networks. In this respect, individuals from the former Yugoslav republics still prevail among immigrants.

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What is posting?

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

Rights and rules for posted workers

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

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

With the revision of the Directive ((EU) 2018/957), posted workers in all economic sectors are guaranteed equal pay to locally-hired workers based on rules set by national law or universally applicable collective agreements. However, if sending country working conditions are more favourable, they become applicable to posted workers.

Relevant EU Legislation

- ❖ Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services.
- ❖ Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation').
- ❖ Directive (EU) 2018/957 of the European Parliament and of the Council of 28 June 2018 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services.
- ❖ Regulation no 883/2004 on the coordination of social security systems.

Relevant National Legislation

- ❖ Law on Foreigners (Zakon o strancima).
- ❖ Law on Protection of Rights of the Citizens of Montenegro working abroad (Zakon o zaštiti građana Crne Gore na radu u inostranstvu).
- ❖ Law on Intermediaries in Employment and Rights during Periods of Unemployment (Zakon o posredovanju pri zapošljavanju i pravima za vrijeme nezaposlenosti).
- ❖ Law on the Protection of Posted Citizens of Montenegro (Zakon o zaštiti upućenih zaposlenih građana Crne Gore na radu u inostranstvu - transposing the Directive into national law; to be adopted).

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

**Labour shortages
in construction,
tourism and other
service activities affect
labour mobility**

Montenegro is facing significant labour shortages, particularly in the sectors of construction, tourism and other service activities, which make the country the main employer of migrant labour within the Western Balkans region. Seasonal work, especially in the tourism sector during the summer, is also of paramount importance. In addition, the country is faced with: significant internal migration from the (predominantly) rural Northern areas to the Southern (coastal) areas of the country, regional inequalities; a significant mismatch between labour market needs and skills; and high youth unemployment. Since emigration is not systematically monitored in Montenegro, it is not clear how many people take up jobs abroad, but emigration is highest from the Northern part of the country.

The Ministry of the Interior of Montenegro has recently reported that the number of workers posted to Montenegro (defined as providing contracted services and movement of individuals within a foreign company) has been: 1,616 in 2016, 3,029 in 2017, 4,371 in 2018 and 2,393 in 2019. In view of this growing trend and the significant labour shortages in Montenegro, posting of workers to, not only from, Montenegro, could be of future significance as well. The demand for foreign workers in Montenegro reflects not only the needs and shortages on the national labour market, but also the need for workers performing work at lower costs compared to the local population.

Legal and institutional framework

The PWD has not been fully transposed in Montenegro yet. Currently, a draft Law on the Protection of Posted Citizens of Montenegro Working Abroad, which will be the main legislative act transposing the Directive into national law, is under review. The proposed text of the law was sent to the European Commission for suggestions at the end of 2018, but comments have not yet been received.

The posting of workers to Montenegro, on the other hand, was included in the new Law on Foreigners adopted in 2018. In 2018, with the adoption of the new Law on Foreigners and in line with EU practice, one single procedure for residence and work permits was established in Montenegro. While previously the National Employment Agency was in charge of issuing the work permit and the Ministry of the Interior was in charge of issuing a residence permit, the Ministry of the Interior is now in charge of issuing both residence and work permits for foreign workers.

The Law on Foreigners also provides a framework for determining the number of work permits for foreigners on an annual basis. Most of the used quotas for foreign workers are in construction, services for providing accommodation and foods, trade and other service activities. The Law on Foreigners defines posted

foreigners as individuals in an employment relation with an employer outside the territory of Montenegro who perform certain services on the territory of Montenegro.

In the area of labour mobility, including posting, the Ministry of Labour and Social Welfare is responsible for the preparation of the legislative framework and its enforcement and for the overall social protection system. The Employment Agency of Montenegro is responsible for the planning and implementation of employment strategies at the national level. The Ministry of the Interior is (as of 2018) responsible for issuing the combined residence and work permit.

Institutional challenges

Institutional challenges that pertain to insufficient inter-sectoral cooperation mechanisms, a lack of human resources at relevant public institutions as well as a lack of cross-border cooperation mechanisms in the area of labour mobility and posting, remain pertinent in Montenegro. Although stakeholders are generally aware of the process of posting third-country nationals via transit EU countries to work abroad in another EU country, they are overall less familiar with the content and the stipulations of the PWD. There exist also terminological confusions, as stakeholders also refer to posted work as 'engaged' or 'detached' work. The practical implementation of the PWD and the lack of in-depth knowledge and training on specific issues that are addressed in the Directive, also remain among the under-communicated issues to stakeholders as well as to the general public.

Coordination mechanisms at the cross-border level need to be mainstreamed

Although Montenegro has achieved some level of preparation in the process of EU accession, in the area of freedom of movement of workers especially its capacities to strengthen the coordination of social security systems need to be improved. Implementation of legislation remains weak due to the lack of political will and a lack of administrative capacities. Cross-border labour law violations are generally solved on a case-to-case basis rather than through established procedures and coordination mechanisms. The lack of coordinating mechanisms at the national and, in particular, the transnational level has implications for the delivery of services to and the protection of both citizens and foreigners. Without proper structures and channels of cooperation across the border, it is difficult for national authorities to follow through with the irregularities they encounter and make sure that workers are protected. Since the Law on Foreigners from 2018 states that employment of foreigners is conducted directly by the employer and not by public employment agencies, less control over employment practices, undeclared work and other violations of foreign workers' rights in Montenegro are also issues of concern. In view of

postings as even more short-term working arrangements, this could be an issue also in the cases of posted workers. Nevertheless, the Sector for Labour Inspection is monitoring also the situation of foreign workers in the field, and intensified control takes place especially during the summer months in the sectors of tourism and construction that employ the most foreigners.

The lack of human resources at the Sector for Labour Inspection that could be used to monitor cross-border labour mobility, is also a concern. Challenges have already been encountered in relation to seasonal work, in sectors like construction and tourism, where foreigners generally are employed and where most violations have been identified by the authorities.

The lack of coordinating mechanisms at the national and especially the transnational level, has implications also for the level and quality of information delivered to both citizens and foreigners, who are often uninformed and/or misinformed about their rights and duties in relation to migration and mobility. Accurate and clear information in a format understandable to workers is paramount to improve worker security and protection.

Tripartite and bipartite social dialogue and interagency cooperation in Montenegro remain weak. Due to the lack of coordinating mechanisms among stakeholders, workers cannot be systematically supported when violations of labour rights occur. Knowledge exchange and information sharing on a national as well as transnational level are also insufficient. Foreign investments especially in tourism and construction are important in terms of meeting occupational health and safety standards as well as establishing more efficient mechanisms for improved stakeholder engagement in the area of labour mobility. Nevertheless, the lack of coordinating mechanisms at the transnational level connected to the lack of a legislative framework in the area of posting, remain pertinent issues.

Recommendations

On the legal framework and institutional mechanisms:

- Coordination mechanisms among stakeholders/institutions on a national as well as transnational level should be improved;
- Systematic and clear procedures on how to deal with violations of workers' rights at a transnational level need to be established;
- There exists a need for more information sharing, training and exchange among stakeholders nationally and transnationally;
- Enforcement and implementation of existing regulations need to be improved.

On the protection of workers and the area of information sharing:

- Workers are to be provided with clear, accurate and timely information on their rights and duties when working abroad and info points providing all such information are to be developed centrally;
- Protection of workers should be improved with the establishment and implementation of cross-border cooperation mechanisms that would enable workers to enforce their rights also transnationally.

On data about posting and labour mobility:

- Timely, accurate and reliable data collection mechanisms are to be established;
- Monitoring mechanisms and data-based reviews and analyses on the topics of labour migration/mobility and the posting of workers need to be strengthened.

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