



# EEPOW

POSTING OF WORKERS IN EASTERN EUROPE

## EEPOW Peer Review Key messages Occupational Safety and Health of Posted Workers: The Case of Slovenia

Ljubljana, Slovenia, 23 October 2019

### Executive summary

The peer review focused on occupational safety and health of posted workers (OSH) in the European Union (EU), an issue rarely addressed so far. The presentations and discussions during the peer review focused on the legal framework at both the EU level and the national levels. OSH related vulnerabilities of posted workers were systematically analysed and explained, and employer's role and responsibilities in relation to the OSH of posted workers discussed. As an illustrative example, a case of a work accident of a posted worker from Slovenia was presented. After the Slovenian case, the Italian and German cases were introduced. Discussions during the working groups additionally addressed legal and health care mechanism and practices in case of work-related accidents. Furthermore, ideas and suggestions on measures to prevent or reduce OSH-related vulnerabilities were exchanged.

The event was hosted by the Research Centre of the Slovenian Academy of Sciences and Arts in Ljubljana. It brought together representatives of policy makers, social partners, labour inspectorates, civil society, and research institutions from the host country, Slovenia, and the following six peer countries: Albania, Austria, Germany, Italy, North Macedonia and Serbia.

### Key learning messages

The peer review revealed that although participating countries have different experiences, similar approaches to OSH of posted workers are followed. Since there is no OSH specific legal framework for posted workers the general OSH directive (Directive 89/391 - OSH Framework Directive)<sup>1</sup> and national legal frameworks are applied within the EU countries. Common participant's observation included the lack of information on posting at the institutional levels. Moreover, practices vary between countries, for instance, regarding accountability in cases of work-related accidents. Responsibility for OSH in situations of posting is particularly important for posted workers, especially because of the varying regulations in the countries. OSH-related issues thus should be discussed and rights and obligations made clear to all involved before a worker is posted.

### *On OSH-related vulnerabilities of posted workers*

OSH-related vulnerabilities of posted workers are multiple, including employment conditions and contractual relations, temporariness of the work abroad, specific socioeconomic situations of posted workers, and lack of necessary training and skills, especially language skills. Posted workers are vulnerable due to the complexity of the national regulatory systems and due to a lack of information. Workers posted to Germany, who seek assistance and counselling at the trade unions, for instance, often complain about missing information on occupational safety and health. They are confused about the risks associated with specific jobs and about procedures in place if an accident occurs.

Additionally, posted workers suffer under psychosocial pressures, such as social exclusion, isolation, experience of mobbing in transnational workplaces (also due to the ethnic origin of the worker).

<sup>1</sup> <https://osha.europa.eu/en/legislation/directives/the-osh-framework-directive/the-osh-framework-directive-introduction>



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## *On legal and health care mechanisms*

During the peer review the responsibility for OSH in the context of posting was discussed in detail. The levels of responsibility for OSH concern the worker, the employer, and the site-managers in cases of subcontracting. In cases of posting of third-country nationals via an EU Member State, the situation is even more complicated. Main problems for workers relate to the lack of information on the OSH-related regulations, the lack of personal social networks, and insufficient language skills. Moreover, subcontractor liability is a key, as especially in a cross-country context the employer - the responsible person - often is unknown or cannot be found. Even in Austria, where a database of posted contracts exists, the employer, who in principle should be responsible, sometimes does not take responsibility. Furthermore, OSH coordinators are established that provide information to posted workers and the company. Still, results are limited due to the reported lack of time and missing language skills. In North Macedonia, OSH is regulated, but practical implementation is weak. There are no court cases involving posted workers and no specific mechanisms to protect them.

Accountability in cases of work-related accidents is a complex issue and practices vary in the countries. In Austria the employer is liable, whereas in Germany the general contractor can also be held responsible and legally prosecuted in OSH-related cases in the construction, meat industry and packing sectors. The problem of liability is exacerbated in cases of long subcontracting chains.

Another important issue is monitoring and controlling of the practices. Labour inspectors complain about the lack of information, language barriers and slow exchange of information via the IMI system. The latter was generally labelled as a good tool, with space for improvement due to the mentioned language barriers and to no or slow response on the side of some EU Member States. In Serbia, Slovenia and Italy the small number of labour inspectors is regarded as problematic.

## **Recommendations**

### *What can be done? Potential measures at the systemic and workplace level to reduce OSH-related vulnerabilities*

Due to the lack of information, the lack of experiences with OSH related issues of posted workers and the poor or limited scope of use of the IMI system in some cases there is a need seen by participants of the peer review for special trainings for labour inspectors dealing with posting. Improving the information sharing about OSH-related issues in local languages, for both posted workers and employers, moreover, is regarded as important.

There is a need seen for a transnational EU fund to cover costs for posted workers in case of work accidents in the form of a last resort, where, for instance, no solution is found between claimants and/or in unclear legal cases, but also in case of work-related health problems that may arise later in their life. It was recommended that resources for the fund should be allocated through a specific taxation on companies hiring posted workers.

Specific preconditions for companies who post workers to the EU must be in place, including valid insurance documentation and clear evidence of OSH training for posted workers as OSH issues should be discussed before a worker is posted abroad, especially since different countries have different OSH regulations.

Finally, there is a need seen for consistent liability chains. Responsibility should be shared between the client that contracts the work and *all* subcontractors. OSH should also be included as a condition in public procurement procedures, whereby employers violating OSH conditions should be banned from any further procurement.