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Bridging the gap between legislation
and practice in the posting of workers



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**Bridging the gap between legislation and practice in the posting of
workers
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**Bridging the gap between legislation and practice in the posting of
workers:
HUNGARY Country Report**

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Executive Summary

The report presents findings from a study that aimed to investigate how the Posting of Workers Directive and other EU regulations interplay with Hungarian rules and regulations on social security, health insurance, temporary agency work, and taxation, and to identify existing gaps in implementation and practice. The study combines secondary and empirical data analysis based on literature review and national statistics as well as interviews with public authorities and social partners in Hungary.

Hungary is primarily a sending country with regard to the posting of workers. The number of workers posted to Hungary is relatively low in comparison, but an increasing trend has been observed during the past years. Workers from Hungary are mainly posted to Germany, Austria, Belgium and the Netherlands with the main sector of activity being the industry, including construction. Germany accounts for almost half of all postings from and to Hungary. Posting from Hungary through temporary work agencies remains at a low level, albeit increasing. Incoming labour is dominated by citizens from the neighbouring countries, especially the Ukraine.

EU regulations pertaining to cross-border labour mobility (the Posting of Workers Directive, the Enforcement Directive, Social Security Coordination Regulations) had been transposed into Hungarian legislation. Provisions on posted work can be found in the Labour Code, while the social security of posted workers is covered in the social security law. Other important legislations relevant to posting include laws on labour inspection, labour safety, service provision, and equal treatment. Regarding taxation, where no coordinating rules exist at EU level, the conditions for determining the taxing of incomes during the posting period are set out in the income tax law and in Hungary's double tax treaties.

The analysis of the legal framework shows that there are important differences between the transposed EU rules on posting and social security coordination as well as taxation rules as to which Member State's law applies in the case of posting. Moreover, in the areas of social security and taxation, where national competence depends on the duration of the posting, the period of time applied differs between the two. These also have an impact on labour costs, which vary considerably across the EU, and can provide a competitive advantage to posting employers when providing services in another Member State.

Regarding implementation, one of the main challenges in Hungary relates to enforcing compliance with labour and working standards, in particular the effectiveness of labour and OSH inspections. The structure and organisation of labour inspection in Hungary has gone through a number of changes over the last ten years. A continuing difficulty facing labour inspectorates is the insufficient number of labour inspectors.

Hungary has experienced a weakening of trade unions over the years with trade union density already being at a low level. This limits access to trade union representation for posted workers. Changes in the legislation about informing and consulting with trade unions for work and employment related matters has had a further negative influence on trade union involvement in the process of worker protection in Hungary.

In terms of posting from Hungary, the most typical problems reported to the Hungarian authority concern unpaid wages, unlawful wage deductions and non-compliance with minimum wage requirements of the host country. These were also considered by the trade union representative the most frequent problems that Hungarian posted workers working in

construction are faced with. Findings from this report also indicate that workers who are posted from Hungary are not adequately informed about their employment rights and employment conditions of the host country. Posted workers working in the construction sector often fail to report labour and OSH violations to the host country authorities. Reasons for this include workers' general fear of authorities, lack of information about available remedy and redress mechanisms, language barriers, as well as lack of incentive due to the comparatively higher wages workers receive in the host country.

Information gathered from the employer organisation representatives shows that access to information about wages and employment conditions in the host country and the often-complex national rules are the main issues for employers. This is especially the case for posting companies in the road transport sector, whose operation typically involves crossing multiple borders. Improved access to information on posting rules was considered by both the interviewed employer organisation and trade union representatives crucial in order to ensure that posted workers' rights are protected throughout the EU. The need for unified minimum rules on wages and working standards was highlighted in this respect. Employer representatives also underlined the importance of clear and balanced regulation on posting at the EU level.

Since posting in Hungary may become increasingly important in the future, a need is seen to improve legislation for worker protection by in parallel ensuring that practical application follows through enforced sanction mechanisms, increased capacities of labour inspectorates and information provision. This should help contribute to a better match of Hungary's labour market demands and supplies in the future for the benefit of both the enterprises and the posted workers.

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1 Introduction

The posting of workers has so far received little attention in public discourse and policy debates in Hungary. Posting is also rarely discussed in the media. The recent legal challenge about the revised Posting of Workers Directive by Hungary (and Poland), which was eventually rejected by the CJEU¹, got broader media coverage, but overall, there is little awareness about posting among the general public.

Hungary is primarily a sending country and the number of incoming posted workers is low in comparison. However, this could be changing in the future due to labour shortages. Labour scarcity has been an ongoing problem in Hungary, the main causes of which are complex and include demographic trends, such as the ageing of the population and emigration of skilled workers, and non-competitive labour market conditions. Rapid economic growth and low unemployment also contributed to labour shortage as reflected in the sharp increase of the job vacancy rate in 2017. To mitigate labour shortages in some sectors, the Government simplified rules for workers from neighbouring non-EU countries, primarily from the Ukraine, to take up employment in Hungary (Kiss, 2017). This entailed the removal of the requirement for a work permit and granting Ukrainian citizens special status.

Although there was a significant increase in the minimum wage, and social security contribution rates were reduced by the Government in recent years, the level of average and minimum wages are still low in EU comparison and there remains a relatively high tax burden on labour costs especially for low wage earners. In terms of workers' protection, changes to the Labour law in 2012 weakened the position of trade unions and decreased employment protection (Tóth, 2012). A 2018 amendment to the Labour Code that allows more overtime work with deferring compensation, meant a further weakening of labour vis-à-vis employers.²

Given Hungary's position as mainly a sending country, and the better wage and generally good working conditions in Member States (Germany, Austria, Belgium, Netherlands), where most workers from Hungary are posted to, the relevance of Hungarian rules and employment conditions may seem to have less importance. This is not the case, however. Due to the transnational and temporary nature of posting, the rights of posted workers as well as of the employers that post them are protected by the host country law as well as by the law of the country of origin (Rasnača & Bernaciak, 2020). Important aspects, for instance, the termination of employment contracts or the information obligations of employers towards their employees, are regulated by the laws of the sending country. In addition to this, there are a number of areas relevant to posting, such as social security or taxation, where, in the case of posted workers, the sending country's laws apply.

The study aims to investigate how the Posting of Workers Directive and other EU regulations interplay with national rules and regulations on social security, health insurance, temporary agency work, and taxation in Hungary, and informs about existing gaps in implementation and practice.

¹ The recently revised Posting Directive grants equal remuneration to posted workers (as opposed to the previously required minimum wage). This principle of 'the same wage for the same job in the same place' was contested by the Hungarian Government and challenged at the CJEU on the ground that it violates the principle of freedom of services.

² The amendment, sometimes referred to as the so-called 'Slave Law', was introduced without prior consultation with social partners. It significantly increased the maximum amount of annual overtime (from 250 to 400 hours), and extended the reference period from 12 to 36 months.

The report is structured as follows: After the introduction, the country context is briefly described and labour mobility and posting rates and trends in Hungary are presented (chapter 2). Chapter 3 provides information about the methodology used for the analysis and the challenges and limitations of the method applied. This is followed by presenting the results (Chapter 4) where the regulatory framework, national implementation and enforcement, as well as employer practices and challenges, and worker protection are described. Chapter 5 draws the synthesis and the conclusions. Finally, some policy recommendations are provided in Chapter 6.

2 Country Context

2.1 Socio-economic overview

Hungary recorded the second highest annual growth rate for real GDP in 2019 (4.9%) among EU countries. In addition to strong economic growth and with unemployment falling steadily, the job vacancy rate rose rapidly from 1.9% in 2016 to 2.3% in 2017. Nonetheless, the rate has been decreasing since 2019. According to the Hungarian Central Statistical Office (KSH), there were 74,824 vacant positions in total (51,144 in the private sector) in the 4th quarter of 2019. Sector-wise the highest vacancies were reported in the industrial sector, including building and construction, followed by administration, healthcare and social sector, and trade.

Table 1: Overall economic and labour market trends

	2017	2018	2019
Real GDP rate of change (%)	4.3	5.1	4.9
Employment rate, population aged 15+ (%)	53.9	54.6	55.1
Job vacancy rate (%)*	2.3	2.7	2.5
Unemployment rate, population aged 15-74 (%)	4.2	3.7	3.4
Average monthly gross (and net) wages (in EUR) **	890 (592)	1,042 (693)	1,073 (714)
Monthly gross minimum wage (in EUR)	411.5	444.7	464.2
Tax wedge (%)***	46.2	45.0	44.6

Source: Eurostat Online Database, Mazars (2017, 2018, 2019) for information on average wages, OECD (2021) Tax wedge indicator.

Notes: *Annual average. **Average monthly wages in the private sector. *** Average tax wedge for a single person earning 100% of the average wage. The tax wedge is defined as income tax on gross wage earnings plus employee and employer social security contributions, expressed as a percentage of total labour costs.

Hungary has for many years been affected by labour shortage; a problem which was further exacerbated during the last decade by the outflow of skilled labour to western European countries with better wage and work conditions (Hárs, 2020). Despite higher wage growth due to the tightening of the labour market, and a significant increase in the minimum wage (since 2016), wages remain much below the EU average. Hungary has the fourth lowest minimum wage in the EU after Bulgaria, Latvia and Romania (Eurostat, 2020). While payroll tax has been reduced in recent years, there is still a relatively high tax burden on labour. The tax wedge on labour costs of average wage earners was 44.6% in 2019.

2.2 Labour mobility and posting rates and trends

Hungary is characterised by higher immigration than emigration (see Table 2). Although migration from Hungary increased significantly, especially from 2013/14 onwards, the trend appears to have reversed in the most recent years. According to data from the national statistical office, while in 2010 there were around 7,000 Hungarian citizens emigrating from Hungary, their number more than tripled within the next five years reaching as high as 32,852 in 2015. In 2019, the number of emigrants with Hungarian citizenship was 21,900.

The largest share of immigrants to Hungary are TCN (46.6% in 2018) mostly citizens of the Ukraine and Serbia as well as of Asian countries (e.g. China, Vietnam). EU migrants (i.e. with citizenship of EU Member States) accounted for 12.8% of total immigrants in 2018. Again, they tend to come from neighbouring countries such as Romania and Slovakia. There is in addition a large number of national immigrants (i.e. with Hungarian citizenship). Their relative share within the total number of immigrants was 55% in 2016 and 40.5% in 2018. It is important

to note here that a significant share of national immigrants are members of the Hungarian ethnic minorities in Romania, Serbia and the Ukraine, who acquired citizenship through simplified naturalisation (EMN, 2019).

Table 2: General migration trends in the last three years available

	2016	2017	2018
Total number of emigrants	39,889	39,829	48,178
Total number of immigrants	53,618	68,070	82,937
Total EU migrants received	10,532	11,182	11,139
Total TCN migrants received	13,261	25,260	38,160
Share of immigrants of working age (18-64 years old) in %	87.9	89.6	91.0

Source: Eurostat Online Database.

Note: Migrant status based on citizenship.

Generally, third-country nationals can only work in Hungary if they have a residence permit for employment, seasonal work, family reunification or studies. In 2019, altogether 14,234 work permits were issued for the purpose of employment for third country nationals of which the largest group was for citizens outside Europe (Ministry of Innovation and Technology, 2020a). This figure does not include workers from non-EU neighbouring countries, such as the Ukraine and Serbia, who can take up employment in Hungary without a work permit. Their employment only entails an obligation by the employer to notify the government office. Among the 44,335 foreign workers reported by employers in 2019, 26,411 were Ukrainian and 2,749 were Serbian citizens (Ministry of Innovation and Technology, 2020a).

An important form of cross-border labour mobility in the Hungarian context concerns cross-border (or so-called frontier) workers who live in Hungary, but work in a neighbouring state. The largest number of cross-border workers work in Austria (56,000 in 2019) and are most commonly employed in the manufacturing, construction and hospitality sector (Eurostat, 2020).

In terms of posting, Hungary is primarily a sending country. In 2018, the latest year for which data are available, the number of Portable Documents A1 forms (PDs A1) issued by Hungary was 54,326 (Table 3). Although the number of postings to Hungary remains relatively low in comparison (17,090 in 2018), there has been an increasing trend since 2015. The main countries of destination are Germany, Austria, the Netherlands and Belgium (De Wispelaere et al. 2019). As far as EU Member States are concerned, workers posted to Hungary mostly come from Germany, Slovakia, Italy, France as well as Austria and Poland. Germany accounts for almost half of all posting from and to Hungary. The two main countries of origin outside the EU are the Ukraine and Serbia. The main sector of activity in which workers are posted abroad is industry (86%), specifically construction (54%), followed by services (14%) (De Wispelaere et al. 2019).

Table 3: Posting trends in the last three years available

	2016	2017	2018
Total number of outgoing posted workers	61,365	62,873	54,326
Total number of incoming posted workers	11,312	12,924	17,090
Labour market share of incoming posted workers	0.3%	0.3%	0.4%
Main countries of destination for posted workers	DE, AT, BE, NL	DE, AT, NL, BE	DE, AT, NL, BE
Main countries of origin of posted workers received	DE, SK, PL, FR	DE, AT, PL, FR	DE, SK, IT, AT

Source: De Wispelaere et al. (2019); De Wispelaere and Pacolet (2018); Pacolet and De Wispelaere (2017).

Note: Data based on number of PD A1 forms under Article 12 of the Basic Regulation.

The number of postings by temporary work agencies (TWAs) tends to be very low, albeit increasing (Ministry of Innovation and Technology, 2019). In 2018, altogether 3,492 workers (2.3% of all temporary agency workers in Hungary) were posted mostly to Germany, Austria and Denmark. The overwhelming majority of these workers were employed in the food processing industry (79%) and ‘only’ 10% worked in construction. The number of TWAs that focus their activities abroad has also grown over the years.

3 Methodology

3.1 Data collection

The study utilized a mixed-methods approach combining primary data gathered from interviews with secondary data. Secondary data were collected through desk research and are based on a review of national legislation pertaining to posting, temporary agency work, social security, health insurance, taxation law and other relevant regulations, as well as a review of academic and grey literature, and statistical information, on cross-border labour mobility and posting. Primary data were collected in order to assess the impact of different regulations on actual practices. The method used for the primary data collection was based on semi-structured interviews with representatives of public authorities, trade unions and employers' organisations. A specific focus was on the construction and road transport sectors, which is reflected in the trade union and employer organisations that were interviewed for the case study. A particular feature of the interviews was the use of vignettes which were comprised of short written cases describing a specific situation or reflecting a concrete problem, and which were administered during the individual interview sessions.

In total, six interviews were carried out (see Table 4 for a detailed account). In one case the response to the questions was provided in writing. All interviews were conducted in Hungarian. The interviews were transcribed and analysed by using qualitative thematic analysis. In an iterative effort, the interview responses were thematically organized and then compared with each other in order to create a comprehensive picture of the situation in question and of the perceived challenges.

Table 4: Detailed account of primary data collection

Fieldwork period	Mode of data collection	Specific sectors covered	Background (and number) of respondents
August-November 2020	Interviews (face-to-face, phone)	Construction, Road transport	<p><i>Public authorities:</i></p> <ul style="list-style-type: none"> Ministry for Innovation and Technology, Department of Labour Inspection (1) Ministry for Innovation and Technology, Department of Labour Market (1)*. <p><i>Trade Unions:</i></p> <ul style="list-style-type: none"> Trade Union, construction sector (1) Trade Union, road transport sector (1). <p><i>Employers' associations:</i></p> <ul style="list-style-type: none"> Employers' organisation, construction sector (1) Employers' organisation, road transport sector (1).

* Information provided in writing.

3.2 Analytic Framework

The analytical framework comprised the identification of the national legislation, policy measures, government instructions and related regulations in various domains concerning posting, cross-border labour mobility, temporary agency work, social security, health insurance, company law and any other relevant regulation. Documents under study included rights and obligations of posted workers, of cross-border mobile workers, and of posting companies, as well as conditions for and incentives of cross-border service provision.

3.3 Challenges and limitations

The fieldwork was conducted in a period when the COVID-19 pandemic had already spread in the EU and Hungary and restrictive measures were in place. This represented a major challenge to the access we had to potential participants and also posed difficulties for planning and carrying out interviews in terms of dates, format (face-to-face, on the phone, online) with those who were contacted and willing to be interviewed.

Although Hungarian public authorities on OSH and social security were approached for an interview, we did not manage to have any representative of these institutions to participate in the research. Hence, in the absence of interviews with these authorities, the report relied instead on secondary information sources (such as publicly available reports and/or the websites of the respective authorities). Likewise, we collected information on employers' perspective and challenges from the employer organisation representatives, who we interviewed but did not interview any posting employers directly. Moreover, the interviews conducted with worker and employer representatives provided input from specific sectoral perspectives (like construction and road transport) and, therefore, do not provide a representative view of trade unions and employer organisations in Hungary.

As an explorative qualitative study, the report at hand thus also presents a number of limitations. As already mentioned, there is a lack of employers' perspective gained directly from posting employers. Another important limitation concerns the lack of research studies on the situation of posted workers and posting employers in Hungary. Our review of academic and grey literature revealed very limited coverage of the topic of posting in the Hungarian context, thus indicating an obvious gap in the posting literature as far as Hungary is concerned. Finally, temporary agency work, which could be covered only to a limited extent in this study, would merit further exploration in the posting context.

4 Results

4.1 Regulatory Framework

In Hungary, legal provisions on posted work are contained in the Labour Code, which transposes EU Directives on the posting of workers. Other important laws relevant to posting include laws on labour inspection, safety at work, social security and service provision (see Text Box 1). These rules and regulations are discussed in this section concentrating on their relevance to the posting of workers in Hungary.

Text Box 1: Hungarian laws and regulations relevant to posting

- Act 1 of 2012 on the Labour Code
- Act LXXV of 1996 on Labour Inspection
- Act XCIII of 1993 on Labour Safety
- Act CXXII of 2019 on Social Security
- Act LXXVI of 2009 on general rules on taking up and pursuit of services activities
- Act CXXV of 2003 on Equal Treatment and Promotion of Equal Opportunities

In addition, there are legal provisions concerning, for instance, temporary agency work (Government Decree 118/2001), the Mandatory Minimum Wage and the Guaranteed Wage Minimum (Government Decree 367/2019) as well as specific rules on reimbursement of travel and other expenses (e.g. Government Decrees 285/2011, 437/2015, 39/2010, 173/2003).

4.1.1 Posting and cross-border labour mobility

In Hungary, Act 1 of the 2012 Labour Code defines the set of mandatory rules regarding the terms and conditions of employment of posted workers (the Labour Code gives its scope by reference to the Posting of Workers Directive and the Enforcement Directive). It sets out the special rules applicable to the posting of workers to the territory of Hungary and the so-called hard core of rights that apply in the case of posted workers, which are contained in section 295 of the Labour Code. This stipulates that if a foreign employer employs the employee in the territory of Hungary, then the Hungarian labour rules shall apply, including their provisions contained in the respective collective agreement, with regard to the following:

- the length of the longest working time or the shortest rest period,
- the minimum amount of paid annual leave,
- the amount of the lowest wage,
- temporary agency work in accordance with sections 214 to 222 (see section below),
- occupational safety and health conditions,
- conditions of employment for pregnant women and women with young children, and young workers,
- the requirement of equal treatment,
- the conditions of accommodation provided to the employee by the employer, and
- the amount of allowances or reimbursement paid for travel, board and accommodation expenses.

These provisions should be applied unless the law applicable to the employment relationship is more favourable to the employee than the Hungarian rules.

As laid out in Section 297 of the Labour Code, the Hungarian company where the service is carried out is required to inform in writing the foreign company (i.e. the posting employer) about the above described labour rules applicable in Hungary and also has to be able to verify

that the conditions are met by making sure that all related documents (employment contracts, timesheets, copy of payroll documents) are available and provided to authorities upon request, and are kept for 3 years after the posting period ends.³ The posting employer has to designate a contact person responsible for liaising with the labour authority and with the social partners who may contact them for the purpose of collective bargaining during the provision of the service.

The Labour Code also regulates the subcontracting liability in the case of posting workers to Hungary. According to Section 297, if the company where the service is carried out fails its obligation to inform the foreign employer, then it will become financially liable to the employee's claims. Moreover, if it knew or should have been aware, given reasonable care, that the foreign employer failed to comply with the obligation of payment of wages and contributions in connection with the employee's employment, it shall be jointly liable with the foreign employer for the payment of wages and other payroll costs (i.e. social security contributions) otherwise payable by the foreign employer. The Hungarian legislation applies the subcontracting liability in the case of posting to all sectors of the economy.

Section 8/D of the Act LXXV of 1996 on Labour Inspection regulates the administrative requirements (i.e. declaration and documentation) for posting in Hungary. In the absence of a posting declaration the law prescribes a fine of 30,000 HUF (around 80 EUR). The Act also lists the relevant information required by the labour authority for the registration of posted workers in order to allow for factual controls at the workplace.

Another important law relevant to posting is the Law on Labour Safety (Act XCIII of 1993) which guarantees the rights of employees (including of posted workers) to safe and healthy working conditions in Hungary and sets out employer obligations in this regard and sanctions for non-compliance.

The EU regulation (1024/2012) on the administrative cooperation through the Internal Market Information System (the main tool used for transnational cooperation and information exchange on posting) was transposed into national law in Act LXXVI of 2009 on general rules on taking up and pursuit of services activities.

4.1.2 Temporary agency work

The 2012 Labour Code (sections 214-222) covers the category of temporary agency work⁴ separately from the rules of posting. As opposed to the typical employee-employer line-up, this form of employment means that in addition to the employee, the user enterprise as well as the temporary work agency, hereinafter TWA, who temporarily transfers the employee for the purpose of employment are involved. The employer's right can, in principle, be shared between the two in a written agreement at their own discretion. The only exception to this is the right to

³ The respective sections of the Labour Code on posting make no mention of the information obligations of Hungarian companies posting workers abroad. However, according to section 47 of the Labour Code, if the work to be performed abroad exceeds 15 days, the employer is required to inform the employee in writing seven days before the departure about the place and duration of the work abroad, remuneration (both cash and in-kind), currency of the remuneration, the rules of the employee's return, in addition to the information described in section 46 of the Labour Code (daily working time, wages and other benefits in addition to the basic salary, the method of accounting for the salary, the frequency of payment of the salary, the date of payment, the tasks pertaining to the position, the extent of ordinary leave, the method of calculation and the method of granting it, the rules for determining the period of notice applicable to the employer and the employee, whether the employer is covered by a collective agreement, and the person exercising the employer's right).

⁴ The Hungarian term used is "munkaerőkölsönzés". Different from this is when a company uses a private employment agency for recruitment of labour (the Hungarian term used is "munkaerőközvetítés") as in this case there is no tripartite legal relationship (i.e. the agency has the role of intermediary that appears only in the pre-employment procedure).

terminate the employment relationship, which according to the Labour Code can only be exercised by the TWA. However, it is important that the TWA qualifies as the employer during the period of the temporary agency work. The Labour Code makes it an obligation of the TWA to inform the employee about the working and employment conditions at the user enterprise (e.g. place of work, start of the lease, work schedule, conditions of accommodation and meals etc.) and to provide all necessary documentation to the user enterprise (e.g. document showing that the TWA is registered in accordance with the relevant national legislation). Throughout the duration of temporary agency work, the user company is obliged to employ the employee in accordance with the employment contract and the rules of employment, and - unless otherwise agreed by the parties - to provide the necessary conditions for the work including occupational safety and health, working time and rest time.⁵ One obvious disadvantage of this form of atypical employment lies in the job insecurity which stems from the contract between the TWA and the user company over which the employee has little influence. Another difference compared to traditional employment is the shorter notice period (15 days as opposed to the normally applied 30 days). In light of this, the provision of the Labour Code which reflects the principle of equal treatment is particularly important (Kiss, 2019). According to this, during the period of temporary agency posting, the employee must be provided with the same basic working and employment conditions that apply to employees with whom the user enterprise has a traditional employment relationship.

As stated in section 297 of the Labour Code, it is the employer where the service is provided that is responsible for informing the posting employer about the rules and conditions of employment. The same applies in case of temporary agency posting. Thus, if a TWA established in an EEA Member State assigns an employee within the framework of temporary agency work to perform work in Hungary, the user enterprise is required to inform the TWA of the terms and conditions of employment regarding the working conditions and remuneration. In the event of failure to provide this information the user enterprise will be held financially liable for the employee's claims under section 295 of the Labour Code.

The establishment, registration, and conditions of operation of TWAs are regulated by Government Decree 118/2001[VI. 30.] which implements provisions of Directive 2008/104/EC on temporary agency work and Directive 2006/123/EC on services in the internal market. The Decree requires compulsory registration for TWAs. While the law prescribes domestic registration of TWAs, foreign companies can also enter to the market through their subsidiaries registered in Hungary. The application for registration is to be submitted to the competent government office. Apart from professional requirements (e.g. at least one employee with the necessary competencies, appropriate permanent office), TWAs must have a collateral.⁶ The labour authority in the competent government office is authorized to monitor compliance with the above criteria and to control the employment practice of both TWAs and user enterprises in Hungary.

⁵ As also stipulated in the 1993 XCIII Law on Labour Safety (Section 87), the user company is responsible for ensuring safe working conditions for the employee.

⁶ To address fraudulent practices and eliminate fraudulent agencies, in 2017 and 2018, the legislator introduced amendments to Government Decree 118/2001 making the public debt exemption mandatory and by increasing the amount of collateral for continuing operation as a temporary work agency from 5 to 15 million HUF.

4.1.3 Social security

The social security of posted workers, including health insurance, is regulated through the 2019 Act CXXII on the entitlement and coverage of social security benefits.⁷⁸⁹ The Act implements Regulation 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation 883/2004 on the coordination of social security systems. As stipulated by Article 12 of Regulation 883/2004, in the case of posting, the worker continues to be subject to the social security legislation of the sending Member State, and pays social security contributions there, given that the expected duration of work does not exceed 24 months and the worker is not sent to replace another person.¹⁰ Article 14 of the Implementing regulation 987/2009 provides further conditions for establishing attachment to the social security legislation of the sending State.

In Hungary, the above mentioned 2019 Social Security Act (sections 89-95) specifies these conditions (see Table 5). In addition, the Act makes it clear that the posting employer should retain full authority over the posted worker during the period of secondment and the posted worker must be employed continuously by the posting employer for the entire duration of the posting.

Table 5: Posting conditions for social security

Conditions in Articles 12 of Regulation 883/2004, and 14 of Regulation 987/2009	Conditions in the 2019 Social Security Act
Anticipated duration of the posting should not exceed 24 months	- If the employer sends the worker to one of the EEA Member States or to Switzerland, the worker will remain subject to the Hungarian social security rules for a maximum of 24 months. If the posting is interrupted for a maximum of 2 months, it continues to be considered as a continuous posting. Suspension of work for less than 2 months in the State of posting will not result in an extension of the period of secondment and will not justify the establishment of a new posting. If, within 60 days of the expiry of the previous posting, the employer wishes to post the same worker to the same Member State, Hungarian law shall apply to the new posting, provided that its duration, including the previous posting, does not exceed the 24 months.
The worker should not be sent to replace another person	- Workers cannot be posted if the reason is to replace another posted worker or to make the worker available to another undertaking or to transfer the posted worker to another Member State.
The posting employer should normally operate and carry out substantial activities in the territory of the sending Member State	- The posting employer must be legally registered by the court of registration. - The posting employer must have a significant domestic economic activity. Significant domestic economic activity exists when the proportion of domestic employees within the average number of employees employed in the course of domestic and foreign economic activity (production, distribution and other service activities) will reach, or the share of revenue from domestic activity in total revenue reaches 25 percent. The condition of significant domestic economic activity is also met if the employer can show that significant domestic economic activity is probable (especially if the enterprise carries out

⁷ 2019. évi CXXII. törvény a társadalombiztosítás ellátásaira jogosultakról, valamint ezen ellátások fedezetéről.

⁸ The 2019 Act, which replaces the previous 1997 Act LXXX on social security, entered into force on the 1st of July 2020.

⁹ The Act covers the following social security benefits provided (1) under the health insurance system: health services and cash benefits (including sick pay, infant care allowance, childcare fee, accident benefits, disability benefit, rehabilitation benefit) and (2) under the pension insurance system: old age pension, widow(er)'s pension, orphan's allowance, parental pension, accident-related survivors' benefit.

¹⁰ Posting is an exception to the general rule according to which it is the social security legislation of the place where the work is performed that is applicable (*lex loci laboris*).

	<p>continuous production activities in Hungary). The condition relating to significant economic activity is also considered to be fulfilled if the employer (and not an establishment of the company, but the company itself) has an ownership interest of at least 25 percent in an undertaking which carries out significant economic activity, or the legal predecessor of the employer fulfils the condition of significant economic activity. However, significant domestic activity must be maintained throughout the whole period of posting.</p> <p>- The posting employer must carry out an activity belonging to the same branch of the national economy abroad.*</p>
The person being posted to another Member State should be subject to the legislation of the sending Member State immediately before the start of the posting employment	<p>- The worker posted by the employer must be entitled to health care without interruption for at least 30 days immediately prior to the starting date of the posting.</p>

* E.g. an employer engaged in building services in Hungary may only post an employee to another Member State for construction work.

Hungarian law can only be established as the applicable social security law in the case of posting if the above conditions are met. It is important to note that the same conditions apply to a TWA that wishes to post an employee to perform work abroad. That is, the TWA can exercise the right of posting and workers can remain subject to the Hungarian social security legislation only if the conditions for posting are met for the TWA. Otherwise the workers will need to be insured in the Member State where the temporary work is performed, even if the posting TWA has a registered office or establishment in Hungary. The legislator makes this clarification in the law.¹¹

The 2019 Act also establishes the reporting obligations of posting employers to the Hungarian health insurance authority and the procedures they need to follow when applying for the PD A1 certificate.¹² The employer is obliged to immediately notify the authority that issued the certificate of any changes in the circumstances of the posting that affects the scope of the certificate (e.g. insurance obligation no longer exists, termination or suspension of the employment of the posted worker during the period of secondment).

In the case of posting to Hungary, the competent insurance body according to the registered office of the posting employer certifies that the employee is insured in the sending Member State by means of the PD A1 form. If the A1 certificate expires and is not renewed, but the posted worker is still employed in Hungary, the insurance relationship will be transferred to Hungary. This means that there is an obligation to pay social security (and health insurance) contributions, which, as a general rule, must be fulfilled by the direct posting employer. The start of the employee's insurance relationship in Hungary must be reported to the National Tax and Customs Administration (NAV) by submitting a form, either in person, by post or electronically (via a customer portal). If the foreign employer fails to comply with its reporting, payment and declaration obligations, then the individual worker must do so.

The rates of taxes on labour have been reduced significantly over the past few years in Hungary. Currently a 15.5% social contribution tax on gross salary is payable by employers. Hungarian employers pay in addition a 1.5% contribution to the training fund. The rate of employees'

¹¹ Social Security Law [(56/A. § (4)]

¹² The situation is different when posting is to/from a third country (i.e. non-EEA). In such cases, it has to be examined whether Hungary has a social policy or security agreement with the country.

social security contribution is 18.5%. The employer's part of the social tax and the individual employee's social security contribution are paid on a monthly basis.

4.1.4 Health insurance and coverage

For proof of health insurance in Hungary, the European Health Insurance Card (EHIC) can be requested at and is issued by the competent government office. Posted workers who are insured in an EEA Member State, can receive health care during their stay in Hungary under the same conditions as Hungarian insured persons if they have the EHIC that proves their entitlement. In case they cannot produce this when seeking treatment, the health care provider can also accept a retroactively issued PRC (Provisional Replacement Certificate), which has to be submitted within 15 days following the treatment (NEAK, 2020). Without the EHIC (or PRC), the person has to pay for the services received, but can apply for a reimbursement at the national health insurance institute in the Member State where he/she is insured. With the EHIC, medical treatment can be accessed in Hungary free of charge at the GP (General Practitioner), specialised outpatient centres and hospitals (generally upon referral from the GP, except for emergency cases), which are contracted with the Hungarian national health insurance fund. However, for certain hospital services and pharmaceuticals, co-payments may be required which are not refundable. The same no-refund rule applies to private charges for seeing a doctor or dentist.

Hungary has bilateral agreements on the provision of healthcare with a number of non-EEA European countries (e.g. Bosnia and Herzegovina, Montenegro, Serbia, Russia, Ukraine), whose residents can access health services during their temporary stay in Hungary when these are medically necessary and urgent (NEAK, 2020).

4.1.5 Taxation

While in the case of social security, the coordination regulations (883/2004, 987/2009) make it clear that there can only be one legal system applicable at a time (for posting, it is the sending State), there are no coordinating rules at EU level that would determine which Member State taxes income during the period of posting (De Wispelaere & Pacolet, 2015). Instead, it is regulated through national laws and bilateral tax agreements (double taxation treaties), which are mainly based on the OECD Model Convention on Income and on Capital (OECD, 2017). According to Article 15, an employee will be liable to pay tax on the income earned during the work assignment only in the sending State, if

- the period of the assignment does not exceed 183 days within 12 consecutive months (or in a calendar year);
- the salary is paid by an employer who is not a resident of the country of employment; and
- the costs are not borne by the employer's branch or permanent establishment in the country of employment.

Table 6: Member State competence in social security coordination and taxation law

Period of work assignment	Tax	Social security
Less than 183 days	Sending Member State	Sending Member State
Between 183 days and 24 months	Host Member State	Sending Member State
Longer than 24 months	Host Member State	Host Member State

Source: De Wispelaere and Pacolet, 2015.

This so-called 'economic employer approach' to interpreting Article 15 of the OECD treaty has been adopted by the Hungarian taxation authority (NAV, 2019). This means that when a

Hungarian worker is posted abroad the salary paid by the posting company will be taxed in Hungary (and will remain subject to the Hungarian taxation rules) as long as the period of posting is less than 183 days and the salary is paid directly by the Hungarian employer who posted the worker. However, posting employers and posted workers would need to check for specific rules in host Member States. They can also consult the guidelines prepared by the Hungarian tax authority in order to determine the economic employer and check information on double tax treaties (Hungary has such treaties with more than 80 countries including with all EU Member States).

Hungarian income taxation is regulated in the 1995 Act CXVII on Personal Income Tax. The Act stipulates resident rules for the purposes of income taxation, tax rates, categories of taxable income (salaries, cost-of-living allowances, housing allowances or the value of accommodation provided, etc.), tax-exempt income (e.g. employer-provided housing in case of assignments), and employee and employer compliance obligations for reporting and payment of income taxes. There are various penalties and interest charges levied in case of non-compliance.

In Hungary, income is taxed at a flat rate of 15% on annual gross salary. According to Hungarian regulations, the employer must deduct the amount of the personal income tax in advance. An exception to this is if the income in question is not subject to tax in whole or in part. There is, for example, an exemption for up to 15 EUR¹³ from the daily allowance of posted workers or for expenses incurred in connection with accommodation and travel.¹⁴

The corporate income tax rate is 9%, which is one of the lowest in the region and in European comparison.

Please view Table 7 for an overview of rules and regulations on posting in the national context.

¹³ In case of posted road transport workers, the amount of the daily allowance after which no tax or social security contribution need to be paid is 60 EUR.

¹⁴ Gov. Decree 285/2011.

Table 7: Rules and regulations on posting in the national context

	Law/Regulation	Posting Workers Rights	Posting Companies Rights and Incentives	Posting Companies Obligations	Public Authorities Mandate
Posting-specific or Cross-border Service Provision	<p>2012 Labour Code</p> <p>1996 Act on Labour Inspections</p> <p>1993 Law on Labour Safety</p>	<p>Act 1, section 295 incorporates the terms and conditions of employment of posted workers (in line with Article 3 of the PWD).</p> <p>If a foreign employer employs the employee in the territory of Hungary then the Hungarian labour rules shall apply, including their provisions contained in the respective collective agreement.</p> <p>The OSH law guarantees the rights of employees (including of posted workers) to safe and healthy working conditions in Hungary</p>		<p>The main employer has to inform in writing the posting employer/TWA about the rules and conditions of employment in accordance with section 295 and has to verify the conditions are met by making sure that all related documents (employment contracts, timesheets, copy of payroll documents) are available and provided to authorities upon request, and are kept for 3 years after the posting period ends. Failure to comply makes the main employer financially liable to posted workers' claims.</p> <p>The posting employer has to designate a contact person responsible for liaising with the labour authority and with the social partners.</p> <p>Section 8/D of the 1996 Act on LI regulates the declaration and documentation, in the absence of which a fine of 30,000 HUF (around 80 EUR) is issued.</p> <p>The OSH regulation sets out employer obligations and sanctions for non-compliance.</p>	<p>Department of Labour Inspections, Ministry of Innovation and Technology</p> <p>Metropolitan and County Government Offices (regional/local labour authorities)</p> <p>Equal Treatment Authority (EHB)</p>
Temporary Agency Work	<p>Gov Decree 118/2001</p> <p>2012 Labour Code</p>	<p>The worker is entitled to labour rights in accordance with the employment contract and the rules of employment, and the necessary conditions for the</p>	<p>The employer's right can, in principle, be shared between the user enterprise and the TWA in a written agreement at their own discretion.</p>	<p>Compulsory registration for TWAs; foreign companies can also enter to the market through their subsidiaries registered in Hungary.</p>	<p>Department of Labour Inspections, Ministry of Innovation and Technology</p>

		work including occupational safety and health, working time and rest time.	The right to terminate the employment relationship can only be exercised by the TWA.	<p>The TWA qualifies as the employer during the period of the temporary agency work.</p> <p>The TWA should inform the employee about the working and employment conditions at the user enterprise (e.g. place of work, start of the lease, work schedule, conditions of accommodation and meals etc.).</p>	<p>Metropolitan and County Government Offices (regional/local labour authorities)</p> <p>Equal Treatment Authority (EHB)</p>
Social Security and Health Insurance and Coverage	2019 CXXII Law on the entitlement and coverage of social security benefits	<p>The worker continues to be subject to the social security legislation of the sending Member State, and pays social security contributions there, given that the expected duration of work does not exceed 24 months and the worker is not sent to replace another person.</p> <p>The worker posted by the employer must be entitled to health care without interruption for at least 30 days immediately prior to the starting date of the posting.</p> <p>Entitled to the European Health Insurance Card (EHIC).</p> <p>In the absence of EHIC, the health care provider can also accept a retroactively issued PRC (Provisional Replacement Certificate), which has to be submitted within 15 days following the treatment.</p>		<p>The posting employer must be legally registered by the court of registration.</p> <p>The posting employer must have a significant domestic economic activity (25% of revenue) and must carry out an activity belonging to the same branch of the national economy abroad.</p> <p>The posting employer should retain full authority over the posted worker during the period of secondment and the posted worker must be employed continuously by the posting employer for the entire duration of the posting.</p> <p>The employer is obliged to immediately notify the authority that issued the PD A1 certificate of any changes in the circumstances of the posting that affects the scope of the certificate (e.g. insurance obligation no longer exists, termination or suspension of the employment of the posted worker during the period of secondment).</p> <p>Obligation to pay posted workers' social security (and health insurance) contributions.</p>	<p>National Health Insurance Fund (NEAK)</p> <p>Metropolitan and County Government Offices</p> <p>National Tax and Customs Administration (NAV)</p>

Taxation	<p>1995 Act on Personal Income Tax</p> <p>Double tax treaties based on the OECD Model Convention on Income and on Capital</p> <p>Gov. Decree 285/2011 on eligible costs for posting abroad</p>			<p>When a Hungarian worker is posted abroad, the company will be taxed in Hungary (and will remain subject to the Hungarian taxation rules) as long as the period of posting is less than 183 days and the salary is paid directly by the Hungarian posting employer.</p> <p>Obligations for reporting and payment of income taxes with penalties and interest charges levied in case of non-compliance.</p> <p>The employer must deduct the amount of the personal income tax in advance. An exception to this is if the income in question is not subject to tax in whole or in part. There is, for example, an exemption of up to 15 EUR from the daily allowance or for expenses incurred in connection with accommodation and travel.</p>	National Tax and Customs Administration (NAV)
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4.2 National implementation and enforcement

4.2.1 Institutional Framework

The institutional framework for monitoring and control of the posting of workers in Hungary extends to a number of institutions at the national and local level, with different authorities responsible for specific aspects of posting. The authorities and a concise overview of their competences is provided in Text Box 2.

Text Box 2: Hungarian public authorities and enforcement agencies on posting

Department of Labour Inspections, Ministry of Innovation and Technology

It supervises and controls the labour authorities' activities in the government offices and is also responsible for verifying compliance with posting rules in Hungary. A designated unit within the Department serves as the official contact and information point (liaison office) on posting and is in charge of administrative cooperation through the Internal Market Information (IMI) System.

National Health Insurance Fund (NEAK)

NEAK is the central agency responsible for the management and administration of health insurance in Hungary. One of its core tasks is the preparation and implementation of international treaties related to social security. It also maintains contact with the designated competent institutions and bodies, and performs the coordination tasks stemming from EU membership. It is the authority that manages the PD A1 forms.

Metropolitan and County Government Offices

The government offices are the general territorial administrative bodies of the Government. Labour authorities in these offices carry out inspections. They are responsible for monitoring and enforcing compliance with employment regulations (employment contracts, undeclared work, working time, wages etc.), and employment of posted workers, third country nationals and temporary agency workers. Occupational safety and occupational health experts in the offices carry out OSH inspections, investigate work accidents and provide information and training on OSH. The government offices are the contact points for information and administration on social security and health insurance related matters and they issue the PD A1 forms and the EHIC.

Other relevant public authorities and enforcement agencies:

- National Tax and Customs Administration (NAV)
- Equal Treatment Authority (EHB)

4.2.2 Enforcement Agencies Practices

4.2.2.1 Access to information

The Hungarian national website on posting provides information about the terms and conditions of employment that apply to posted workers. The website, managed by the Ministry of Innovation and Technology, is available in Hungarian and English. It contains an overview for the minimum requirements for posting workers to Hungary and relevant sections of national legislations on posting (translated into English); information on administrative procedures for posting employers, on the rights and obligations of posted workers related to OSH, and mechanisms for complaints; factsheets on collective agreements; and contact details of the relevant public authorities (e.g. NEAK, Government Offices). There is a separate section on the website where more specific questions can be asked. According to the interviewed public authority representative these tend to be answered within 7 days and basic information is provided over phone and email as well. Since postings to Hungary concerns highly specialised

postings in general, such as engineers, specialised industry and construction professionals, the authority also receives requests for information from national embassies. As regards to inquiries on posting rules in other Member States, posting employers and workers are generally advised by the authority to visit the countries' own national websites.

4.2.2.2 Administrative requirements

When posting workers to Hungary from an EEA Member State, there is a requirement to submit a declaration to the Hungarian authority before the start of the posting (including the day the posting starts). Posting employers can do this through the online posting declaration tool that Hungary has implemented for this purpose, and which can be accessed on the above-mentioned website.¹⁵ The declaration can be made in Hungarian or English.¹⁶ As for the language of the documentations related to the posted worker's employment, neither the Labour Code nor the Labour Inspection Act provides specification on this. What the practice appears to be is that employers can keep these documents without translation and have them translated into Hungarian only when requested by the authorities (EC, 2019).

As discussed before (see section 4.1.3 of the report), Hungarian employers who post workers to another Member State need to have proof of Hungarian social security status for the workers in the form of an official certificate (PD A1). Information on how to acquire this is provided on the website of the National Health Insurance Fund (NEAK) as well as by the government offices which handle the applications and issue the certificate. The NEAK website gives a detailed description of the required information for issuing the form and of the application process (see Text Box 3). The employer's application is assessed in a summary procedure within 8 days after the submission, and in a full procedure within 60 days. If the application is accepted, the A1 form will be issued by the competent government office. In the event of a rejection, the authority issues a decision against which an appeal can be lodged by the employer. If the authority establishes that the conditions for the application of Hungarian law no longer exists or conditions have not been fulfilled already at the time of application (if it emerges that the worker was posted to replace another posted worker, for instance), it will withdraw the certificate and initiate the establishment of an insurance obligation in the other state.

Text Box 3: Application for proof of Hungarian social security status¹⁷

Application for the Posting Certificate

If an employer would like to post employees, it needs to fill out an application form that can be downloaded from the website of the National Health Insurance Fund (NEAK) of Hungary (www.neak.gov.hu). For the application, the employer is requested to provide the following information:

- Name, place of registered residence, tax number of the employer;
- Name, place of birth, citizenship, address, social security number of the posted worker, and the date of the start of the employment relationship with the employer submitting the application;
- Economic activities for which the posted worker is employed during the posting;
- Name and address of the foreign enterprise (person) concluding a contract with the posting employer, where the posted person performs work, the place of work, if different, or the place of employment (address);
- Planned duration of the posting.

¹⁵ In case of a posting from a non-EEA Member State to Hungary, the notification is to be sent without registration to the email address of the Department of Labour Inspections at the Ministry of Innovation and Technology.

¹⁶ Section 8/D of the Act LXXV of 1996 on Labour Inspection.

¹⁷http://www.neak.gov.hu/felso_menu/lakossagnak/ellatas_kulfoldon/biztositasi_kotelezettseg_eu_szerint/a_kikuldetes_szabalya_az_eu_ban

In addition, the employer has to declare and provide proof that it meets the conditions as specified in the Social Security Law (e.g. reporting total domestic income for the tax year preceding the posting).

Application for extension of posting beyond 24 months

The posting employer can submit an application requesting an exception to the rules specified in the coordination regulations. Such exception may be granted if the duration of the posting is expected to exceed 24 months or the employer can show that there are circumstances that merit special consideration justifying the establishment of the exception. The NEAK, if it supports the request, shall propose a case-by-case exemption to the designated body of the other Member State concerned. With the consent of the other Member State, the A1 certificate is issued for the duration of the activity.

4.2.2.3 Inspections

Labour inspectors control employers' compliance with the provisions set out in the relevant labour legislation and collective agreements concerning working time, wages, undeclared work, OSH, posting, temporary agency work, foreign workers etc.¹⁸ The inspections are based on central inspection plans. Joint inspections are carried out with the Tax Authority and the Police. According to the latest reports on labour inspections, the most frequently established labour legislation infringements relate to the lack of working time records (30%), violation of working time provisions (29%), and the use of undeclared work (18%) (Ministry of Innovation and Technology, 2020b). Less frequent are violations of pay provisions (9%), however, infringements on working time records can also cover possible irregularities related to wages such as payments for overtime. One of the sectors that is most prone to labour and OSH violations is construction (Ministry of Innovation and Technology, 2020b; 2020c). One-third of the workers covered by the inspections in the first half of 2020 were affected by undeclared work in this sector (see Table 8). The published labour inspection reports from the last two years contain no information specific to posting or posted temporary agency workers. Irregular employment of third country nationals is mentioned mainly in relation to lacking work permits and the employers' failure to report their employment to the competent authorities.

Table 8: Selected labour inspection statistics for the last two years available

	2019	2020
Number of employers covered by the inspections	9,731	6,718
Share of employers with irregularities	67%	70%
Number of workers covered by the inspections	37,139	28,428
Share of undeclared workers	13.9%	15.4%
Number of workers covered by inspections in the construction sector	6,632	5,982
Share of undeclared workers in the construction sector	28%	31%

Source: Ministry of Innovation and Technology, 2020b.

Note: Data refer to the first half of 2019 and 2020.

According to an amendment to the Labour Inspection Act, as of 2018 it is mandatory for labour inspectors to impose a fine on the employer in case of undeclared work. For minor violations, labour inspectors can issue a warning or notice requesting the employer to rectify the violation within a deadline. In the first half of 2020, 35% of discovered infringements carried a financial sanction (Ministry of Innovation and Technology, 2020b). In cases when the employer fails to pay the fine, the inspectors can initiate the collection of the overdue payment with assistance from the tax authority.

¹⁸ The scope of labour inspectors' authority is regulated by Act LXXV of 1996 on Labour Inspections.

4.2.3 Enforcement through Transnational Cooperation

Administrative cooperation on posting with other Member States' competent authorities is mainly done through the Internal Market Information (IMI) System. Data on the usage of the IMI System provides some indication how the information exchange on posting is realised in practice. The latest available statistics show that in total there were 343 requests on posting received by Hungary in 2020 so far (Table 9). The majority of these were notification of a decision (106), requests for information (88), and requests to send documents (85). There were 48 requests made to Hungary to recover a penalty. Compared to 2018, the previous year for which detailed information is available, there was an increase both in the number of received decision notifications and requests for recovering fines. According to the interviewed public authority representative, the most frequently reported problems in case of workers posted from Hungary relate to unpaid wages or unlawful wage deductions, and non-compliance with minimum wage requirements of the host Member State (these were also considered the most typical violations faced by Hungarian workers posted abroad as far as the construction sector is concerned by one of the trade union representatives). While the interview with the Hungarian authority representative confirmed the general usefulness of IMI for information exchange, it was pointed out that when they report a problem or issue to the competent foreign authority, they are not always informed how these were followed up by the foreign authority. There are Member States that tend to reply once they investigated the issue, even after a year the notification was sent, while in other cases they never receive a response.

Table 9: IMI System statistics on posting for Hungary

	2018	2020 Q1-3
Number of posting information exchanges sent by Hungary	3	n.a.
Number of posting information exchanges – received by Hungary	351	343
Information request – average response time (in days)	52	31
Information request – % of requests answered by legal deadline (35 calendar days)	51%	43%

Source: Data based on Internal market Information System statistics: https://ec.europa.eu/internal_market/imi-net/statistics

Regarding transnational cooperation on social security, the National Health Insurance Fund (NEAK) is currently implementing the Electronic Exchange of Social Security Information (EESSI) system.¹⁹ The new system aims to improve and speed up the information flow between the social security institutions in EU Member States in the handling of social security benefits of mobile citizens.²⁰ Once the system is introduced and fully operational in all countries, it will allow national social security authorities to exchange relevant information, also for the verification of social security rights of posted workers (i.e. PD A1 certificate), through a common electronic system.

4.2.4 Enforcement Agencies Challenges

The structure and organisation of labour inspection has gone through a number of changes over the last ten years. In 2011, the National Labour Authority was incorporated into the National Labour Office, and its territorial offices were integrated into the new territorial Government Offices as their labour inspection units. At the end of 2014, the National Labour Office was abolished, and closed in 2015, and the labour inspection department was moved to the Ministry

¹⁹ <https://ec.europa.eu/inea/en/connecting-europe-facility/cef-telecom/2016-hu-ia-0012>

²⁰ More information on the EESSI can be found on the European Commission's website: <https://ec.europa.eu/social/main.jsp?catId=869&langId=en>

of Finance and then to the Ministry of Innovation and Technology. These reorganisations also have had an impact on the work of labour inspectors.

A continuing challenge facing labour inspectorates is the insufficient number of labour inspectors. The need for increasing the number of labour inspections and the capacity of labour inspectorates was emphasised in a joint proposal by employer and trade union organisations in 2019.²¹

4.3 Employer practices and challenges

4.3.1 Employer practices

According to the latest report published by the European Commission on posting, there were 54,326 postings from Hungary, 53,500 by employers, involving 21,856 workers in 2018 (De Wispelaere et al. 2019). More than half of all postings (53%) concerned the provision of services in the construction sector. The average time for which workers were posted abroad was 211 days. As for the number of posting companies, no national estimates are available in Hungary. A survey conducted by the National Federation of Hungarian Building Contractors that focused on Germany, estimated that there were around 600 Hungarian companies that provided services in Germany (EVOSZ, 2015). One-third of these companies worked in the construction sector mainly as subcontractors to German companies. Most of them are small companies with less than 50 employees, but there are also companies with 400 employees. The majority of these companies do not have an establishment in Germany. They carry out their work as a posting on occasion, while maintaining their operations at home.

According to the representative of the employers' organisation that represents companies in the construction sector, Hungarian companies often contact them for information on posting-related matters. Questions mainly concern host country rules on wages, employment conditions, taxation, accommodation requirements, sector-specific information (e.g. collective agreements), as well as administrative procedures concerning registration and declaration for posting. Employers also seek advice on social security issues such as the extension of posting beyond the 24 months.

As mentioned before, the most typical problems reported by foreign authorities to the Hungarian authority concern wages and compliance with minimum wage requirements of the host country. Another issue that was highlighted by both the labour authority and the employer organisation representative of the road transport sector was in connection to the PD A1 form. Hungarian employers posting workers abroad would need to ensure that these forms are available at all times so that they can be provided to authorities during inspections or upon request. In a number of Member States (e.g. Austria), failure to do so entails an immediate fine. Lack of licence and registration of companies engaging in temporary agency posting was mentioned by the construction employers' representative in the context of posting to Germany. Violations related to working conditions (e.g. overtime, non-compliance with mandatory rest time rules) was considered non-typical in the road transport sector, as far as Hungarian companies are concerned, by the respective employer organisation representative due to the fact that the rules on driving and rest periods are very clearly sanctioned by EU regulations and involve serious fines. Problems related to health insurance and the EHIC were not frequent according to the two employer organisation representatives. However, there may be cases - e.g. in the event of an accident - when the range of services available within the framework of health services is narrower in some Member States than in Hungary. The construction employers' representative mentioned as an example the special accident insurance scheme in Germany

²¹ <https://munkastanacsok.hu/javaslatok-a-munkaero-allomany-hatekonysaganak-javitasara/>

which requires membership to cover expenses. In the case of posted workers, this may present administrative problems for the posting employer.

4.3.2 Employer challenges in applying posting rules

Access to information about wage and employment conditions in host Member States was identified by the employer organisation representatives as a main challenge in applying posting rules by employers. Hungarian posting companies represented by the two organisations often face difficulties in this regard. There is great diversity in the extent that such information is made available by the host countries. A number of Member States do not make information available in a clear and transparent way on their websites or provide only very minimal information. This poses a particular challenge for posting companies in the road transport as their operation typically involves crossing multiple countries.

The complexity across national posting rules and special rules adopted by some Member States adds a further layer of challenge for posting employers. Compliance with this regulatory patchwork is especially challenging for transport operators and drivers as was pointed out by the employer organisation representative of the road transport sector. The revised Posting Directive clarified the applicability of posting regulations to drivers and transport companies (see Text Box 4).²² However, it is crucial according to the respective employer representative that posting companies are adequately informed about specific national rules on posting terms and conditions.

Text Box 4: Special rules for road transport

Revised Posting Directive (2018/957/EU):

- The principle of ‘same pay for the same work at the same place’ will apply to posted drivers as well.
- Only cabotage²³ counts as posting (i.e., to which posting rules apply), while drivers carrying out other operations (such as transit operations, bilateral transport operations and bilateral transport operations involving two additional activities of loading or unloading) are excluded from the scope of application.
- For cabotage, the posting rules apply from the first day of operation.
- Transport operators will have to submit their posting declarations and other requested documents through the IMI system.

As part of the so-called EU Mobility Package, important changes to the operation of transport companies and the working conditions of drivers were introduced:

- Drivers operating in international freight transport can return home regularly, i.e., every three to four weeks, depending on the work schedule.
- Regular weekly rest period of at least 45 hours must be spent outside the vehicle and the employer must pay for the accommodation if the rest period is taken away from home.
- In order to prevent systematic cabotage, there is requirement for a four-day waiting period before cabotage operations can be carried out in the same country with the same vehicle.
- To prevent the creation and operation of so-called letterbox companies, transport operators must be able to demonstrate that they are active in the Member State in which they are registered. For this, trucks must return to their country of registration at least every two months.
- All trucks engaged in international transport must be equipped with a smart tachograph by 2023.

²² <https://eur-lex.europa.eu/legal-content/en/LSU/?uri=CELEX:32020L1057>

²³ Cabotage refers to transport operations that stay within the borders of a country using a vehicle registered in another country.

- The EU Commission will develop standards and a certification procedure for safe and secure parking areas and a website will be set up with information about these.

The two employer organisations from which representatives were interviewed for this study offer and provide help and assistance to their members and represent their interest at national level as well as members of EU and international level federations (e.g. IRU, FIEC). The employer organisation that represents construction companies also has a special branch established in Germany, which is the Member State receiving most posted workers from Hungary. Good cooperation with Hungarian trade unions was reported by both employer organisation representatives.

The employer representatives emphasized the importance of employers complying with EU and national rules on posting. The need for clear and balanced regulation at EU level was underlined by both representatives.

4.4 Worker Protection

4.4.1 Mechanisms for worker protection: institutional, social partners

Posted workers in Hungary can report labour law and OSH violations and file complaints against employers at the competent government office of the actual place of work, and can also contact the respective ministry department for help (e.g. for information about complaint procedures).²⁴ Concerning cases of discrimination by the employer, complaints can be lodged at the Equal Treatment Authority (EHB), the administrative body responsible for monitoring the implementation of the principle of equal treatment.²⁵

In terms of workplace representation, in Hungary it is through the local trade unions and the elected work councils.²⁶ Work councils can be established in companies with at least 50 employees (at companies with fewer employees a workplace representative can be elected by workers) (Matheika & Krokovay, 2019). The main role of the work councils is to monitor the employer's compliance with legislation and they also have the right to conclude a plant agreement that regulates working conditions (except wages) in the absence of trade union representation. Only trade unions have the right to collective bargaining (i.e. wages, wage-related issues) and the right to strike. Until 2012, trade unions also had a right to be informed and consulted by the employer regarding the company's economic situation and the workers' employment contracts (working time, wage-related issues, number of agency workers, etc.), but according to the new Labour Code, this right is now only with the work councils. Trade unions can request information on these aspects and can initiate a consultation, but there is no obligation for the employer to inform or consult them. Unlike work councils, trade unions have a right to represent their members' interest at court.

In case of collective labour disputes, a so-called conciliation committee can be set up by the employer together with the work council or the trade union to resolve the issue at hand (Matheika & Krokovay, 2019). For individual labour disputes, the main resolution mechanism

²⁴ The rules for complaint procedures are laid down in the 2013 Act CLXV on Complaints and Public Interest Disclosures.

²⁵ The legal framework for the activities of the Equal Treatment Authority is regulated in Act CXXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities.

²⁶ The role, rights and obligations of trade unions and work councils are regulated in the Labour Code (Part III on industrial relations).

is through the courts.²⁷ Section 285 of the Labour Code explicitly states that workers posted to Hungary have the right to assert their claims before a Hungarian court.

4.4.2 Challenges to worker protection: access to information, legal support and trade union representation

Improving access to information on posting rules is considered by both the trade union and the employer organisation representatives key to ensuring that posted workers' rights to basic employment and working conditions are protected throughout the EU. However, they also shared the opinion that information provided on national rules are often complicated, difficult to understand and of poor quality. It is particularly so in the case of international road transport where applicable rules, as was shown, can be very complex. The need for unified minimum rules on wages and working standards presented in a transparent and accessible format was highlighted by all the interviewed social partner representatives. While many foreign authorities try to improve access by making information available in more languages, not speaking the language of the host country remains an important barrier to information access. Trade unions offer various support for posted workers in this respect. In addition to directing their attention to where information can be found (e.g. the special website for posted workers in the construction sector), they provide help with translation if needed.

As we have discussed earlier in the report, the Hungarian legislation makes it the obligation of the user enterprise to inform the posting employer or TWA about the rules and conditions of employment applicable in Hungary. When posting is practiced from Hungary to another EU country, the employer and the TWA are required to inform the workers about the conditions of employment in the destination country. According to the trade union representative (construction sector), they try to ensure that the workers who are posted from Hungary are protected by informing them about important issues they should check with their employer before the start of the posting, and warn them in advance about problems that may arise in relation to their assignment. They can also assist with recovering unpaid wages, including payments related to overtime, holiday periods, etc. as well as accommodation or travel costs not paid or reimbursed by the employer. The trade union representative from the construction sector mentioned as an example the close cooperation they have in this regard with partner organisations in Austria. Posted workers are also advised to be cautious of bogus agencies recruiting temporary agency workers to work abroad.

Another challenge in terms of worker protection pertains to labour and working standards and their enforcement, in particular the effectiveness and adequacy of labour and OSH inspections in Hungary. The representative of the trade union from the construction sector referred to the fact that the inspections by the labour authorities do not sufficiently target smaller companies, but focus mostly on large companies, and generally do not impose fines on the former as these could have negative consequences both with regards to the financial survival of the company and for the workers. As for OSH, there has been a lot of improvement in Hungary in the last 20 years according to the same representative, but there is a gap in practice regarding the focus on OSH-related health problems such as long-term physical health problems due to exposure to dangerous materials as well as psycho-social health problems, which affect many posted workers.

Posted workers working in the construction sector often fail to report labour and OSH violations to authorities. This was explained according to the trade union representative by the workers' general fear of authorities, lack of information about available complaint mechanisms, language

²⁷ In 2020, administrative and labour courts that handled labour law-related disputes have been abolished. Such cases are now handled by the regional courts.

barriers, but also by their lack of incentive (i.e. as long as they are paid, they are willing to work more overtime or tolerate worse working conditions, for instance). International literature shows that posted workers in general are also less familiar with the legal environment of the host country including access to legal support through third parties, such as trade unions, which greatly limits their ability to seek legal remedy in case they fall victim to fraudulent practices (Kall and Lillie, 2017; Kaszás et al. 2017). Given these obstacles, it is not surprising that posted workers tend to go to court in their country of origin when they want to enforce their rights in legal proceedings (Rasnača and Bernaciak, 2020). While there is no information on the number of court cases involving posted workers in Hungary, a study of case law that reviewed 20 cases on posting brought before the Hungarian Supreme Court (Kártyás, 2019) reveals that a significant number of these cases concern workers who were posted from Hungary. The same study also finds that EU regulations had been incorporated into the Hungarian court practice to only a limited extent, which suggests that there is need for greater legal clarity concerning posting, especially with regard to the application of host country (foreign) laws and collective agreements to outbound posted workers (Kártyás, 2019).

Trade union density is at a low level in Hungary. Figures from the Hungarian statistical office's Labour force survey show a continuing decline (19.7% in 2001, 12% in 2009, 9% in 2015). In 2020, 7.2% of the employed workforce reported to be a member of a trade union. Overall, Hungary has experienced a weakening of trade unions over the years which also entails a reduction of access to trade union representation. The changes in the legislation about informing and consulting with trade unions for work and employment related matters has had a further negative influence on trade union involvement in the process of worker protection in Hungary.

5 Synthesis and Conclusions

The findings of this report indicate that posting in Hungary is mainly focused on outbound posted workers and considerably less on incoming postings. Posting towards Hungary may become increasingly important due to labour shortages, however. So far Hungary has relied mainly on labour supply from neighbouring non-EU countries, which was encouraged by national policies that aimed at simplifying rules for employment for citizens from the Ukraine and Serbia. Temporary agency postings are still relatively low in numbers, but such atypical forms of work are expected to become more prevalent in the future.

The analysis of the legal framework points to important differences between EU-level regulations related to cross border mobility (such as the PWD and social security coordination) as well as taxation rules (not regulated at the EU level) as to which Member State's law is applicable to posted workers and under what conditions. These differences have important implications in terms of labour costs as these can differ considerably between sending and host Member States and can, therefore, lead to a competitive advantage for posting (foreign) employers; an issue that has already been highlighted in the posting literature. Possible solutions to address this, like having social security contributions paid according to host country rules for the period of posting, might be problematic (De Wispelaere & Pacolet, 2015) and may only lead to greater administrative burden for workers, employers and public agencies alike. Also, in the case of Hungary, despite recent reductions, contribution rates on employees' wages remain higher compared to many 'old' EU Member States.

Both the employer and trade union representatives who were interviewed for this study reiterated the importance of improved access to information in order to ensure compliance by posting companies and to protect posted workers' rights.

In terms of posting from Hungary, findings indicate that workers are not sufficiently informed about the employment conditions of the host country. Other challenges they face include access to remedy measures and support such as in the cases of recovering unpaid salaries. Also, Hungarian workers posted abroad often see no incentive to report violations as the wages they receive in the host country are still higher than what they would earn in Hungary. Interviews with the trade union representatives also showed that posted workers rely to a large degree on trade unions in their home country for assistance and support.

For employers, the main issue identified is in terms of access to information about wages and employment conditions in the host country, and the often highly complex national rules. This presents a particular challenge for posting companies in the road transport sector as their operation typically involves crossing multiple countries. The need for transparent and adequate information for drivers and transport operators on the specific terms and conditions on posting was emphasised. There also remain uncertainties among posting employers as regards to the scope of the Posting Directive and what it means for their business in concrete terms.

There appears to be inconsistency in Hungarian case law concerning the interpretation and application of EU rules on cross-border mobility, especially with regard to the applicability of host country (foreign) laws and collective agreements to outbound posted workers. This also poses difficulties for Hungarian posted workers when they want to enforce their rights in legal proceedings as the literature shows that most posted workers tend to go to court in their home country.

6 Policy Recommendations

The presented policy recommendations are detailed in the following by grouping them according to first, the governance and, second, the stakeholder level.

Governance level/National:

- Improve access to information – Information on national rules on posting is key to ensure that posted workers' rights to basic employment and working conditions are protected. This concerns information provision on the side of public authorities for both workers and employers. Basic information on the national posting website, which is currently presented mostly in the form of legal texts, should be provided in a way that is easily readable and understandable and accessible for the targeted audience.
- Make posted workers and posting employers more aware of their rights and duties – Information campaigns and awareness-raising materials (e.g. leaflets with information on basic rules on posting, rights of posted workers, checklist for posting employers) would help to make posted workers more conscious of their rights and to prevent non-compliance by posting companies. Such public initiatives could be jointly developed with and involve relevant national stakeholders (social partners, enforcement agencies) so that the needs and concerns of posted workers and employers are adequately reflected and addressed, and should target both inbound and outbound posting.
- Increase effectiveness of labour inspections – Labour inspectorates should have the adequate resources and capacities to perform their duties sufficiently and efficiently. There is a need for labour inspections to target smaller companies and impose fines to firms who fail to respect legislation irrespective of their size. In addition to work accidents, OSH-related health problems (e.g. long-term physical health problems due to exposure to dangerous materials, psycho-social health issues), require more attention in OSH inspections.
- Greater legal clarity on posting rules – It is important that in legal disputes falling within the scope of the EU Directive on posting, national provisions are interpreted and applied in Hungarian legal practice in a way that is consistent with the objectives of the directive. Addressing potential ambiguities and gaps in national legal provisions on posting would strengthen their effective implementation and enforcement not only in legal proceedings, but in other areas as well (e.g. labour inspections).

Governance level/EU:

- EU website on posting – A dedicated EU website containing harmonised information on minimum rules on wages and working standards of the Member States would benefit both posting employers and posted workers.

Stakeholder level/Industry: Enterprises need to make themselves aware of their rights, and duties. Prior to posting, Hungarian employers should familiarise themselves with national rules, and if applicable with collective agreements, in the host country, inform posted workers of the terms and conditions of employment, and ensure that these are in accordance with the relevant national legislation.

Stakeholder level/ Social Partners: In general, social partners' role in posting have to be strengthened to enable for practical implementation of the legislation to protect workers. This especially concerns the role and scope that trade unions play in the posting of workers.

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