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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:
Slovenia Country Report**

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Executive Summary

The present report is part of a study investigating how the Posting of Workers Directive (96/71/EC) interacts with and is influenced by other EU and national regulations. Throughout the study various issues are highlighted: gaps between national policy and practices, barriers in the posting process, unfair competition, exploitation of workers, etc. In this report, the Slovenian case study is presented.

Slovenia is one of the European countries with the highest number of posted workers. There were 1,149 postings from Slovenia in 2005, whereas in 2017 190,976 Portable Documents A1 (PDs A1 hereafter) have been issued. There are several reasons underlying this rise: the Slovene social security and taxation system, the geographical vicinity of the ex-Yugoslavia countries, lack of control, etc.

The study is based on a literature review conducted in the first half of 2020 and empirical data collected through 15 semi-structured interviews with posting employers, public authorities' representatives and social partners' representatives. The national case study aimed at answering the following research questions: How does the implementation of the Posting of Workers Directive interact with national regulations related to posting such as the rules on social security, health insurance, temporary agency work and company law? How does the interaction of EU and national rules on posting and the related areas influence employers' practices and their deliberations to engage in posting?

Findings on the *regulatory framework* show that the posting of workers from and to Slovenia is basically regulated in the Employment Relationship Act. In the event of workers posted to the Republic of Slovenia by a foreign employer on the basis of an employment contract pursuant to foreign law, the Employment Relationship Act applies in accordance with the provisions of the Employment, Self-employment and Work of Foreigners Act.

The basic Slovene legislative act that implements Article 12 of the Posting of Workers Directive (a regime) is the Transnational Provision of Services Act. The act does not regulate the posting of workers under the regime of Article 13 of the Posting of Workers Directive. In addition, the following legislation is also relevant in the context of employers' and workers' rights and obligations: The Health and Safety at Work Act, the Minimum Wage Act, the Labour Market Regulation Act, the Pension and Disability Insurance Act and collective agreements. Employment and work of third country nationals (b regime) is regulated in the Employment, Self-employment and Work of Foreigners Act.

One of the most important legal consequences of the issuance of the PD A1 is the change of the insurance basis from "001" to "002". This means, above all, that the basis for the calculation of pension and disability insurance is reduced to the salary that would have been received for the same work in the Republic of Slovenia. In most cases in practice, this means a minimum wage salary.

The Transnational Provision of Services Act is in the procedure of revision to implement the revised Posting of Workers Directive. The proposed changes were the subject of discussion by the social partners within the ESF at the time of writing of this report.

As the revised directive has not yet been transposed, it is too early to report on the (proposed) changes of the Slovene national regulations on this matter.

In terms of *the national implementation and enforcement*, the problem with the enforcement of the legislation on posting in Slovenia does not arise from the national legislation but from the lack of control/monitoring of violations. Many respondents see this as the consequence of an insufficient number of labour inspectors and/or the lack of a more thorough checking and control of employers who post workers abroad. One of the challenges of enforcement is also to stop the illegal practices of obtaining the PDs A1 issued under Article 13; specifically, many employers that do not meet the requirements for obtaining the PDs A1 based on Article 12 resort to this option, due to the fact that the conditions for obtaining the PDs A1 under article 13 are less stringent.

The analysis of employer practices and challenges suggests that Slovene companies, especially small and medium size ones which often lack knowledge and own resources, find the posting of workers a complex and lengthy process. Several challenges for employers have been identified: one of the most often stated is obtaining all the necessary legal information when companies post workers to other EU countries and, consequently, complying with all the relevant legislation. Because of the complexity of regulation that the posting companies must comply with, many of them have reported resorting to hiring special services to help them in that matter. Along with the complexity of the legislation to follow, the language barrier when posting workers to other countries has also been emphasised. Our research also showed several illegal practices associated with some posting employers.

In terms of *worker protection*, it has been reported that some employers exploit their workers' readiness to earn as much as they can while away from home. As trade union and public authority interviewees stated, workers will agree with some practices breaching the legislation (overtime work, payment in cash, etc.) – sometimes knowingly, in other cases not being aware that these practices are illegal. These practices are most frequently reported in the construction sector, where most of the workers posted from Slovenia are third country nationals, but they have been reported in the transport sector as well. Posted workers find legal issues complex and often have difficulties understanding which legal system applies where. Not speaking the local language can also pose a big challenge for posted workers – be it to or from Slovenia.

Policy recommendations on how the gaps between legislation and practice and the challenges in enforcing posting and other related regulations could be addressed, are:

On the EU level, we propose the establishment of an EU system of equally frequent and strict control of compliance with posted workers' legislation in all the EU countries. In addition to this, more effort should be put into the further harmonisation of labour law rules, especially those pertaining to maximum working hours and rules on health and safety at work. We also suggest a further EU harmonisation, possibly unification, of procedural rules regarding the issue of PDs A1.

The policy recommendations *at the national level* mainly refer to the amendment of the Transnational Provision of Services Act and Companies Act, but also to some practical solutions that do not require legislative intervention.

The recommendations that require the amendments to the Transnational Provision of Services Act are:

- that in the upcoming revision of the Act, fines should also be prescribed for Slovene employers who are in breach of the law while posting workers;
- the responsibility for compliance with the posting legislation should also be imposed upon companies to whom the services with posted workers are provided;
- the definition of “infringements of important provisions of labour law relating to the rights of the worker” should be more elaborated. The minor infringements should not be a reason for not issuing a PD A1.

We also propose a more detailed elaboration of article 10a of the Companies Act, which regulates the restriction regarding the establishment of companies in cases of chaining companies.

The recommendations that do not need legislative intervention are:

- more labour inspectors should be hired in order to enforce the posting legislation more effectively;
- the “automatic” control (in the system application) of the conditions for issuing a PD A1 should be upgraded with crossing data from different databases that already exist;
- there should be a national site with more detailed and up-to-date information for posting companies, with links to Slovene legislation in (at least) English.

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1 Introduction

The single European labour market means that no barriers should be put in place to restrict the mobility of labour. Much European legislation has been devoted to the free movement of labour, including legislation on posted workers. Slovenia is a country with a relatively large number of outgoing posted workers and a negligible number of incoming posted workers. Our research in Slovenia shows that in the field of the posting of workers, there are numerous challenges for both posting companies (employers) and public authorities as well. Slovene employers are faced with difficulties in obtaining all the necessary information when posting their workers to other EU countries. The processes involved can be lengthy, there are huge differences in systems, legislation and enforcement throughout the European Union (EU), making posting workers difficult and complicated, especially for small and medium size companies. Currently, the main concern of the Slovene national authorities in the field of posting of workers is the transposition of Directive 2018/957 and the problems that arise from inadequate compliance with national legislation.

Aims of the study and method

The study aims to investigate how the Posting of Workers Directive and other EU regulations interact with national rules and regulations regarding social security, health insurance, temporary agency work, and company law. Country case studies identify gaps between procedures (legal basis) and practices (experiences) in posting rule enactments in Austria, Slovenia, Italy, Slovakia, Hungary, Poland, Serbia and North Macedonia.

The methodology combines secondary and empirical data: a) Secondary data is based on a literature review and national statistics. The analytical framework identifies national legislation, policy measures, government instructions and related regulations in various domains pertaining to posting and cross-border labour mobility. Documents under study include the rights and obligations of posted workers, posting companies, etc. b) Empirical data is gathered from the viewpoint of employers as well as public authorities and social partners. Semi-structured interviews use a vignette design to elicit insights from both viewpoints concerning posting practices. The empirical data analysis follows a qualitative thematic analysis that thematically organises and compares different interview responses to create a comprehensive picture of the situation and perceived challenges. The Slovenia team conducted 15 interviews from May to December 2020. Of these, five interviewees were public authorities' representatives, further four interviewees were social partners' representatives, and six interviews were conducted with posting employers.

Main Findings

The posting of workers from and to Slovenia is basically regulated in the Employment Relationship Act. The Slovene legislative act that implements Article 12 of the Posting of Workers Directive (a regime) is the Transnational Provision of Services Act, which came into force on January 1, 2018. The act does not regulate the posting of workers under the regime Article 13 of the Posting of Workers Directive. The Transnational Provision of Services Act is in the procedure of revision in order to implement the revised posting directive. The proposed changes were the subject of discussion by the social partners within the ESF at the time of

writing of this report. There will be a delay in transposing Directive 2018/957 because social partners have opposing views on some issues, but also due to the COVID-19 crisis that was a priority for the government in 2020.

The main gap between procedures (legal basis) and practices (experiences) in the posting of workers does not arise from the national legislation but from the lack of control/monitoring of violations. This is mainly a consequence of the insufficient number of labour inspectors and the lack of a more thorough checking and control of employers who post workers abroad.

Slovene companies, especially small and medium size ones which more often lack knowledge and own resources, find the posting of workers a complex and lengthy process. The posted workers find legal issues complex and often have difficulties understanding which legal system applies where. Not speaking the local language can pose a big challenge for posted workers – be it to or from Slovenia.

From the perspective of Slovene employers, the coming changes in the Slovene regulations in order to meet European legal requirements are anticipated with concern as it is assumed that the postings from Slovenia will be more difficult (and shorter). There is also a concern that the Slovene companies' competitiveness will diminish after the implementation of Directive 2018/957. Several challenges to employers have been identified: one of the most often stated is obtaining the necessary information when companies post workers to other EU countries. They report difficulties in complying with substantially different national legislation systems and regulations when posting workers across Europe (e.g., evidence of working hours). The language barrier has also been reported by all the interviewees who post workers and by the employers' associations' interviewees.

The policy recommendations refer to the amendment of the Transnational Provision of Services Act on the one hand, but also on the other to some practical solutions that do not require legislative intervention.

Structure of the country report

In the first part of the report, the study aims and methodology are presented and relevant national data on the posting of workers to and from Slovenia is given. The results of the empirical study in Slovenia are organised in four different content parts: firstly, the Slovene regulatory framework relevant for the posting of workers is comprehensively presented. Secondly, the fieldwork results related to national implementation and enforcement and the current state of the implementation of Directive 2018/957 are explained. Thirdly, employers' practices and challenges are listed, and fourthly, worker protection and associated challenges are presented. Finally, a synthesis and conclusions are followed by policy recommendations.

2 Country Context

2.1 Socio-economic overview

From 2017 to 2019, the Slovene GDP decreased by 1.2% in 2019 to 3.2% (Real GDP Growth Rate – Volume Percentage Change on Previous Year, 2020). With –2.6% volume growth of GDP – compared to the same quarter of the previous year, domestic economic activity remains weak in light of the COVID-19 pandemics that severely hit key economy sectors (GDP and Economic Growth, 2020).

Since the end of the economic crisis in 2013-14, there has been a substantial year-on-year decrease of the unemployment rate in Slovenia, as well as growth of the employment figures. From 2017, the employment rate of population aged 15+ rose from 69.3% to 71.8% in 2019 (Employment Rates by Sex, Age and Citizenship (%), 2020). The unemployment rate hit a record low in 2019 with 4.5% (Unemployment Rates by Sex, Age and Citizenship (%), 2020). The job vacancy rate remained fairly stable throughout the period with 2.3% in 2019. However, the COVID-19 pandemic hit the labour market severely in 2020. According to the Statistical Office of Republic of Slovenia (2020), the employment rate in the 3rd quarter 2020 fell to 54.9%, whereby the unemployment rate rose to 5.1%.

Both average monthly gross wage and monthly gross minimum wage rose throughout the 2017-2020 period. Average gross earnings for October 2020 amounted to EUR 1,821.44 (Earnings and Labour Cost, 2020) – the 7.8% increase from 2017 (EUR 1,627). Monthly gross minimum wage in 2020 amounts to EUR 940.58 – representing a 16.8% increase from 2017 (EUR 804.96) (GOV.SI, 2020).

Table 1: Overall labour market dynamics

	SI 2017	SI 2018	SI 2019
GDP real (annual growth in %) ¹	4.8	4.1	2.4
Employment rate, population aged 15+ (%) ²	69.3	71.1	71.8
Job vacancy rate (%) ³	2.2	2.5	2.3
Unemployment rate, population aged 15+ (%) ⁴	6.6	5.1	4.5
Average monthly gross wage (in EUR) ⁵	1 627	1 682	1 754
Monthly gross minimum wage (in EUR) ⁶	805	843	887

¹ <https://ec.europa.eu/eurostat/databrowser/view/tec00115/default/table?lang=en>

² <https://ec.europa.eu/eurostat/databrowser/view/tgs00007/default/table?lang=en>

³ <https://appsso.eurostat.ec.europa.eu/>

⁴ <https://appsso.eurostat.ec.europa.eu/nui/submitViewTableAction.do>

⁵ <https://www.stat.si/StatWeb/Field/Index/15>

⁶ <https://www.gov.si/teme/minimalna-placa/>

2.2 Labour mobility and posting rates and trends

In 2018, 28,455 people immigrated (Immigration: Persons, 2020) to Slovenia and 13,527 emigrated (Emigration - Persons, 2020). Compared to 2016, the number of immigrants was 71% higher, and the number of emigrants was 13% lower. The number of total EU migrants received grew from 2016, reaching 6,032 in 2018, as did the total number of third country nationals (henceforth TCN) migrants: from 11,523 in 2016 to 22,423 in 2018 (Meddržavne selitve po, 2020).

The most common countries of previous residence for immigrants with Slovenian citizenship in 2018 were Germany and Austria (24% and 17% respectively), followed by Switzerland, the United Kingdom and Italy. Most foreign immigrants in 2018 came from Bosnia and Herzegovina (49% of all foreign immigrants); some other common countries of previous residence were Serbia, Kosovo, North Macedonia and Croatia. In 2018, a quarter (26%) of emigrants with Slovenian citizenship left for Austria; some other common countries of next residence were Germany (20%), Switzerland and Croatia. Among foreign emigrants, the most common country of next residence was Bosnia and Herzegovina (24%), followed by Germany (12%), Serbia and Croatia (11% each) (Razpotnik, 2020). The share of immigrants of working age (19-65 years old) grew slowly from 76% in 2016 to 79% in 2018 (De Wispelaere & Pacolet, 2018).

The total number of outgoing posted workers peaked in 2017 (190,976) and then dropped significantly in 2018 (127,059) by 33%. The total number of incoming posted workers grew from 2016, reaching 9,173 in 2018 (78% growth over 2016). The labour market share of incoming posted workers also grew, reaching 1% in 2018.

The main countries of destination for posted workers remained unchanged throughout the 2016-18 period: Germany, Austria and Belgium, as did the main countries of origin of posted workers received: Croatia, Germany and Austria (see Table 2).

Table 2: Available general labour migration and posting trends in the last three years

	SI 2016	SI 2017	SI 2018
Total number of emigrants ⁷	15 572	17 555	13 527
Total number of immigrants ⁸	16 623	18 808	28 455
Total EU migrants received ⁹	5 100	5 192	6 032
Total TCN migrants received ⁹	11 523	13 616	22 423
Share of immigrants of working age (19-65 years old) in % ¹⁰	76	78	79

⁷ <https://ec.europa.eu/eurostat/databrowser/view/tps00177/default/table?lang=en>

⁸ <https://ec.europa.eu/eurostat/databrowser/view/tps00176/default/table?lang=en>

⁹ https://pxweb.stat.si/SiStatDb/pxweb/sl/10_Dem_soc/

¹⁰ Total number of immigrants of working age (20-64): 12718 (2016), 14637 (2017), 23001 (2018)

	SI 2016	SI 2017	SI 2018
Total number of outgoing posted workers ¹¹	164 226	190 976	127 059
Total number of incoming posted workers	5 146	6 357	9 173
Labour market share of incoming posted workers	0.6 %	0.8 %	1 %
Main countries of destination for posted workers	DE, AT, BE	DE, AT, BE	DE, AT, BE
Main countries of origin of posted workers received	HR, DE, AT	HR, DE, AT	HR, DE, AT
Main countries of origin of posted workers received	HR, DE, AT	HR, DE, AT	HR, DE, AT

¹¹ Data regarding posted workers has been collected from three reports:

https://limo.libis.be/primo-explore/fulldisplay?docid=LIRIAS1898934&context=L&vid=Lirias&search_scope=Lirias&tab=default_tab&lang=en_US&fromSitemap=1

https://www.mobilelabour.eu/wp-content/uploads/2019/02/raport-Report-on-A1-PDs-issued-in-2017_FdW-Prof.-JP.pdf

<https://www.mobilelabour.eu/wp-content/uploads/2020/02/PD-A1-report-Reference-year-2018.pdf>

3 Methodology

3.1 Data collection

Secondary national data is based on literature review and statistics. Primary data was collected in Slovenia 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 posting employers and representatives of public authorities and social partners. A particular feature of the qualitative interviews is the use of vignettes to elicit insights from both sides of the institutional relationship: posting employers and street-level bureaucrats/state agencies' representatives regarding posting practices.

The data analysis utilises a mixed-methods approach combining qualitative data sources with secondary data. The qualitative data from the interviews was collected by following a semi-structured interview template and analysed by using qualitative thematic analysis. In an iterative effort, the different data interview responses were thematically organised and then compared with each other in order to create a comprehensive picture of the situation in question and of the perceived challenges.

In the first half of 2020 the literature review and study of secondary data took place. Subsequently, (starting in May 2020 throughout December 2020) the primary data obtained through semi-structured interviews was collected. Altogether, 15 interviews were conducted in Slovenia and the interviewees' affiliations are presented in Table 3. Although not indicated in the table, two interviews were conducted with the same trade unions association representative; the first one at the beginning of our fieldwork, the second towards the end thereof. We decided to conduct a follow-up interview in order to clarify certain research aspects. With the consent of our interviewees, the interviews were recorded. Most of these were later transcribed in order to facilitate the data analysis. Although the employers' representatives that took part in our research came from different sectors, the findings in this report most often refer to the construction sector. This is due to the fact that the great majority of the workers posted from Slovenia to other European countries are construction workers. This resulted in many cases, examples and answers to the interview questions given by our social partners' and public authorities' interviewees referring to the construction sector.

In order to grant anonymity to our interviewees, they were not named in the report and are referred to as representatives of either public authorities, social partners or posting companies/employers.

Table 3: Interviews conducted and interviewees' affiliations – Slovenia

Public Authorities	
1.	EURES – Employment Service of Slovenia
2.	Employment Service of Slovenia (Legal Affairs Service)
3.	Health Insurance Institute of Slovenia
4.	Ministry of Labour, Family, Social Affairs and Equal Opportunities of the Republic of Slovenia
5.	Labour Inspectorate of the Republic of Slovenia

Social partners	
6.	Association of Free Trade Unions of Slovenia
7.	Chamber of Craft and Small Business of Slovenia
8.	Chamber of Commerce and Industry of Slovenia
9.	Confederation of Trade Unions of Slovenia PERGAM
Employers	
10.	Posting employer – manufacturing and installation of hydraulics
11.	Posting employer – automation of logistics centres (engineering), the interviewee is also a representative of the Chamber of Commerce of Štajerska
12.	Posting employer – logistics sector
13.	Posting employer – transport sector
14.	Posting employer – construction sector
Others	
15.	Accounting Service ¹²

3.2 Analytical Framework

The analytical framework comprised the identification of the national legislation, policy measures, government instructions and related regulations in various domains pertaining to posting, cross-border labour mobility, temporary agency work, social security, health insurance, company law and any other relevant regulation.

3.3 Challenges and limitations

The biggest challenge of the fieldwork proved to be the recruitment of the employer interviewees. Otherwise, the persons asked to participate in the research generally responded positively and were willing to cooperate. Our partners and later interviewees themselves led us to the next interviewees.

A delay in transposing Directive 2018/957 into Slovene national laws resulted in a limitation to the research. In addition to being unable to include information on the coming changes to the national legislation in connection with Directive 2018/957, some of our interviewees (understandably) were reluctant to share their views and ideas on specific changes to national laws while the negotiation process was still ongoing.

Because of the COVID-19 pandemic, most of the interviews were conducted online, using a web conferencing platform. Some interviewees expressed their wish to be interviewed in person, resulting in three interviews being conducted in person. The COVID-19 situation caused the process of arranging interviews to be lengthier than expected, primarily regarding the posting companies.

¹² Representative of the Accounting Service that provides assistance to the employers posting abroad (administrative, legal, taxation, etc. aspects) has been recommended by our public authority interviewees. The representative indeed provided a valuable insight into the posting process from the point of view of the employers.

4 Results

4.1 Regulatory Framework

In Slovenia, we distinguish between two basic regimes of employment and work of foreigners (non-Slovene nationals), namely: a) free movement of workers and services between EU Member States, the European Economic Area and Switzerland (posted workers) and b) the regime of employment and work of third-country nationals.

The posting of workers from and to Slovenia is regulated in the Employment Relationship Act¹³. The act regulates employment relationships which are entered into on the basis of an employment contract concluded between the worker and the employer. It regulates employment relationships in both the public and private sectors. In the event of workers posted to the Republic of Slovenia by a foreign employer on the basis of an employment contract pursuant to foreign law, the Employment Relationship Act applies in accordance with the provisions of the Employment, Self-employment and Work of Foreigners Act.¹⁴

The basic Slovene legislative act that implements the Posting of Workers Directive (to which we will refer as ‘a regime’) is the Transnational Provision of Services Act¹⁵, which came into force on 1.1.2018. This determines the conditions under which legal and natural persons registered to perform activities established in the Republic of Slovenia may temporarily provide services in another Member State of the European Union (hereinafter: EU Member State). It also determines the conditions under which legal and natural persons registered to perform activities with a registered office in another EU Member State temporarily provide services in the Republic of Slovenia. Employment and work of third country nationals (to which we will refer as ‘b regime’) is regulated in the Employment, Self-employment and Work of Foreigners Act. It determines the terms and conditions for employment, self-employment and work of foreigners and the related tasks of the state for the regulation and protection of the domestic labour market. In the context of the present research, this Act is important because there are many instances in which the citizens of the former Yugoslavia (Bosnia and Herzegovina, Serbia, North Macedonia) commence working in Slovenia on the basis of this act (they obtain a single work permit) and are later sent to work abroad (to other EU countries).

Before the Transnational Provision of Services Act came into force on 1.1.2018, the posting of workers from Slovenia was not regulated by law. The portable social security documents A1 (the PDs A1), were issued by the Health Insurance Institute of Slovenia¹⁶ on the basis of article 129 of the Health Insurance Rules. On the basis of that article, the issuance of the PD A1 was subject to very loose conditions that were not compliant with those required by the Posting of

¹³ Official Journal of Republic of Slovenia, no 21/2013 and following.

¹⁴ Official Journal of Republic of Slovenia, no 47/2015 and following.

¹⁵ Official Journal of Republic of Slovenia, no. 10/2017. English translation is available here <http://www.pisrs.si/Pis.web/cm?idStrani=prevodi>

¹⁶ The Health Insurance Institute of Slovenia (i.e. Zavod za zdravstveno zavarovanje Slovenije) is a public institute, bound by statute to provide compulsory health insurance. Its principal task is to provide the effective collection and distribution of public funds in order to ensure the quality of rights arising from the said funds for the insured persons.

Workers Directive.¹⁷ For the PDs A1 issued before 1 January 2018, the Health Insurance Institute is not competent to retroactively verify the fulfilment of the conditions for their issuance. However, at the request of foreign authorities, it may revoke PDs A1 issued before (and after) 1 January 2018.

The posting of workers can also take place through temporary agencies that provide workers to other users. The legal basis for providing work to other users is regulated in the Labour Market Regulation Act¹⁸ (Articles 163 to 179a) and in the Employment Relationships Act (Articles 59 to 63).

Additionally, the following legislation is also relevant in the context of employers and workers rights and obligations: Health and Safety at Work Act¹⁹, Minimum Wage Act²⁰, Pension and Disability Insurance Act²¹, and collective agreements.

4.1.1 Posting and cross-border labour mobility

4.1.1.1 The posting of workers from Slovenia to other EU member states

Articles 208 and 209 of the Employment Relationship Act regulate the posting from Slovenia in detail. Article 208 determines the conditions under which the employer may send the worker to work abroad. The basis of posting is an employment contract. If the employment contract does not foresee the possibility of working abroad, the employer and the worker must conclude a new employment contract. The contract may be concluded for the period of completion of a project or for a period of completion of work carried out by the posted worker abroad. The employment contract (which is the basis for posting) must, besides the compulsory elements of the laws regulating employment relationships, also stipulate: the duration of the work abroad, holidays and free days, minimum annual leave, the amount of pay and the currency in which it shall be paid, additional insurance for health services abroad, other incomes to which the worker is entitled during his working abroad, the way of ensuring and implementing the rights connected to the payment for work and other benefits which, in accordance with the regulations of the country where the work is carried out, are provided at least to the extent prescribed by those regulations, or more favourably. The employment contract must also stipulate the conditions of return to Slovenia (article 209). After the termination of work abroad, the employer must ensure the worker his return to Slovenia (at the employers' expense). If the employer does not ensure the return home after the termination of work abroad, he may be fined between EUR 1,500 and 4,000 (Employment Relationship Act, article 218, paragraph 23).

According to Article 208 of the Employment Relationship Act, a worker may refuse the posting abroad if there are justified reasons such as: pregnancy, care of a child under the age of seven, care of a child under the age of 15 if the worker lives alone with the child and takes care of its education and protection, disability, health reasons, other reasons provided by the employment contract and/or the collective agreement, which are directly binding on the employer.

¹⁷ In addition to this, those postings that lasted less than 90 days were not considered postings. They were considered a business trip.

¹⁸ Official Journal of Republic of Slovenia, no 80/2010 and following.

¹⁹ Official Journal of Republic of Slovenia, no 43/2011 and following.

²⁰ Official Journal of Republic of Slovenia, no 13/10 and following.

²¹ Official Journal of Republic of Slovenia, no 96/2012 and following.

More detailed conditions, under which legal or natural persons, established in the Republic of Slovenia, may temporarily provide services in another Member State of the European Union, are regulated in the Transnational Provision of Services Act.²² This act is the actual implementing measure for the Posting Directive. According to the article 4, an employer may provide a cross-border service provided that:

- it usually carries out activity in the Republic of Slovenia,²³
- does not infringe important provisions of labour law relating to the rights of the worker,²⁴
- the posted worker does not normally work in the country of posting,²⁵
- the service is provided within the framework of the activity for which the employer is registered in the Republic of Slovenia, except in the case of posting an employee to an affiliated company, and
- the service is provided in one of the permitted ways.²⁶

Before sending the worker abroad, the employer must apply for the PD A1 (Transnational Provision of Services Act, article 6), which is issued by the Health Insurance Institute of Slovenia. An application for the PD A1 is submitted through the state information system for companies and entrepreneurs e-VEM. In addition to the general information on the worker and the applicant, the following documents must be submitted with the application:

²² However, this act does not apply to the cross-border provision of services by self-employed persons who normally work in two or more EU Member States and by employers whose posted workers normally work in two or more EU Member States (article 1 of the Transnational Provision of Services Act).

²³ The condition referred to is deemed to be fulfilled if (article 4 of the Transnational Provision of Services Act):

- the employer has been entered in the Business Register of Slovenia for at least two months;
- the employer has an open transaction account, which is registered in the tax register in accordance with the law governing the financial administration and is not blocked;
- an employer employing between five and ten workers, employs at least one worker who is continuously covered by compulsory pension and invalidity insurance, compulsory health insurance, parental care insurance and unemployment insurance (hereinafter: compulsory social insurance) in the Republic of Slovenia for at least six months or, if the period from the establishment is shorter, from the establishment onwards; or that the employer employing more than ten workers employs at least three workers who are continuously included in compulsory social insurance on this basis in the Republic of Slovenia for at least six months or, if the period from the establishment is shorter, from the establishment onwards;
- in the last 12 months or, if the period from the establishment is shorter, from the establishment onwards, the total number of hours of inclusion of all employees employed by the employer in this period in compulsory social insurance on the basis of posting did not exceed 80 percent of the total number of hours social insurance based on employment with the same employer and
- the employer, declares, under criminal and material liability, that he actually carries out his activity in Slovenia.

²⁴ This condition is deemed to be fulfilled if the employer has not been fined more than once in the last three years for an offense relating to remuneration, working time or undeclared work; if the employer has proposed withholding tax returns for employment income, for the period of the last six months before the month of submitting the application for the issuance of the PD A1, and if the employer has no outstanding tax liabilities (article 4 of the Transnational Provision of Services Act).

²⁵ This condition is deemed to be fulfilled if the posted employee is continuously included in compulsory social insurance in the Republic of Slovenia for at least 30 days on the basis of full-time employment or on another appropriate legal basis (article 4 of the Transnational Provision of Services Act).

²⁶ This condition is deemed to be fulfilled if the service is provided in one of the following ways (article 4 of the Transnational Provision of Services Act):

- for its own account and under its own management on the basis of a contract concluded with the service subscriber,
- on the basis of an act of secondment to an affiliated company, or
- in the context of performing the activity of providing workers to the user.

- the applicant's statement issued under criminal and material liability that he normally carries out activity in Slovenia,
- appropriate employment contract for work abroad (with the employee, in Slovene!) and a service contract (with the client, not obligatory in Slovene) or deed of transfer to an affiliated company.

Eligibility for a PD A1 is demonstrated by the employer:

- with the duration of the employer's registration in The Business Register of Slovenia at least two months,
- by the existence of a bank account that is not blocked,
- with the number of employees in relation to the size of the company and the number of posted workers in relation to employees performing work in the Republic of Slovenia,
- with a statement from the employer in which he declares, under criminal and material liability, that he actually carries out his activity in Slovenia.

In addition, the employer must not infringe important provisions of labour law and has no outstanding tax liabilities.

The fulfilment of the conditions of the posted worker is checked on the basis of the data from the records of insured persons and issued PDs A1, namely that:

- the employee is employed by the employer and has adequately regulated compulsory health insurance,
- the employee has prior min. 30-day insurance before being posted,
- no other PD A1 has already been issued and is valid for the person.

The entire procedure takes place only through the e-VEM system, which combines data from various state registers and databases. If the conditions for the issue of the PD A1 are not met, the negative decision is issued immediately (automatically, from the e-VEM system). If the conditions are met (automatically checked by the e-VEM system), the employees of the Health Insurance Institute of Slovenia check whether the employment contract meets the legal requirements from the 208th and 209th articles of the Employment Relationship Act.

Upon issuance of the PD A1, the Health Insurance Institute of Slovenia deregisters the health insurance of the posted worker under the existing insurance basis (001) and registers it under the insurance basis 002 (Persons employed by an employer based in the Republic of Slovenia, sent to work or for professional training abroad).

It is very important to stress that the “change” of the insurance basis is reflected in the change in the basis for calculating social security contributions. The basis to determine the amount of contributions that have to be paid for pension and disability insurance in cases of 002 insurance basis is “the salary that would have been received for the same work in the Republic of Slovenia” (article 144, paragraph 2 of the Pension and Disability Insurance Act). In most cases in practice, this means a minimum wage salary.

It is also very important to stress that the procedure for the issuing of the PD A1 is not regulated by the rules of the administrative procedure.²⁷ If the conditions for issuing a PD A1 are formally met (the system application verifies the fulfilment of conditions by obtaining and controlling data from various databases kept by various ministries – no substantive assessment is done), the Health Institute of Slovenia will issue it in the form of a separate document within five working days of receiving a complete application. If the conditions for issuing a PD A1 are not met, the Health Institute shall reject the application for the issuance of a PD A1 by a decision. An appeal against issued decisions of the Health Institute (meaning an administrative dispute) is not permitted. The issued decision can be challenged only in court (article 9, paragraph 7 of the Transnational Provision of Services Act).

After obtaining the PD A1, the employer and the posted worker are obliged to inform the Health Insurance Institute of Slovenia of any changes that occur during the period of posting, especially if the posting was not made or was completed before the planned date (article 6 of the Transnational Provision of Services Act).

If, after the issuance of the PD A1, the Health Insurance Institute of Slovenia receives notification of the existence of doubt that the employer actually carries out activities in the Republic of Slovenia, it shall request the Labour Inspectorate of the Republic of Slovenia to supervise the employer (article 10 of the Transnational Provision of Services Act).

At the end of the posting assignment, the employer must again file a deregistration for the employee based on A1 002 and, if the conditions are met (e.g., that the employee continues to be employed by the employer), file for a registration under the “existing” insurance basis (the one they had before being posted).

The above-described process of issuing the PD A1 (more precisely, it is called A1 002) must be distinguished from the situation under Article 13 of the Regulation 883/2004/ES, which is not about posted workers and is therefore not covered by the Transnational Provision of Services Act. In the latter case, the employer who normally performs work or activity in two or more EU Member States, must obtain an PD A1 (more precisely, it is called A1 001). As a rule, this certificate is issued for the period of the next 12 calendar months (maximum 24).²⁸ Besides that, the conditions for obtaining this certificate (A1 001) are less severe than in the case of posted workers (who require the A1 002) - there is no need to prove impunity for breaches of workers' rights, to prove that all taxes are paid, etc. In addition to this, the PD A1 (A1 001) is valid for all the EU member states. As a result, in practice, applications for the PDs A1 are often submitted under article 13 with the false indication of workers as assembly workers, servicing and transport workers.

²⁷ In the administrative procedure, state officials substantially check the fulfilment of the prescribed conditions for the acquisition of a certain right in the field of public law. The administrative procedure lays down the rules to be followed when verifying compliance with the conditions for the acquisition of rights or the imposition of obligations. Among the most important are those that set minimum procedural standards for the client and the necessary mandatory rules of procedure for the public authority. In administrative proceedings, the official conducting the proceedings must, throughout the proceedings, ex officio protect the legal rights of the party and draw the client's attention to the rights he has under procedural and substantive regulations. Of course, decision-making under the administrative procedure takes time. As a rule, at least 30 days elapse between the submission of a request for deciding on a right (e.g., for the issuance of the PD A1) until the issuance of a substantive decision.

²⁸ And for a minimum of 2 months (if the period is shorter).

We can conclude that in Slovenia, it is “easier” to post workers on the basis of article 13 than to post them on the basis of article 12. On the other hand, the workers who are posted under article 12 are “cheaper” for the employer because the basis to determine the amount of contributions that have to be paid for social security systems is the minimum wage in Slovenia.

The problem with the Transnational Provision of Services Act not regulating the issuing of the PD A1 under Article 13 was firstly planned to be solved with the amendment of the named act (according to one of the interviewees from the national authorities). However, according to one of the interviewees from trade unions, in the present phase of negotiations between social partners, the revised Transnational Provision of Services Act does not include the procedures and conditions for issuing the PDs A1 under article 13 (A1 001).

4.1.1.2 The posting of workers to Slovenia

The posting of workers to Slovenia is basically regulated in the Employment Relationship Act, article 210, which determines that a worker who has been posted to perform temporary work in the Republic of Slovenia by a foreign employer on the basis of an employment contract under foreign law shall carry out temporary work in the Republic of Slovenia under the conditions laid down in the regulations governing the work and employment of foreign citizens. The employer must ensure to the posted workers all the rights that belong to domestic workers under Slovenian law in terms of working time, breaks and rest periods, night work, minimum annual leave, salaries, safety and health at work, special protection of workers and equal treatment, if these are more favourable to the worker (in comparison to the rights to which he is entitled on the basis of his national law). In the event of temporary initial work which is an integral part of a contract for the supply of goods, the rights that refer to minimal annual leave and salary do not apply if the work does not exceed eight working days and is carried out by expert workers of the supplier. The rights that refer to salaries also do not apply if such temporary work does not exceed one month in an individual calendar year. These two exceptions do not apply to activities registered within the construction sector (article 201, paragraph 4 of the Employment Relationship Act). The Employment Service monitors and provides information on the terms and conditions of employment of posted workers.

More detailed conditions, under which a foreign employer may temporarily provide services in Slovenia, are regulated in the Transnational Provision of Services Act. In Article 12 it determines that a foreign employer may provide a cross-border service in the Republic of Slovenia provided that:

- he usually carries out an activity in the country of employment,²⁹
- the posted worker does not normally perform work in Slovenia,³⁰

²⁹ The condition is considered fulfilled if the foreign employer has a valid PD A1 for the posted worker – article 12, paragraph 1 of the Transnational Provision of Services Act.

³⁰ The condition is considered fulfilled if the foreign employer has a valid PD A1 for the posted worker.

- does not infringe important provisions of labour law relating to the rights of the posted worker,³¹
- the service is provided in the context of activities for which the foreign employer is registered in the country of employment, except in the case of a posting of an employee to an affiliated company, and
- the service is provided in one of the permitted ways.

Before starting the cross-border provision of the service, the foreign employer must register with the Employment Service of Slovenia, which issues a certificate to the foreign employer on the filed application (Article 14 of the Transnational Provision of Services Act).

If, in the case of supervision, the Labour Inspectorate of the Republic of Slovenia finds that the service is provided despite the unfulfilled conditions or contrary to the data on the PD A1, it prohibits the further provision of the service by a foreign employer and notifies the Health Insurance Institute of Slovenia (Article 12 of the Transnational Provision of Services Act). The Health Insurance Institute of Slovenia proposes to the foreign competent authority to revoke the PD A1.

A fine ranging from 2,000 to 60,000 euros is imposed on a foreign employer who provides cross-border services in contravention of the provisions of the law (Article 25 of the Transnational Provision of Services Act). However, the fine is prescribed only for foreign employers (not for Slovene employers who post from Slovenia).

The Transnational Provision of Services Act is in the procedure of revision, in order to implement the revised Posting Directive. The proposed changes were the subject of discussion by the social partners within the Economic and Social Council at the time of writing of the legal analysis. The proposed amendments to the law have not yet been publicly presented.

4.1.2 Temporary agency work

Temporary agencies are in general allowed to post workers from Slovenia. Temporary agency work is regulated in the Labour Market Regulation Act (Articles 163 to 179a) and in the Employment Relationships Act (Articles 59 to 63). The Labour Market Regulation Act stipulates the conditions for carrying out the activity of a temporary work agency (article 164) for which a special licence must be obtained (article 167 to 170), obligations of the employer providing temporary agency work (article 165), obligations of the user undertaking (article 166) and cessation of activity (article 171).

In the context of the present research, it is important to stress that a user undertaking may only accept assigned workers from a temporary work agency that holds a licence and is entered in the register of licenced temporary work agencies (article 166, paragraph 2 of the Labour Market Regulation Act). Both a legal and a natural person who wishes to perform the activity of providing work to other users (temporary work agency) must submit an application to the

³¹ The condition is considered fulfilled if a foreign employer has not been fined more than once in the last three years for a misdemeanour related to the provision of rights to posted workers temporarily performing work in Slovenia, as provided by the law governing employment relationships.

Ministry of Labour, Family, Social Affairs and Equal Opportunities with the required regulatory documentation. It must prove the adequacy of all conditions for entry in the register of temporary work agencies. In the event that foreign legal and natural persons wish to perform the above-mentioned activity, they must also submit an application with appropriate evidence for entry in the register of temporary work agencies. The temporary agency must conclude an employment contract with agency workers for a definite or indefinite period of time. The temporary employment agency may not refer workers to another user in cases: a) when this would represent replacement of workers employed with the user who are on strike; b) when during the period of the past 12 months the user has terminated the employment contracts of a large number of workers employed with him; c) when risk assessment shows that workers at the user's workplace are exposed to dangers and risks and d) in other cases which can be laid down by branch collective agreement.

A user undertaking is obliged to comply with all the regulations governing employment relationships during the period of assignment.

However, in cases of third countries nationals, the agency may conclude employment contracts only with those residing in the Republic of Slovenia on the basis of the EU Blue Card, or with those who have been given consent for employment, self-employment or work in the process of issuing or renewing a single permit or issuing a written approval, and with those who have free access to the labour market in accordance with the act that regulates the employment of foreigners (article 7 of Employment, Self-employment and Work of Foreigners Act³²).

The number of posted workers at the user may not exceed 25 percent of the number of employees at the user, unless otherwise stipulated by a collective agreement at the level of the branch. This limitation does not include workers who are employed by the employer for an indefinite period of time. The restriction does not apply to the user - a smaller employer.

A fine of EUR 10,000 to 30,000 is prescribed for a legal person - the temporary agency, in the event of failing to ensure the worker all the rights arising from employment. A fine of EUR 10,000 to 50,000 is prescribed for a breach on a legal person in the event of pursuing the activity of posting workers to user undertakings without being entered in the register of licenced temporary work agencies. A fine of EUR 10,000 to 30,000 is prescribed also for the user undertaking in the event of accepting a worker from the employer who pursues the activity of posting workers to user undertakings but is not entered in the register of licenced temporary work agencies. In all the above-mentioned cases, a fine of EUR 1,500 to 5,000 is prescribed for the responsible person of a legal person (Articles 177 to 179 of the Market Regulation Act).

4.1.3 Social security

The posted worker is still subject to Slovenian legislation in the field of social security, which means that he or she is included in the social security insurance system in Slovenia. The social insurance covers compulsory health insurance (regulated in Law on Health Care and Health

³² Official Journal of Republic of Slovenia, no 1/2018 and following.

Insurance³³ and Law on Contributions for Social Security³⁴), parental compensations (Parental Protection and Family Benefits Act³⁵), compulsory pension and disability insurance (the Pension and Disability Insurance Act) and unemployment insurance (the Labour Market Regulation Act).

Upon issuance of the PD A1, as already explained in 4.1.1., the Health Insurance Institute of Slovenia deregisters the health insurance of the posted worker under the existing insurance basis (001) and registers under the insurance basis 002 (Persons employed by an employer based in the Republic of Slovenia, sent to work or for professional training abroad). It is very important to stress that the “change” of the insurance basis is reflected in the change of the basis for calculating social security contributions. The basis to determine the amount of contributions that must be paid for pension and disability insurance in cases of 002 insurance basis is “the salary that would have been received for the same work in the Republic of Slovenia (article 144, paragraph 2 of The Pension and Disability Insurance Act). In most cases in practice, this means a minimum wage salary.

No sanctions are prescribed for employers who do not apply for the PD A1 before sending their workers abroad.

4.1.4 Health insurance and coverage

For a worker posted abroad, the regulations on healthcare and compulsory health insurance apply. The health insurance in Slovenia is compulsory for all the citizens of the Republic of Slovenia having their residence in the territory of Slovenia. As part of the compulsory health insurance, the insured persons are guaranteed the payment of health services, sick pay during temporary absence from work and the reimbursement of travel expenses tied to obtaining health services. The right to health care services comprises the services at the primary health care level, including dentistry, health care services in certain types of social care institutions, specialist out-patient services, hospital and tertiary level services. In addition to medical services, the right to health care services also encompasses the right to health resort treatment, rehabilitation treatment, transport by ambulance and other vehicles, medicaments, medical devices and several other rights.³⁶

The compulsory health insurance contributions are paid calculated as a percentage of the specified bases. The Law on Health Care and Health Insurance provides the bases applied in calculation of the contributions for different groups of insured persons. The rates of contributions under compulsory health insurance are specified by the Law on Contributions for Social Security. For workers, the compulsory health insurance contributions depend on the salary or other income earned by the insured person.³⁷ The employer and the worker must pay

³³ Official Journal of Republic of Slovenia, no 9/1992 and following.

³⁴ Official Journal of Republic of Slovenia, no 5/1996 and following.

³⁵ Official Journal of Republic of Slovenia, no 26/2014 and following.

³⁶ <http://www.zzzs.si/zzzs/internet/zzzseng.nsf/o/DF851AAD119C45F6C1256E89004861AC>

³⁷ This ensures a high degree of solidarity within the system. For some groups of insured persons (the unemployed, the recipients of the social security allowances and similar), the health insurance contributions are paid by national or local community budgets.

for the health insurance. As described above, the “change” of the insurance basis after the issue of the PDs A1 for posted workers is reflected in the change of the basis for calculating pension and disability insurance. However, this does not affect the amount of health insurance contributions. The health insurance and all other social insurances must also be paid during posting. There are no additional travel insurances to be paid.

After the termination of work abroad, the employer must ensure the worker his/her return to Slovenia (at the employers' expense). If the employer does not ensure the return home after the termination of work abroad, he may be fined between EUR 1,500 and 4,000 (Employment Relationship Act, article 218, paragraph 23).

4.1.5 Company law

The conditions for companies posting workers from and to Slovenia are regulated in the Transnational Provision of Services Act and are not subject to company law. Slovene company law addresses only general conditions for establishing a company in Slovenia.

The conditions for the establishment of companies are determined by the Companies Act³⁸, which is general law in this area. More detailed conditions for the performance of specific activities (such as the activity of providing workers for other users) or conditions for the employment of certain categories of persons (e.g., third country nationals) are determined by special legislation. However, this special legislation may contain provisions which, according to their content, fall within the scope of company law. For example: one of the conditions for the issue of the PD A1 to the company that wants to post workers abroad is that the service is provided within the framework of the activity for which the employer is registered in the Republic of Slovenia (registration of the company is subject to Companies Act - upon establishment, each company is entered in the Business Register of Slovenia). The second condition is that the service is provided in one of the permitted ways. The latter condition is deemed to be fulfilled if the service is provided in one of the following ways (article 4 of the Transnational Provision of Services Act):

- for its own account and under its own management on the basis of a contract concluded with the service subscriber,
- on the basis of an act of secondment to an affiliated company, or
- in the context of performing the activity of providing workers to the user.

The condition that the service is provided within the framework of the activity for which the employer is registered is deemed to be fulfilled if (article 4 of the Transnational Provision of Services Act):

- the employer has been entered in the Business Register of Slovenia for at least two months;
- the employer has an open transaction account, which is registered in the tax register in accordance with the law governing the financial administration and is not blocked;

³⁸ Official Journal of Republic of Slovenia, no 65/2009 and following.

Regarding the temporary agency work, there are conditions under which a registered company is allowed to register and operate as a temporary agency – those conditions are stipulated in the Labour Market Regulation Act (see 4.1.1).

In the context of posting, it is important to mention that some employers register with the sole purpose to recruit workers in Balkan states and post them directly to Europe. If something goes wrong (their company is closed by the inspectors, or they cannot obtain work permits for third country nationals because they have breached labour law regulations), they simply register a new company. This practice is in Slovenia described as “chaining of companies” (Gajšek 2017). It means that the enterprise (economic term) is transferred from one company (meaning legal form) to another. In certain cases, the companies are registered in advance and later activated when needed (shell companies, *vorratsgründung*, phoenix companies³⁹). In Slovenia, a person can register as many companies as he/she wants. The registration procedure is very quick (you can register a company in one day, by online application e-VEM) and costless. For partnership companies, no initial capital is prescribed. For a limited liability company, which is the most popular company in Slovenia, the initial capital of EUR 7.500 is prescribed. Although the establishment of companies for the purpose of chaining companies is prohibited by article 10a of the Companies Act, in practice we can still witness many examples of this.

In cases when an employer wishes to perform a regulated service/activity in Slovenia, it must fulfil the conditions prescribed by a special law that regulates such a service. For example: conditions for operating in the construction sector are prescribed by the Building Act.⁴⁰ If the employer carries out a regulated activity in Slovenia, the legislation does not generally require any special registration (as in Germany, where a company wishing to carry out a regulated service/activity must register it with the German Chamber of Crafts in the city where it provides the service). The compliance with the conditions for providing a regulated service/activity is carried out in the event of a supervision by the competent inspection body.

4.1.6 Other relevant regulation

In addition to the above-described legal framework, the following legislation is also relevant in the context of employers and workers rights and obligations: Minimum Wage Act, Health and Safety at Work Act, Building Act, and collective agreements.

Minimum Wage

The minimum wage is determined by the Minimum Wage Act⁴¹, the elements of the wage are determined by the Employment Relationships Act, and collective agreements additionally determine the specifics. In 2020, the minimum wage was 940,58 EUR per month.

Health and safety at work

The Health and Safety at Work Act⁴² stipulates that the employer must ensure the safety and health of workers at work. To this end, it must implement the measures necessary to ensure the safety and health of workers and other persons present in the work process, including the

³⁹ For details, see Steffek 2011, 556 and 557)

⁴⁰ Official Journal of Republic of Slovenia, no 61/2017 and following.

⁴¹ Official Journal of Republic of Slovenia, no 13/10 and following.

⁴² Official Journal of Republic of Slovenia, no 43/2011 and following.

prevention, elimination and management of occupational hazards, information and training of workers, appropriate organisation and provide the necessary material resources. According to the Act, an employer that performs his activities with temporary agency workers is considered to be an employer. As such, he is responsible for ensuring the safe and healthy work of employees and for all duties of the employer arising from the law and other regulations in the field of safety and health at work. In the event of an accident at work, the employer is obliged to inform the Labour Inspectorate of the Republic of Slovenia by filling out the ER-8 form.

Building Act

For construction workers, the Building Act⁴³ is also important. The latter determines the conditions for performing certain professions in construction (regulated professions). Professions such as responsible project manager, responsible designer (architect or engineer), responsible project auditor, responsible construction supervisor, responsible construction manager are required to obtain the status of certified engineer or architect in the Republic of Slovenia and be a member of the Chamber of Engineers of Slovenia or the Chamber of Architecture and Spatial Planning of Slovenia.

For construction workers, a subsidiary responsibility of the “user” of the subcontractor services is also regulated. Article 16 of the Transnational Provision of Services Act stipulates that if a foreign employer who is a subcontractor and provides a cross-border service within the construction activity in Slovenia fails to provide the posted worker with a salary in accordance with the provisions of the law governing employment, a subsidiary responsible contractor with a registered office or residence in Slovenia, whose direct subcontractor is a foreign employer, is obliged to fulfil this obligation (pay the salary).

A similar principle of liability is regulated for the temporary work agencies. If a foreign employer performing the activity of providing work does not provide the posted worker with a residence, salary or other employment benefits in accordance with legislation, the user is subsidiary responsible for fulfilling this obligation for the period during which the employee performed work for him (Article 16 of the Transnational Provision of Services Act).

Collective agreements

It is important to stress that, in Slovenia, the regulation of posting is not based solely on legislation: collective agreements play an important part in granting protection to the posted workers. Collective bargaining in Slovenia is highly structured. In the private sector there is collective bargaining between unions and employers at industry and company level. Collective agreements can only improve on the arrangements set by law. Most agreements contain pay and pay rates (based on a nine-level grading structure), working conditions and working time, absence arrangements, redundancy terms, training and a range of procedural issues such as dispute resolution, trade union facilities and information arrangements. There is a number of sector-specific collective agreements declared universally binding. The list of all the binding collective agreements is kept by Ministry of Labour, Family and Social Affairs.⁴⁴

⁴³ Official Journal of Republic of Slovenia, no 61/2017 and following.

⁴⁴ Link to the list (record) of collective agreements: http://mddsz.arhiv-spletisc.gov.si/si/delovna_podrocja/delovna_razmerja_in_pravice_iz_dela/socialno_partnerstvo/evidenca_kolektivnih_pogodb/

Table 4. 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 regulations	<p>Transnational Provision of Services Act</p> <p>Employment Relationships Act</p> <p>Employment, Self-employment and Work of Foreigners Act.</p>	<p>In implementing the Posting Directive, Slovenia decided to apply only the hard core of rights (Article 3 of the PWD).</p> <p>The basis of posting is an employment contract. It must stipulate the duration of the work abroad, holidays and free days, minimum annual leave, the amount of pay and the currency in which it shall be paid, additional insurance for health services abroad, other incomes to which the worker is entitled during his working abroad, the way of ensuring and implementing the rights connected to the payment for work and other benefits which, in accordance with the regulations of the country where the work is carried out, are provided at least to the extent prescribed by those regulations, or more favourably. After the termination of work abroad, the employer must ensure the worker his return to Slovenia (at the employers' expense).</p> <p>A worker may refuse the posting abroad if there are justified reasons, such as: pregnancy, care of a child, disability, health reasons, etc.</p>	<p>No specific rights (in comparison to non-posting companies).</p> <p>Incentives: the basis for the payment of social security contributions is the salary that would have been received for the same work in the Republic of Slovenia (in most cases in practice this means a minimum wage).</p>	<p>To obtain the PD A1, the posting company must show that it is a "reliable employer" – is not infringing important labour law provisions, the bank account is not blocked, and the taxes are paid.</p> <p>If the employment contract does not foresee the possibility of working abroad, the employer and the worker must conclude a new employment contract. The contract may be concluded for the period of completion of a project or for a period of completion of work carried out by the posted worker abroad.</p> <p>The employment contract must stipulate the duration of the work abroad and the most important workers' rights in that context (holidays and free days, minimum annual leave, the amount of pay, etc).</p> <p>After the termination of work abroad, the employer must ensure the worker his return to Slovenia (at the employers' expense).</p> <p>For the construction sector, there are rules on subsidiary liability of the employer that "hired" the subcontractor.</p>	<p>Labour inspectors control the implementation of the legislation on posting in practice.</p> <p>Health Insurance Institute of Slovenia issues A1 certificates.</p>
Temporary Agency Work regulations	<p>Labour Market Regulation Act</p> <p>Employment Relationships Act</p>	<p>There are no specific provisions for posted agency workers – the same conditions must be met as in the case of "normal" posting.</p>	<p>In the procedure for obtaining the PD A1, the temporary work agencies are not required to submit the service contract (with the client, in Slovene) or deed of transfer to</p>	<p>Same as above</p> <p>In cases of third countries nationals, the agency may conclude employment contracts only with those residing in the Republic of Slovenia on the</p>	<p>Labour inspectors</p> <p>Health Insurance Institute of Slovenia</p>

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			an affiliated company.	basis of the EU Blue Card, or with those who have been given consent for employment in the process of issuing or renewing a single permit/written approval, and with those who have free access to the labour market in accordance with the Employment, Self-employment and Work of Foreigners Act.	
Health insurance and coverage	<p>Law on Health Care and Health Insurance</p> <p>Law on Contributions for Social Security</p>	Posted workers have all the rights from the health insurance, the same as Slovene nationals. If a posted worker from another EU country needs urgent medical assistance in Slovenia, he does not need to pay for it. The bill is sent to the sending country authority.	Slovene health insurance also covers the salary compensation for the period of sick leave, from the 31 st day of sick leave (until it ends) – the employer pays the salary, but it is refunded from the Health Insurance Institute of Slovenia.	The employment contract, which is the basis for posting, must stipulate additional insurance for health services abroad.	<p>Labour inspectors</p> <p>Health Insurance Institute of Slovenia</p>
Social security regulation	<p>Law on Health Care and Health Insurance</p> <p>Law on Contributions for Social Security</p> <p>The Pension and Disability Insurance Act</p> <p>Parental Protection and Family Benefits Act</p> <p>The Minimum Wage Act</p>	No specific provisions for posting companies	The basis for the payment of social security contributions is the salary that would have been received for the same work in the Republic of Slovenia (see above: Posting Companies Rights and Incentives).	No specific provisions for posting companies	<p>Labour inspectors</p> <p>Health Insurance Institute of Slovenia</p>
Company law	Companies Act	No specific provisions for posting companies	No specific provisions for posting companies	Article 10a of Companies Act regulates the restriction regarding the establishment of companies in cases of chaining companies.	
Any other relevant legislation, e.g. anti-dumping laws	<p>Building Act</p> <p>Collective agreements</p>			A subsidiary responsibility of the “user” of the subcontractor services.	

4.2 National implementation and enforcement

There will be a delay in transposing Directive 2018/957 into Slovene national laws because the negotiations amongst the Economic and Social Council partners regarding the transposition and changes of national legislation on the posting of workers started in July 2020. The same goes for the governmental inter-institutional working group, which will deal with the legislation change. We might expect a relatively lengthy process because social partners have opposing views on some issues. For example, one interviewee from an employers' association stated that they advocate minimal changes to the current Slovene legislation because the employers will find it more difficult to work and post their workers following the transposition of the revised Directive. On the other hand, we have noticed a certain degree of scepticism from our public authorities' interviewees regarding what to expect with the revised Directive, expressing their doubts that it would bring substantial changes in practice. Firstly, they claim that the current legislation is appropriate (but lacking enforcement); secondly, in their belief, certain employers will always find a way to bypass the legislation. Very often it has also been said that "allowing" incoming posted workers in such numbers and not controlling the process of posting and the companies that post is a political decision made by the destination countries (for example, the difference between Germany and Austria has been mentioned in this regard). According to our interviewees, the frequency and extent of the control of the posted workers and/or companies is much more vigorous in Austria compared to Germany and subsequently there is a greater number of fines issued, although many more workers are posted from Slovenia to Germany.

Given the delay in the transposition of the Directive, we cannot yet report on specific changes to the national regulations. However, as the coordination and negotiation processes are still taking place, it was also difficult to obtain information on proposed changes – our interviewees refrained from sharing specific information with us. They did share some very broad ideas (such as one mentioned above offered by an employers' association representative), most often in terms of challenges to the current situation and regulations.

As mentioned earlier, Slovenia is one of the biggest posting countries in Europe and the reasons for this are multifaceted. One would be the cost of the posting for the employer – as it has been stated by our interviewees that the employers' financial contributions are relatively low compared to many European countries (however, the same is not true for workers' contributions). Although the posted workers will receive (at least) the minimum wage or minimum hourly wage as demanded in the destination country (which is higher than that of Slovenia), the social contributions will always be calculated based on the (as a rule minimum) gross wage the worker would have received for the same work in Slovenia. This regulation has been criticised by other EU countries as well as by some Slovene social partners. On the one side, it is also seen in Slovenia as an unfair practice (e.g., the amount of the wages earned abroad will not be considered when calculating workers' pensions) while others (employers, employers' associations) claim changing the regulations concerning this matter would make it more difficult or even impossible for Slovene employers to post their workers. Although transposing Directive 2018/957 does not imply these changes, there have been demands from abroad (mainly from Austria and Germany) to change it. As a notable Slovene economist claims, this increase in labour costs could result in the loss of "1.7 billion euros in exports yearly" and could put at risk from 13,000 to 26,000 workplaces (Damijan, 2019). Another

reason is the vicinity of certain Balkan countries, the historical, political, and cultural background Slovenia shares with the ex-Yugoslavia countries, bilateral agreements on employment (with Serbia and with Bosnia and Herzegovina) – all of these make Slovenia an “intermediary” employing third country nationals in Slovene companies and posting them to other European countries. They are employed and posted following the Slovene and EU legislation, however in practice they are employed with the sole intention of posting them to other EU countries. Many of them never actually see Slovenia (see also Danaj et al., 2020). However, it is very difficult to prove this intention – which poses a big challenge for Slovene authorities. As stated elsewhere in the report, this “business model” is often associated with exploitation of workers, letter-box companies, law violation, etc. Lack of control of these companies, and regulation that makes it possible for some employers to bypass the legislation (the PDs A1 issued based on the Article 13) are further reasons for Slovenia’s numbers of posted workers.

4.2.1 Institutional Framework

There are several institutions in Slovenia involved in the posting of workers (be it from or to Slovenia).

Ministry of Labour, Family, Social Affairs and Equal Opportunities: The Employment, Social Entrepreneurship and Migrations Department is responsible for preparing regulations and law proposals related to the employment of foreign workers in Slovenia, monitoring the implementation of regulations, and participating in the preparation of the EU legislative proposals relating to the free movement of workers and services, employment of third-country nationals, etc. The Ministry established a website with information for posting employers and workers (<https://www.napotenidelavci.si/sl/>).⁴⁵ The website operates in 4 languages: Slovene, English, German and Croatian. However, the relevant legislation (accessible by links) is available only in Slovene.

The Employment Service of Slovenia: the institution responsible for accepting applications for providing services with posted workers to Slovenia and for approving work and residence permits for posted workers.

The Health Insurance Institute of Slovenia: in regard to posting workers, the HIIS is designated as the institution for implementing statutory provisions regarding health care as well as provisions concerning the applicable legislation (e. g. the PDs A1).

The Financial Administration of Slovenia: the institution where information about financial obligations (taxes) of posted workers – both those being posted from or to Slovenia, can be obtained, as well as information for employers concerning the taxation of employment income. The FAS is in charge of assessing taxes and obligatory levies as well as of financial supervision.

⁴⁵ The website was created as a part of the project Posting of Workers: Sharing Experiences, Promoting Best Practices and Improving Access to Information, co-financed in part by the European Commission in the framework of the EU programme Employment and Social Innovation (EaSI) and the Ministry of Labour, Family, Social Affairs and Equal Opportunities of the Republic of Slovenia.

The Labour Inspectorate of Slovenia (under the Ministry of Labour, Family, Social Affairs and Equal Opportunities): labour violations can be reported to the inspectorate, which supervises the implementation of laws, collective agreements and other acts.

Administrative Units: points where the worker posted to Slovenia is issued with the work and residency permit.

Employers seeking assistance concerning posting to other countries can join the Chamber of Craft and Small Business of Slovenia, Chamber of Commerce and Industry of Slovenia or Association of Employers of Slovenia. Employees, however, may seek assistance from trade unions.

4.2.2 Enforcement Agencies Practices

According to our interviewee from the Employment Service of Slovenia, this institution retains evidence of the workers posted to Slovenia, however, workers themselves rarely seek their assistance or help. Regarding the inter-institutional collaboration – they collaborate with the labour inspectorate on individual cases when (usually) Slovene workers report violations of laws by the employer who posted them abroad. However, in cases when a Slovene national posted abroad reports the employer to the Slovene national authorities, the dilemma pertaining to the jurisdiction of Slovene and foreign inspectorates arises.

Considering the relatively low number of labour inspectors in Slovenia, they often (some would say usually) investigate violations based on individual complaints. However, complaints are relatively rare; according to our trade unions interviewees, employees whose rights are being violated tend to complain and report the employer only when they have no other option and are left without any financial resources.

The Health Insurance Institute of Slovenia can request the Labour Inspectorate of the Republic of Slovenia to supervise the employer. Regarding the posting of workers from Slovenia – if, after the issuance of the PD A1 to the Slovene employer, the Health Insurance Institute of Slovenia receives notification of the existence of doubt that the employer actually carries out activities in the Republic of Slovenia, it shall request the Labour Inspectorate of the Republic of Slovenia to supervise the employer. If the Labour Inspectorate finds breaches of the law, it fines the employer in accordance with the Slovene Employment Relationships Act. Regarding the posting of workers to Slovenia - if the Labour Inspectorate of the Republic of Slovenia in its supervisory capacity finds that the service is provided despite the unfulfilled conditions or contrary to the data on the PD A1, it prohibits the further provision of the service by a foreign employer and notifies the Health Insurance Institute of Slovenia, which proposes to the foreign competent authority to revoke the PD A1. The foreign employer will also be fined from 2,000 to 60,000 EUR.

When posting abroad – as one of our informants explained – employers and workers will encounter different practices. There are substantial differences in the probability they will be subject to a labour inspector control, as well as in the strictness and consistency of the control – even within the same country, which can cause confusion to posting employers. While some countries require employers to have all documentation related to the posting, on the work site and translated into the national language, others are less stringent (they do not require all

translations, documentation can be submitted for inspection later, etc.). In addition to this, in some countries, inspections are carried out in such a way that several competent inspection services attend the employer at the same time for a very thorough inspection, while in other countries inspection bodies do not perform joint operations.

The validity of a PD A1 can be checked by entering the required data on the website of the Employment Service of Slovenia. From 20 March 2018 onwards, the issued PDs A1 have a QR code for entering the Employment Service of Slovenia website to check whether the PD A1 with such a QR code is valid.

The public authorities' representative stated that the problem with issuing the PDs A1 is in the fact that the procedure for issuance is not regulated by the rules of the administrative procedure. This means mainly that the application for obtaining the PD A1 is completed online (on the e-VEM site), where the system application verifies the fulfilment of conditions by obtaining and controlling data from various databases maintained by various ministries. The substantive assessment (which is not "automated") refers only to the contents of the submitted employment contract for work abroad (required by the Employment Relationship Act, article 208i). If the conditions for issuing a PD A1 are met, the Health Institute of Slovenia will do so in the form of a separate document within five working days of receiving a completed application. If the conditions for issuing a PD A1 are not met, the Health Institute rejects the application for the issuance of a PD A1 by issuing a decision. An appeal against decisions issued by the Health Institute is possible only by referring to a court of justice.

4.2.3 Enforcement through Transnational Cooperation

As the public authorities' interviewees claim, inter-institutional transnational collaboration takes place mainly in the context of solving specific, individual problems. For example, when a foreign inspection authority seeks information through the Internal Market Information System (IMI), usually concerning an individual worker who is under inspection or on the posting company in the destination country. This kind of information exchange (worker's documentation, company's registration, etc.) runs relatively smoothly. However, there is no coordinated transnational inspection surveillance practice, as one of our public authority interviewee reports being established in some EU countries. The transnational collaboration – as stated – is limited to solving individual problems, and it lacks the systemic approach.

One of the public authorities' interviewees mentioned the network of Public Employment Services (PES network), which enables the exchange of practices. However, again, this collaboration lacks a more systemic approach. Transnational cooperation is very difficult, as (apart from the IMI System) the formal exchange of information (e.g., between Slovene and Austrian PES) is non-existent.

There is a general consensus that the posting of workers should be more regulated. At the same time, most of our informants agree that the problem does not arise from the national legislation but from the lack of control/monitoring of violations. Many see this a consequence of the "automatic" control of conditions for issuing PD A1s, an insufficient number of labour inspectors and/or the lack of a more thorough checking and control of employers who post workers abroad.

4.2.4 Enforcement Agencies Challenges

As stated above, the relatively low number of labour inspectors in Slovenia poses a problem in controlling the incoming employers' compliance with Slovene regulations. There is a general consensus that the posting of workers should be more regulated. At the same time, most of our informants agree that the problem does not arise from the national legislation but from the lack of control before issuing PD A1s and the lack of monitoring of violations.

Our attention has been drawn to the problem of possible revocation of the PDs A1 issued by Slovenia by other EU countries after their inspection surveillance discovers different legislation violations. As stated by many (mostly public authority) interviewees, this might pose a huge problem in the future; namely, the destination country might demand the social security contributions to be paid in the destination country for the period of the "posting" (employment, actually) of the worker(s), following the destination country regulations. As stated by our interviewees, there are huge differences in the amount of the social contributions paid in Slovenia compared to the social contributions that would need to be paid in the destination country. This difference should be covered by the employers; however, it is assumed that this would not happen in the future (many companies do not exist anymore, some would go bankrupt, etc.). In this case the employees would suffer damage – if the social contributions were not paid after being demanded by the destination country it could result in a shortfall in the employees' employment years contribution records.

It has been mentioned by several public authorities' representatives that controlling the financial flows more systematically and more rigorously could result in identifying the employers who are not eligible to be issued with PDs A1 for their employees for various reasons.

Associated with this problem is the number of employees in different institutions who are at different stages involved in the process of issuing the PDs A1, enforcement, control, supervision, data verification, etc. As has been mentioned already, the number of labour inspectors is low. However, other institutions may also suffer from a work overload per individual employee. For instance, the PDs A1 are issued by the Health Insurance Institute of Slovenia – which has been assigned this role after the enactment of the Transnational Provision of Services Act. As some of our interviewees stated, this has been a compromise solution, which has not been followed by a (substantial) increase in the number of employees.

Slovene courts are notorious for their inefficiency and lengthy processes – a fact of which certain employers take advantage.

As has been elaborated earlier, one of the challenges is the abuse of the option to obtain PDs A1 issued under Article 13; namely, many employers that do not meet the requirements for obtaining the PDs A1 based on Article 12 resort to this option. Although the cost to the employer is, in the majority of cases, somewhat higher, it still has many advantages – lack of thorough control in the process of issuing the PDs A1, obtaining the PDs A1 immediately, these being issued for a period of one year, etc. There have been reports of certain construction sector employers obtaining the PDs A1 based on Article 13 and not providing services in the form of transport, assembly or maintenance work. However, as our employers' association representative points out, the distinction between construction and (for example) assembly work is not always clear-cut. Our interviewees are of the opinion that the revision of the

Transnational Provision of Services Act should eliminate these “anomalies” (expression used by the interviewed public authorities’ and social partners’ representatives). Yet, the last draft of the revised Transnational Provision of Services Act does not include the conditions or procedure for the issuing of PDs A1 under Article 13.

4.3 Employer practices and challenges

4.3.1 Employer practices

There is a huge discrepancy in the numbers of outgoing and incoming posted workers regarding Slovenia. As of 2018 the number of incoming posted workers (9,173) represented only 7% of the outgoing posted workers (127,059), two years earlier this proportion would be even smaller – only 3%. In line with this the topical issue regarding employer practices in Slovenia is posting Slovene companies’ workers to other countries. The information we gathered through our interviews on posting to Slovenia was scarce in comparison to the information on posting out of Slovenia. Employers’ practices and challenges will reflect the viewpoints of public authorities, employers and social partners.

As our interviewees generally agreed, bigger companies posting from Slovenia would encounter fewer problems in the administration process. However, small and medium size companies usually lack knowledge and own resources, and therefore more often find the posting of workers a complex and lengthy process.

From the perspective of the Slovene employers, the coming changes to the Slovene regulations in order to meet the European legal requirements are anticipated with concern, as it is assumed that postings from Slovenia will be more difficult (and shorter). There is also a concern that the competitiveness of Slovene companies will diminish after the implementation of Directive 2018/957 into national regulations. As one of our public authorities’ representatives commented (and discussed in section 4.1), “differences in labour costs and the companies’ competitiveness arise from different social systems.”

The representatives of employers’ associations and of public authorities expressed their expectations that the amendments to the Transnational Provision of Services Act will change the provisions that prevent the employer from obtaining the PDs A1 in cases where the employer has violated labour law. Namely, it happens in practice that the violation is minor in nature, negligible and committed unintentionally (for example, a few days of delay in the payment of annual leave allowance), but it still means that the employer is banned from posting abroad. On the other hand, the Slovene Labour inspectorate in cases of control over Slovene employers that post abroad, often resorts to this solution, as the Transnational Provision of Services Act contains criminal provisions only for a foreign employer posting to Slovenia, but not for a Slovenian employer posting abroad.

As one interviewee from the public authorities said, there are a lot of posting employers who wish to abide by the law but find the Slovene labour legislation very complicated and often need substantial help from specialised agencies or legal offices in order to meet all the conditions. Therefore, intentionally or unintentionally posting employers engage in irregular practices, which will be explained below.

4.3.1.1 *The use and misuse of Article 12 or Article 13 in the application for PDs A1*

Sometimes employers need the PDs A1 issued urgently (this depends on the nature of the services provided), e.g., the same day or the next day at the latest. In these cases – if they do not receive it, the workers might be posted without valid documentation, as some employers would admit. Some employers are of the opinion that the bureaucratic procedures for issuing the PD A1 should be further simplified. In practice, there are frequent cases, especially in the construction sector, when the PDs A1 has already been issued, but the posting abroad was not carried out, for example due to unfavourable weather conditions. In such cases, the employer has to file a request for revocation of a PD A1 and then file a new application for a new PD A1. It would be more practical if the employer could submit only a notification of a change in the date of posting.

In the case of posting of workers there is a difference on which basis the PD A1 is issued, which is discussed in detail in sections 4.2.4 and 4.1.3. To sum up, obtaining an “Article 13 PD A1” is faster and easier, it is issued for the following 12 months and is valid in all EU member states. These facts led to a huge rise in the number of “Article 13 PDs A1”. It is also assumed that a large proportion of these are issued to ineligible employers/their employees.

The problem of misuse of Article 13 for obtaining PDs A1 is connected also with the eligibility of employers for obtaining the PDs A1. Namely, one of the conditions for the employer is that he “usually carries out activity in the Republic of Slovenia” (Article 4 of the Transnational Provision of Services Act). This condition deems to be fulfilled if in the last 12 months or, if the period from the establishment is shorter, from the establishment onwards, the total number of hours of inclusion of all employees employed by the employer in this period in compulsory social insurance on the basis of posting did not exceed 80 percent of the total number of hours social insurance based on employment with the same employer. In other words, the posted employees must be included in “ordinary” social insurance (insurance basis 001) for at least 20 % of all their working hours. For working hours as a posted worker, he is registered as “insured on basis 002” (for details on social security contributions, see 4.1.3). But the employees who are posted under article 13 are registered as insured on insurance basis 001. The representatives of employers’ associations reported that, in certain cases, the same employee is posted for most of the time (working hours) under article 12, but for a certain period of time (working hours) also under article 13, therefore illegally. Posting under article 13 (which means insurance basis 001) in such case serves to “prove” that the worker was working for at least 20 % of all working hours in Slovenia (insurance basis 001).

4.3.1.2 *“Creative accounting”*

There are reports that some of the posting employers try to bypass the minimum wage requirements of the host country as well as some other regulations (e.g., regarding working hours, etc.) through “creative” payrolls. For instance, by keeping two different payrolls they would meet the regulations of the host country regarding the minimum wage, at the same time the payroll details intended for the Slovene authorities would be “corrected” in such a way that the salary decreases to the Slovene minimum payment. However, various allowances (travel expenses, food allowance, etc.) would increase. This kind of “optimisation” means that taxes and social security contributions are paid only on the amount of the minimum wage of the origin country.

4.3.1.3 Control avoidance

There are instances of work records being falsified in order to follow the legislation of the host country – e.g., at construction sites the records/evidence would be manipulated in order not to show the workers’ overtime and thus comply with the maximum allowed working hours in the destination country. One of the interviewees shared an experience with a posting company which has operated abroad for several years; as it is active in a production process which cannot be stopped, the inspection control always has to be announced in advance. Some of the employers would then remove workers from the premises for the duration of the inspection, bringing them back afterwards.

4.3.1.4 Companies acting as temporary staff agencies

According to our interviewees, many companies that supposedly post their own workers (from Slovenia to other EU countries), act as de facto agencies providing temporary staff to other EU employers, although they are not registered as temporary agencies nor follow the Slovene or EU legislation in that regard. There are no specific estimates, however, it is believed that a substantial share of posting from Slovenia is not providing services but can be categorised as “hidden” agency work.

4.3.1.5 Bypass postings from Slovakia

A trend has been observed in recent years with a rise in the number of posted third country nationals from Slovakia to Slovenia. In many cases, the company owners are Slovene nationals trying to bypass national legislation and/or profit (according to one of our interviewees) from the differences in the minimum wage requirements and more favourable taxation. This trend has mainly been observed in the construction sector, however, more information should be obtained in order to come to more relevant conclusions. Although we tried to find an interviewee posting from Slovakia, we did not manage to have one participate in our research.

4.3.1.6 The chaining of companies

In the context of posting, it is important to mention the chaining of companies as a practice that allows circumvention of the legislation in the field of posting. The chaining of companies is discussed in detail in section 4.1.5. Some employers register with the sole purpose of recruiting workers in Balkan states and posting them directly to Europe. If something goes wrong (their company is closed by the inspectors, or they cannot obtain work permits for foreigners because they have breached labour law regulations), they simply register a new company. The same happens with companies that breach the workers’ rights and are banned from obtaining the PD A1 – they simply close their company, register a new one and move all the workers to the new company. In some cases, several companies are registered in advance and then workers are re-employed from one company to another. As soon as, for example, company A does not meet the conditions for obtaining a PD A1, workers are re-employed, and the activity is continued through company B. When the latter is no longer “appropriate” for posting, the story repeats – services are provided through company C and so on.

4.3.1.7 The retaining of workers

Different employers’ methods on how to deter workers from seeking other employers have been reported. One of these is withholding a certain amount of the worker’s payment (and calculating that the worker might continue working for this employer in the hope of eventually receiving the promised amount). Another practice has been the employers retaining workers’ bank cards

and collecting a certain share of workers' net salary. As mentioned, these practices are most often found in companies employing and posting mainly third country nationals. These workers will usually not report the employer nor seek help until the exploitation reaches an excessive level.

It is difficult to make an estimate of how many employers have a prior intention of breaking the laws and rules of the destination country when posting workers in order to profit therefrom, but their number is not insignificant. Generally, however, our interviewees agree that a large majority of employers do not have a clear intention of breaking rules in order to benefit financially. The control in many countries where Slovene employers post their workers is very rigorous and strict, e.g., Austria, Switzerland, Belgium etc., sometimes resulting – in the event of various irregularities being identified – in very severe penalties. As our interviewees would agree, e.g., at construction sites in certain countries (Austria, Switzerland), local authority control is to be expected, and awareness of this deters most employers from bypassing the local legislation.

4.3.2 Employer challenges in applying posting rules

Through our research we identified a number of challenges faced by posting employers, which we discuss in this section.

4.3.2.1 Access to information

One of the most often stated challenges (which can quickly transform into a problem) is obtaining the necessary information needed when companies post workers to other EU countries. Even when they are not trying to bypass local legislation, employers often find the local regulations and requests to be very complex, and therefore need the assistance of Slovene and the destination country's agencies and services in order to sort out the bureaucratic processes. In addition, once the workers are already in the destination country, a similar problem regarding the lack of information arises during inspections. As stated by an accounting service representative, very often posting companies are not aware of the fact that obtaining the PDs A1 for their workers is just one (relatively) small step in a long bureaucratic process (comprised of different applications, registrations, obtaining consents, taxes, contracts, possible later appeals, etc.). Companies need to consider not just the legislation of the origin country but the laws and rules of the destination country, which can be very different from Slovene legislation, and if a company posts to several other countries, the regulations can differ substantially across the EU. For example, companies may not be aware that they may receive a balance sheet a year or two after the work has been concluded as well as a payment order along with it – usually not having a clue as to why. In short, they find compliance with different legal systems rather complicated – this is especially true for small and medium size companies which lack knowledge and tend to rely on published information and their own resources, therefore often being forced to seek the assistance of other agencies. Although agreeing that more and more information on the posting of workers can be accessed more easily as of recent years compared to previously, our interviewees still agree the amount and the complexity of the information is very often too extensive for a company to deal with it on its own. As some of our interviewees mentioned, although the accessible information on posting is becoming more comprehensive, there is still a substantial amount of information not covered – e.g., financial

(tax) aspects, some legal aspects (before or after the posting). We have noticed a certain degree of scepticism amongst employers regarding the transposition of the Directive and changes to the Slovene legislation – they fear the process of posting will be further complicated and bureaucratised, which – in their experience – happens each time new legislation is passed. Rather, they see a need to unify and simplify the procedures and regulations. Although they see the idea of a European website that hosts crucial information concerning posting as promising, they would rather see more effort being put into eliminating the bureaucratic barriers.

As mentioned above, employers very often need to seek assistance from agencies in destination countries in order to sort out the formal process of posting. In certain countries, as stated by our transport sector interviewee, they are obliged to have a representative in the destination country – e.g., in Italy and France. Another employer mentioned they have representatives in most of the countries to which they post; in this way the posting process runs smoothly and, most importantly, all the requests of the host country are met.

Several of our interviewees emphasised the difficulties they encounter in ascertaining the hourly rate for the destination country and for the sector.

As the employers' association representative stressed, even for them (when assisting posting companies in acquiring specific information), obtaining certain information in Slovenia can be a lengthy process, involving difficulties in reaching the right institution and the right person within that institution.

4.3.2.2 Working hours evidence and different legislation

As has been reported by many of our interviewees (not just by the employers' representatives), one of the biggest problems that employers encounter when posting their workers is meeting different national regulations regarding the evidence of working hours. Or, as claimed by one employers' representative (and at the same time also the employers' associations' representative) this is actually the biggest problem for the posting employers. Throughout the EU countries the maximum weekly working hours can differ substantially, and this can represent a huge problem for the employers. For example, in Germany the maximum weekly working hours can reach 60, while in Slovenia it is 48 hours – and there is no legal basis in Slovenia for the employer to report the 60 working hours done (legally) in Germany. The employers may encounter the problem when reporting the working hours of their workers or in the case of control. Indeed, the interviewee shared a case in which the inspecting authority concluded that the posted worker must work in accordance with the Slovene legislation – however, it is, as also stated by other interviewees, impossible to follow this in practice. As stressed by the interviewee, “a posted worker from Slovenia cannot say in – for example – Germany: According to the Slovene legislation, my working day is now over.” Complying with local legislation and at the same time not breaching the legislation and regulations of the country of origin (and vice versa) can be a huge challenge. Another example is posting to France, where weekly working hours are fewer than in Slovenia – meaning that a Slovene worker posted to France, working the (local) legal total of hours in a week, would not reach the required weekly working hours permitted by Slovene legislation.

Another example of different national regulations causing confusion and adding to the consumption of time and finances was given by the employers' representative; e.g., in Slovenia,

workers are required to pass a medical examination and obtain medical certificates on a biannual basis. However, in Croatia (the posting destination of the company), workers are required to pass the medical examination on an annual basis.

4.3.2.3 Language barriers

Along with the complexity of the legislation, the complications that ensue as a result of the language barrier when posting workers to other countries have been emphasised. It is encountered in the first phase – when starting the process of posting and gathering the information from the destination country’s institutions, agencies, etc., as well as later when workers are located in the host country and communicating with local or national authorities. For example, although the basic legislation acts are translated, very often the collective agreements are only available in the local language. This is a problem reported by Slovene employers and employers’ associations when posting abroad. However, it is also a problem encountered by companies posting to Slovenia as, for example, the collective agreements remain untranslated.

The transport sector interviewee stated that different countries claim different documents need to be translated in the local languages, e.g., in Italy the PD A1 must be translated, although no other country demands this, as it is a uniform EU document.

4.3.2.4 Additional costs

All the above issues result in additional costs for employers, of which, as our interviewees pointed out, very often they are not aware in advance. The cost of hiring a representative in the country of origin and/or in the host country for dealing with all the procedures, the cost of document translations, etc. can be substantial.

Although the employers may ask for assistance and help from the employers’ associations, they cannot expect the latter to sort out their documentation. They can obtain advice from them, as well as some general and also more specific information, but paperwork must be sorted out by the employer or (more often) this process is outsourced. For smaller companies this can represent a substantial financial burden.

4.3.2.5 Paperwork

Although mentioned in other parts of the report, it must be emphasised that the extent of the paperwork in the process of posting is, in the opinion of the employers, excessive. If the company posts to different countries (or the work is done in different countries, as is the case in the transport sector), this problem is even more pertinent. With different legislation systems and regulations, the documentation that is required to be provided increases. For small companies, this represents an especially huge challenge.

One of our interviewees (posting company representative) mentioned attending four seminars on the PDs A1 topic alone – a fact that clearly illustrates the complicated processes the employers face when posting.

4.3.2.6 Confusion arising from uncoordinated institutional decisions

In the process of issuing PDs A1 in Slovenia, employer controls are not very rigorous - especially in the case of the PDs A1 issued based on Article 13. The process of issuing these (compared to PDs A1 based on Article 12) is also much faster – the employers receive them the

same day – which is an important factor for them. However, in a possible control procedure taking place later, a labour inspector might claim that the PDs A1 were not issued correctly considering the work that has been done. This can even occur a few years after the posting process – although the PDs A1 were issued by a public authority, the employer may subsequently be penalised, which is seen by at least some employers as confusing or contradictory.

4.3.2.7 Pandemic related challenges

Employees report different experiences when posting workers during the COVID-19 pandemic period. Some of them encountered problems in border crossing – in some countries the 10 or 14 day quarantine period is obligatory (with the additional requirement to undertake testing after six days in some countries). This can, of course, complicate the work process and add a financial burden. As mentioned by one of our interviewees, this is especially hard for smaller businesses and some of these will therefore provide services abroad without reporting to the local authorities, i.e., they perform undeclared work. In addition to the financial burden, the pandemic has caused more documentation work for the posting companies, so the “bureaucratic” burden has escalated, too. The posting companies also need to follow the development of events regarding the pandemic and related changes in the regulations on a daily basis because the situation changes very quickly in some instances.

However, others did not encounter any problem in border crossing – they (did) need to provide some proof or contract of providing services, but otherwise were not affected by the pandemic related travel restrictions. However, one of our transport sector interviewees did mention the problem his drivers encounter – because the accommodation facilities remain closed in many European countries, truck drivers cannot comply with the EU regulations (45-hours weekly rest time away from the trucks).

4.4 Worker Protection

An important viewpoint shared by the interviewed public authorities' representatives is the need to "first and foremost ensure the appropriate, lawful status of posted workers" who are "the most vulnerable group." One of the underlying assumptions discerned while interviewing the representatives of all the groups (public authorities, employers, social partners) is the belief that the current legislation is appropriate, but is lacking in enforcement/control. Our interviewees often commented that the current (low) level of control (for example, the relatively low number of labour inspectors in Slovenia is a decades-long issue) indicates a political decision at least to some extent. The same goes for some other European countries – some of our public authorities' representatives compared the numbers of complaints involving Slovene workers posted to Germany on the one hand and Austria on the other, stating that, given the high numbers of workers posted to Germany, the number of complaints and regulation violation reports is relatively low. Therefore, one question kept emerging: are workers' rights subjected to the protection of the domestic labour market? As our interviewees suggest, inspection controls are more rigorous where the state intends to protect its labour market, and Austria and Switzerland have often been mentioned in this context. They control the workers and the employers more strictly, resulting in workers' rights being less frequently violated.

4.4.1 Mechanisms for worker protection: institutional, social partners

If the employer does not provide the employee with rights, the following steps are possible:

- a) Reporting directly to the employer: if the employee considers that the employer is not fulfilling its employment obligations or is violating any of his employment rights, he has the right to request the employer in writing to fulfil its obligations. If the employer does not fulfil its obligations within three (in some cases eight) days after receiving the written request, the employee may file a lawsuit against the employer. In cases where infringements were very serious, the employee has the right to leave the job.
- b) Judicial protection: if the employer fails to fulfil its obligation from the employment relationship or does not eliminate the violation within three to eight working days after receiving the written request of the employee, the employee may request judicial protection within 30 days of the expiration of the deadline for fulfilment of obligations or elimination of violations.
- c) Mediation with the assistance of a labour inspector: a labour inspector may, at the request of an employee or employer, mediate in a dispute between them if the employer fails to fulfil its employment obligation or remedy the breach within 8 days of receiving the employee's written request. The agreement on the resolution of the dispute has the nature of an enforceable title.
- d) Written report/application to the labour inspectorate: the employee may submit the application to the inspectorate in the home country or to the inspectorate in the country of posting. On the basis of the report, the competent inspection carries out a control and punishes the employer, if in breach of law.

In addition to the above-described options, the worker can seek assistance in exercising his rights from trade unions who give legal advice and consultation, or from non-governmental organisations. The most important trade union that represents posted workers in the building sector is the Association of Free Trade Unions of Slovenia – Trade Union of Workers in the Building Sector, which collectively represents domestic and foreign construction workers at the policy level, provides information, and offers free legal advice to its members. The most active non-governmental organisation that is dedicated to advocating, protecting, promoting and developing the rights of workers, with particular attention to posted workers, is the Counselling Office for Workers (see <http://www.delavskasvetovalnica.si/>). Since its foundation in 2016, this NGO has helped many Slovenian and TCN posted workers who were abandoned in Germany or Belgium by their Slovenian employer without payment and without any money to return to Slovenia or to their home countries (Danaj et al. 2020, 34).

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

It has been reported that some employers exploit workers' readiness to earn as much as they can while away from home. At the same time, the workers do have some higher expenses – accommodation and living costs. As our trade union and public authority interviewees stated, workers will agree with some practices (overtime work, payment in cash, etc.) breaching the legislation – sometimes knowingly, in other cases not being aware that these practices are illegal. Overtime work, as reported in some cases by trade unions, can be excessive, however – as mentioned – in many cases this occurs with the workers' consent. It should be emphasised that this practice is most frequently reported in the construction sector, in which most of the workers posted from Slovenia are third country nationals. These are very often posted “from” Slovenia without even seeing Slovenia, meaning they may encounter many barriers in asserting their rights; not being familiar with the system in Slovenia and even less so in the host country, language barriers, lacking the social network and knowledge of where to seek help/assistance, etc. In addition to this, workers are highly dependent upon and therefore compliant with their employers because the condition to obtain the working permit for Slovenia is a one-year commitment to the same employer. As any form of resistance is threatened by the interruption of the employment contract and the loss of the permit, the workers will not report breaches of the law.

Posted workers find legal issues complex and some have difficulties in understanding which legal system applies where. For example, PDs A1 are issued in the country of origin and thus are subject to that country's legislation – however, this only applies to the social security aspects. It might not be clear to the workers that the minimum wage, working conditions, etc. are subject to local legislation.

Not speaking the local language, as has been mentioned already, can pose a big challenge for posted workers – be it to or from Slovenia. Being able to communicate in the local language (or at least in English) is of crucial importance when workers' rights are violated by the employer.

Construction companies posting to Austria are subject to the Construction Workers' Annual Leave and Severance Pay Act (BUAG) and obliged to remit to the Austrian Construction Workers' Holiday and Severance Pay Fund (BUAK) wage supplements. Several interviewees (social partners' representative, employers' associations' representatives) have pointed out that although these financial obligations are met by the companies, workers are not informed of their rights in connection with the BUAK fund – therefore, they do not claim the entitlements. The entitlements can be claimed by the employees themselves or by the employers, however, as a rule these entitlements are left unused. One of the reasons is, as already mentioned, that the workers are not informed, or they lack knowledge of the existence of, or the way to claim, the entitlement. In some cases, even the employers are not sufficiently informed regarding the BUAK to encourage their workers to claim their remunerations. On the other hand, as stated by our interviewees, even when knowledgeable enough, the companies do not make claims on behalf of their employees (nor encourage their employees to do so on their own) because they do not want to risk more thorough control of their companies – be it in the destination country or in Slovenia. The same is true when companies post to other European countries and are obliged to make contributions to different funds (e.g., Soka-Bau in Germany). One of our employer interviewees stated that the process of collecting the BUAK funds is too complicated and bureaucratised, it also caused some additional expenses (translations, etc.) and they concluded it did not pay to claim it. We assume this differs in accordance with the length of the posting. One of our interviewees (trade union representative) compared the BUAK and Soka-Bau and stated that the German fund was more transparent, simpler and easier for the employee to collect. On the other hand, one of the posting companies' representatives claimed they would need to hire a financial representative in Germany in order to comply with the Soka-Bau regulations and later collect the funds.

5 Synthesis and Conclusions

Slovenia is one of the European countries with the highest number of posted workers. There are several reasons underlying this: the Slovene social security and taxation system, the geographical vicinity of the ex-Yugoslavia countries and common political and historical background, lack of control, etc.

The research on how the Posting of Workers Directive (96/71/EC) interacts with Slovene regulations and what the challenges are that arise from the gap between procedures (legal basis) and practices (experiences) in the posting of workers was conducted by a literature review and legislation analysis in the first half of 2020, followed by fieldwork in which 15 semi-structured interviews were conducted with posting employers, public authorities' representatives and social partners' representatives.

Regulatory framework

The posting of workers from and to Slovenia is basically regulated in the Employment Relationship Act. In the case of workers posted to the Republic of Slovenia by a foreign employer on the basis of an employment contract pursuant to foreign law, the Employment Relationship Act applies in accordance with the provisions of the Employment, Self-employment and Work of Foreigners Act.

The basic Slovene legislative act that implements Article 12 of the Posting of Workers Directive (a regime) is the Transnational Provision of Services Act, which came into force on January 1, 2018. The act does not regulate the posting of workers under the regime of Article 13 of the Posting of Workers Directive. The opinion of the interviewees from trade unions is that this problem should be solved with the revision of the Transnational Provision of Services Act, which should also regulate the conditions and procedures for issuing the PDs A1 under Article 13. However, in the present draft of the revised Act, no such provisions are included.

Employment and work of third country nationals (b regime) is regulated in the Employment, Self-employment and Work of Foreigners Act. In addition, the following legislation is also relevant in the context of employers' and workers' rights and obligations: the Health and Safety at Work Act, Minimum Wage Act, Labour Market Regulation Act, Pension and Disability Insurance Act, and collective agreements.

The application for the PD A1 based on Article 12 of the Posting of Workers Directive is submitted through the state information system for companies and entrepreneurs e-VEM. The PD A1 is issued by the Health Insurance Institute of Slovenia. One of the most important legal consequences of the issuance of the PD A1 is the change of the insurance basis from "001" to "002". This means, above all, that the basis for the calculation of pension and disability insurance is reduced. The basis to determine the amount of contributions that are required to be paid for pension and disability insurance in regard to 002 insurance is "the salary that would have been received for the same work in the Republic of Slovenia" (article 144/2 of the Pension and Disability Insurance Act). In most cases in practice, this means a minimum wage salary.

The Transnational Provision of Services Act is in the process of revision in order to implement the revised Posting Directive. The proposed changes were the subject of discussion by the social partners within the ESF at the time of writing of this report.

National implementation and enforcement

As mentioned, there will be a delay in transposing Directive 2018/957 into Slovene national law and a relatively lengthy process might be expected because social partners have opposing views on some issues.

There is a general consensus that the posting of workers should be more strictly regulated. However, the problem with the enforcement of the legislation on posting does not arise from the national legislation (as stated by most of the interviewees) but from the lack of control of conditions for issuing PDs A1 and from a lack of monitoring of violations. Many see this as a consequence of the lack of a more thorough checking and control of employers who post workers abroad and/or insufficient number of labour inspectors. In Slovenia, the number of labour inspectors is relatively low, which is a challenge in terms of enforcement; it has often been said that labour inspectors investigate violations based on individual complaints or reports. When posting abroad, employers report experiencing different practices, frequency and strictness when being subjected to control. On the other hand, public authorities' representatives report there is no systemic transnational collaboration, and collaboration is therefore limited to solving individual problems. One of the challenges of enforcement is the abuse of the option to obtain a PD A1 issued under Article 13; namely, many employers that do not meet the requirements for obtaining a PD A1 based on Article 12 resort to this option. Our attention has therefore been drawn to the problem of possible revocation of Slovenian-issued PDs A1 by other EU countries after their inspection surveillance discovers different legislation violations. As stated by many (mostly public authority) interviewees, this could pose a huge problem in the future and currently they do not see any relatively fast and/or easy solution for this situation.

Employer practices and challenges

Slovene companies, especially small and medium size ones which more often lack knowledge and own resources, find the posting of workers a complex and lengthy process. From the perspective of the Slovene employers, the coming changes to the Slovene regulations in order to meet European legal requirements are anticipated with concern as it is assumed that postings from Slovenia will become more difficult (and shorter). There is also a concern that the competitiveness of Slovene companies will diminish after the implementation of Directive 2018/957 into national regulations. Several challenges for employers have been identified: one of the most often stated pertains to obtaining the necessary information when companies post workers to other EU countries. Along with the complexity of the legislation, the difficulties arising from the language barrier when posting workers to other countries has been emphasised. All of the foregoing result in additional costs for employers. There have been several illegal practices associated with some posting employers: maintaining two different employee payrolls in order to avoid financial obligations, different methods of avoiding surveillance, "bypass" postings from other EU country because of financial and/or regulative convenience, the chaining of companies, etc.

Worker protection

A question kept emerging during the fieldwork – are workers' rights subjected to the protection of the domestic labour market? According to the interviewees, inspection controls will be more rigorous where a state intends to protect its labour market; Austria and Switzerland have often

been mentioned in this context. These nations control the workers and the employers more strictly, resulting in workers' rights being less frequently violated. It has been reported that some employers exploit the readiness of workers to earn as much as they can while away from home. As our trade union and public authority interviewees stated, workers will agree with some practices (overtime work, payment in cash, etc.) breaching the legislation – sometimes knowingly, in other cases not being aware that these practices are illegal. It should be emphasised that these practices are most frequently reported in the construction sector, where most of the workers posted from Slovenia are third country nationals. Different methods used by employers to deter workers from seeking other employers have been reported (withholding a certain amount of workers' payment, retaining workers' bank cards, and collecting a share of the worker's salary, etc.). There are no specific estimates, but it is believed that a substantial share of posting from Slovenia is not providing services but can be categorised as “hidden” agency work. Posted workers find legal issues complex and some have difficulties in understanding which legal system applies where. Not speaking the local language can pose a big challenge for posted workers – whether they are posted to or from Slovenia.

6 Policy Recommendations

The following policy recommendations stem from the desk analysis and semi-structured interviews in Slovenia only.

EU level

As the public authorities' interviewees claim, inter-institutional transnational collaboration takes place mainly in the context of solving specific, individual problems. There is no coordinated transnational inspection surveillance practice, as one of our public authority interviewees reports being established in some EU countries. Our research also shows that there are substantial differences in the probability that employers will be subject to a labour inspector control, as well as in the strictness and consistency of the control. Therefore, we propose the establishment of an EU system of equally frequent and strict control of compliance with posted worker legislation in all the EU countries. The control/surveillance of individual cases should be organised as a coordinated transnational inspection system in which the employer (service provider) in the sending country and the employer (to whom the service is provided) should be supervised at the same time.

Despite the fact that minimum workers' rights are harmonised in the EU, there are still substantial differences in the labour regulations of the EU countries. In our research, employers and their representatives reported the problem of maximum allowed working hours, which vary from country to country. In this specific area (working hours), employers are faced with the dilemma of whether to respect the law of the host country or the law of the home country. A similar problem arises regarding the rules relating to safety and health at work (e.g., in Slovenia, a worker's medical condition certificate must be renewed after two years, whereas in Croatia it must be renewed every year). The employers' representatives are of the opinion that, to make it easier for employers to comply with all the legislation, labour law rules and/or bureaucratic requirements should be further harmonised at the EU level in regard to posted workers, especially those regulations pertaining to maximum working hours and the rules on health and safety at work.

Employers also report that different countries claim different documents must be translated into local languages (e.g., in Italy the PD A1 must be translated, although no other country demands this). We suggest a further EU harmonisation, possibly even a unification, of procedural rules regarding the issue of PDs A1.

Finally, the control of the PDs A1 forms via QR code seems a good practice that could be established on the EU level.

National level

General

As our public authorities interviewee expressed, the posting employers who wish to abide by the law find the Slovene labour legislation very complicated and often need substantial help from specialised agencies or legal offices in order to meet all the conditions. The amount and the complexity of the legal requirements is very often too extensive for a company to deal with it on its own. As some of our interviewees mentioned, although the accessible information concerning posting is becoming more comprehensive, there is still much that is not covered –

e. g. financial (tax) aspects, some legal aspects (before or after the posting). However, in our research we witnessed some good practices from abroad that could be implemented in Slovenia and would help to remedy this problem. One such is the Austrian website that offers very detailed information for posting employers and workers. In Slovenia, there is a national website with information about posting (<https://www.napotenidelavci.si/sl/>). However, this is general, with no detailed information available on all the aspects of posting (tax aspects, financial aspects, legal aspects during posting). Moreover, the relevant legislation is accessible only in Slovene. We suggest the further development of the national website on posting to incorporate more detailed information pertaining to all aspects of posting and provide links to legislation in (at least) English.

In our research, we also gathered some suggestions for amendments to the Transnational Provision of Services Act. These include changes regarding the definition of “infringements of important provisions of labour law relating to the rights of the worker”, changes regarding the criminal provision of the Act, changes regarding the conditions for the issuance of PD A1 under Article 13 and changes regarding the responsibility for compliance with the legislation.

The Transnational Provision of Services Act determines that an employer may provide a cross-border service if this does not infringe important provisions of labour law relating to the rights of the worker (Article 4 of the Transnational Provision of Services Act). In cases where the employer has violated the above provisions, the PD A1 will not be issued. Our research shows that in practice it can happen that this “penalty” is imposed on a fair employer who did not intend to infringe the law and the infringement was minor (for example, a few days of delay in the payment of annual leave allowance or a few days’ delay in the payment of tax), but it still means that the employer is banned from posting abroad. Our recommendation is that the definition of “infringements of important provisions of labour law relating to the rights of the worker” in the Transnational Provision of Services Act should be more elaborated. Minor infringements should not be a reason for not issuing a PD A1. It could be argued that the consequence of the infringement is not proportionate to the gravity of the infringement. Therefore, this issue should be a subject of discussion by the social partners on amendments of the Transnational Provision of Services Act.

One of the shortcomings of the Transnational Provision of Services Act is that the criminal provisions are provided only for a foreign employer who posts workers to Slovenia. It is recommended that in the upcoming revision of the Act, the fines should also be prescribed for Slovene employers who are in breach of the law while posting workers. In addition to this, in the upcoming revision of the Act the responsibility for compliance with the legislation should also be imposed on companies to whom the services with posted workers are provided.

The public authorities’ representative and trade unions representative both stated that a problem with issuing the PDs A1 lies in the fact that the procedure for the issuing of the PDs A1 is not regulated by the rules of the administrative procedure. This means mainly that the application for obtaining the PDs A1 is completed online (on the e-VEM site), where the system application automatically verifies the fulfilment of conditions by obtaining and controlling data from various databases maintained by various ministries. The substantive assessment (which is not "automated") refers only to the contents of the submitted employment contract for work abroad (required by Article 208 of the Employment Relationship Act). This means that control over

the conditions for issuing the PD A1 is (only) formal and not substantial. In the eyes of employers, their representatives and the public authorities' representatives, the positive consequence of this is that the PDs A1 can actually be issued in a couple of days. The negative consequence, however, is that these PDs A1 are less "strong" or reliable (in the legal sense) than they would be if the Health Institute very strictly controlled whether all the conditions prescribed by the Transnational Provision of Services Act are met. The workers' representatives are of the opinion that the verification of the conditions for issuing the PDs A1 should be more substantial and stricter. In our opinion (policy recommendation), one of the possible "compromises" between the two approaches could be in a procedure that would still be applicable online and conditions for issuing of the PDs A1 would still be automated by a system application, which would be upgraded so that by accessing and cross-referencing much more and different data, it would enable more substantively accurate verification (e.g., verification of money flows led by the Financial Administration of the Republic of Slovenia). In addition, controlling the financial flows more systematically and more rigorously could result in prior identification of the employers who are probably not ineligible to be issued with the PDs A1 for their employees. At least for them, the "automatic" issue of PD A1s could be replaced with a substantial and strict control.

One of the challenges of a more efficient enforcement of the posting legislation in Slovenia is also the abuse of the option for obtaining PDs A1 issued under Article 13, which has many advantages – lack of a thorough control in the process of issuing the PDs A1, obtaining the PDs A1 immediately, these being issued for a period of one year, etc. Many employers that do not meet the requirements for obtaining the PDs A1 based on Article 12 resort to this option. We suggest stricter conditions for the issuance of PD A1 under Article 13, which could be included in the amendments to the Transnational Provision of Services Act.

The Transnational Provision of Services Act is in the process of revision in order to implement the revised Posting Directive. The proposed changes were the subject of discussion by the social partners within the ESF at the time of writing of the legal analysis. The proposed amendments to the law have not yet been publicly presented.

As described in section 4.1.5, some employers try to circumvent the legislation on posting by establishing more companies in advance (chaining of companies) and moving the workers from one company to another. The restrictions on the establishment of companies for the purpose of the chaining of companies are regulated in Article 10a of the Companies Act. However, as many of our interviewees reported, in practice we can still witness many examples of circumvention of these provisions. We propose a more detailed elaboration of the restrictions of Article 10a of the Companies Act.

Industry Level

There have been reports of certain construction sector employers who are ineligible to do so obtaining PDs A1 based on Article 13, although not providing services in the form of transport, assembly or maintenance work. As described above, we recommend stricter conditions for the issuance of PD A1 under Article 13, which could be included in the amendments to the Transnational Provision of Services Act. However, distinction between construction and (for

example) assembly work is not always clear-cut. Stricter conditions for the issuance of PDs A1 under Article 13 would therefore only partially resolve this problem.

As described above, many of our interviewees are of the opinion that the bureaucratic procedures for issuing the PD A1 should be further simplified. Employers from the construction sector reported that, in practice, there are frequent instances in which the PD A1 has already been issued, but the posting abroad was postponed due to unfavourable weather conditions. In such cases, the employer must file a request for the revocation of the PD A1 and then file a new application for a new PD A1. The employers are of the opinion that it would be more practical if they were required to submit only a notification of a change in the date of posting. Therefore, our recommendation is to put more effort into eliminating the bureaucratic barriers in this field.

The employers are of the opinion that the extent of the paperwork in the process of posting is excessive. Of course, with different legislation systems and regulations, the requirements for documentation provision increase. For small companies this represents an especially huge challenge. As proposed many times above, the legislation regarding posting should be further harmonised or unified, with more effort being put into eliminating the bureaucratic barriers.

State Enforcement Agencies

The problem of enforcing the posting legislation in Slovenia seems to be due to a relatively low number of labour inspectors controlling incoming employer compliance with Slovene regulations. There is no explanation as to why this number is not higher. Nonetheless, this shortcoming can be remedied quickly and easily – by hiring additional inspectors. Let us emphasise that the problem of the number of inspectors is not a legal problem, but a practical problem, and the decision to hire additional inspectors is a political one that addresses the systematic approach to the enforcement of the legislation pertaining to the posting of workers. In other words, this is not a problem/question of law, but a problem/question of political will. On the other hand, the insufficient number of inspectors would be less problematic if the conditions for issuing the PDs A1 was more strictly and substantially controlled. One option for stricter control (but still “automatic”) is the cross-referencing of data from different databases, which has been already discussed above.

Social Partners

Social partners must be involved in the process of revision of the Transnational Provision of Services Act.

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