



Posting from a candidate country and its implications for the social protection of workers: the case of Serbia*

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Introduction

Sending workers to the EU country under a contract concluded between the undertaking in the sending country and a firm in the EU for whom the services are intended, for a limited period of time, is defined as posting workers according to the Directive on the Posting of Workers (96/71/EC). However, in Serbia the term posting worker is often confused with other temporary forms of emigration.

The aim of this policy brief is to clarify the concept of posting in candidate countries and Serbia in particular, and to provide policy recommendations, particularly in terms of the social protection of workers. Four different situations of Serbian workers (and potentially workers from the other three candidate countries of the Western Balkans: Albania, Montenegro, North Macedonia) being sent abroad to provide services are identified. The brief clarifies in which situation cross-border mobility is done in the frame of the posting regulation and what the other three situations entail, which country is accountable for the different situations, and which institutions are responsible in the case of Serbia as the sending country. Although there are common recommendations important to all four cases, such as improving information on workers' rights, and greater cooperation between enforcement agencies, each of the four types of situations also requires specific policy responses.

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The ambiguities of posting

Background

Serbia is traditionally a country of emigration, similarly to all other Western Balkan countries. Employment-driven migration from Socialist Federal Republic of Yugoslavia (SFRY) to EU countries, particularly Germany was widespread and often organized. Special type of emigration was posting workers dating since 1968 based on investment agreements and business-technical cooperation, though the bilateral agreement between Socialist Federal Republic of Yugoslavia (SFRY) and Germany was concluded only in August 1988 (Pavlica, 2005:130). In addition, Western Balkan countries experienced mass displacements of their populations during the early transition period which coincided with the end of the communist/socialist era and the break-up of Yugoslavia (King and Oruc, 2019). Eurostat data also show increasing outflow of workers with the number doubled in just a few years from 2016-2019. Increasing emigration is observed to Germany, Slovenia, Slovakia, Czech Republic, Hungary and even Croatia, while only emigration to Austria has seen a decreasing trend (Stanić & Matković, 2021: 4).

It has been more than two decades since the beginning of the transition from communist regime to market economies in the Western Balkan region. Since then, these countries have also begun the process of entering the European Union and some countries have already gained the candidate status (Albania, Montenegro, North Macedonia, Serbia) while the rest remain potential candidate countries (EC-Enlargement, n.d). The results have not shown a significant improvement in the life quality of its citizens. While economic growth rates during the post-war period were modest, with low inflation and a disappointing inflow of FDI, the process of privatisation, deindustrialisation and job cuts led to an increase in the unemployment rate and a further reduction in the overall living standard. The region as a whole has made modest, though uneven, progress towards becoming a functioning market economy. Also, there are serious problems including the persistence of very high unemployment rates in the Western Balkan region, large-scale emigration, a huge outflow of educated and skilled workers and widespread poverty (Ganić, 2019). Serbia started a democratic and economic transition in 2001. Despite progress in many areas of reform and specific policies implemented by different governments, after the 2008 global financial crises, Serbia's economy has stagnated. In addition to slow growth, it continues to be burdened by a lack of fundamental institutional changes, government inefficiency, and unresolved political issues (Uvalić et.al, 2020). In the recent years, overall labour market trends in Serbia have been quite positive, with a steady decline of the unemployment rate and an increase



in the employment rate. However, a reduction in the unemployment rate only partly reflects economic growth, while the other part is a consequence of the mass outflow of workers abroad (Stanić & Matković, 2021 as in FREN, 2018).

Posting from EU candidate countries

Posting workers as a concept is not straightforward and is often confused with some forms of emigration

The ambiguities of posting from a candidate country come from the fact that emigration is widespread. In this specific situation the posting workers as a concept is not straightforward and is often confused with some forms of emigration. There are four situations that needs to be distinguished to properly understand the issue of the social protection of the workers involved in each and propose adequate policy recommendations.

A) Posting from Serbia to the EU

This is “regular” posting as defined by the EU posting directives – whereby a worker is sent by his/her employer to carry out a service in an EU Member State on a temporary basis in the context of a contract of services, an intra-group posting or a hiring out through a temporary agency (EC-ESI, n.d.).

Serbia has a tradition of posting workers to EU countries, particularly to Germany. Posting to Germany has been based on the International Agreement signed with the Federal Republic of Germany in 1989, which is still in force.

There has been an increasing trend in posting workers in the last few years, though with a sudden fall in 2019 (Table 1). Compared to previous years, there was a decrease in the total number of workers posted, the number of trips and total months, while the average number of months spent by posted workers increased.

Table 1. Outgoing posted workers, 2016-2019

	No of posted persons	Number of trips	Total months in posting	Average months per person
2016	9040	11032	32193	3.6
2017	13608	17117	56754	4.2
2018	15615	19971	61365	3.9
2019	11843	16122	52960	4.5

Source: Central Register of Compulsory Social Insurance



Posting via temporary work agencies is currently not possible in Serbia. However, this is envisaged in the Law on Temporary Agency Employment adopted in 2019. The articles regarding posting (Article 10 and 12) shall apply from “the day of acquiring full membership of the Republic of Serbia in the European Union” (Article 37).

B) *Temporary workers from Serbia illegally working in EU countries*

Another practice that is often mixed up with posting is when Serbian nationals are sent by hiring agencies or agencies as a form of business (home care service agencies) for short-term work in the grey economy. In this case, it is not easy to understand who actually pays the workers; that is if they are paid through the agencies (which means that people are actually posted although their employment is non-formal and the service is provided for very short periods of time), or if they are paid directly by the client in which case the agency serves only as a mediator. This is a practice in the grey economy, without a work permit and therefore employees stay a short period of time under the pretense of a tourist trip (maximum of 90 days within a 6-month period) (Stanić & Matković, 2021: 19).

In addition, there are fictitious employers “posting” workers without a proper contract, who leave workers without salaries or paid leave, or make them stay and work longer than agreed - without insurance and compensation for travel expenses. According to Djurić & Todorović (2018) illegal employers conclude contracts with workers at the border crossing or even when they arrive in the foreign country. They are actually “traffickers” because the authorities do not have information about the workers sent abroad or information about the countries in which they were sent in case of illegal employment abroad. Workers in these situations are very often left without any protection.

C) *Emigration to EU countries with the help of Serbian institutions*

The third situation is when Serbian authorities mediate the emigration of Serbian workers to EU countries, which is often confused with the posting workers. This confusion was obvious in the interviews conducted during the fieldwork for the Serbian case study (Stanić & Matković, 2021).

The National Employment Service (NES) and private employment agencies with the appropriate licence are acting as mediators in the employment of Serbian citizens abroad and vice versa. On foreign employers’ demand, the NES announces the job vacancies whereas the selection process is settled between the employer and the jobseeker. While the NES is not involved in the selection



of candidates, it provides “information to potential working migrants from and to Serbia on the risks of irregular migration, procedures for legal employment abroad, access to health care, education abroad, and so on” (Djuric & Tiodorovic, 2018b: 5). This is actually due to an agreement on mediation on temporary employment of Serbian workers in the Federal Republic of Germany that was signed between Serbia and Germany in 2013 and involved both NES and GIZ (the Deutsche Gesellschaft für Internationale Zusammenarbeit) that were running a project called Triple Win to facilitate this agreement[‡]. This arrangement was meant to employ medical and care workers in Germany. Besides this agreement, medical staff has been emigrating via private channels, as well. There are no precise data how many people emigrated since 2013 to Germany, but in any case, it concerns a significant number of medical workers leading to a shortage of medical personnel in Serbia. Hence the Government decided to cease the agreement at the beginning of 2023[§]. A similar agreement was signed at the beginning of 2018 with Slovenia, which is still in force[¶] (Stanić & Matković, 2021: 18-19).

D) Posting candidate country workers as third country nationals (as EU immigrants within EU)

A fourth situation is that of the posting of workers, originally from one of the countries of the Western Balkans including Serbia, from the EU country where they reside to another. The posting of third-country nationals (TCN) – i.e., individuals who are not citizens of any EU state – to EU member state, has increased significantly since 2010. In particular, the number of posted workers who are citizens of the candidate countries of the Western Balkans has grown (Danaj & Geyer, 2020).

Four situations are related to the concept of posting: a) “regular” posting; b) temporary illegal emigration; c) emigration to EU with the help of official institutions; and d) TCN posting

There are several reasons for this trend. The emigration of TCN workers is driven largely by economic discrepancies and wage disparities between the third countries and EU countries, as well as political and economic instabilities in the third countries. The small amount of social security entitlements may also affect the decision of a third-country national to move to another Member State, as acknowledged in some Member States (EC, 2013). Danaj & Geyer (2020) and Danaj et al. (2020) argue that there are strong push and pull factors between of economic and political instability and insecurity that drives their mobility and migration plans to neighbouring EU state that provides relatively easy access to its labour market for workers from the former Yugoslavia. In

[‡] Bundestagentur für Arbeit. Srbija : Triple Win projekat u Srbiji. Available at : <https://www.arbeitsagentur.de/vor-ort/zav/triple-win/serbien>

[§] https://rtv.rs/sr_lat/drustvo/obustavljen-projekat-triple-win-preko-koga-su-drzavljanisrbije-masovno-odlazili-u-nemacku_1090874.html

[¶] http://www.parlament.gov.rs/upload/archive/files/lat/pdf/predlozi_zakona/1013-18%20-%20LAT.pdf



addition, TCN workers agree to be posted as it is an “economically attractive and hassle-free opportunity” (Danaj & Geyer, 2020). However, the intersection of the migration and employment regimes may enhance the vulnerabilities of posted TCN workers, who tend not to defy or report their employers on whom they depend not only for employment, but also for the renewal of their work and residence permits in the EU sending country. Despite the mechanisms for control and enforcement of national/EU standards, the vulnerability of TCN posted workers persists due to the “cloaking effect” of the posting employment characterised by subcontracting, cross-border mobility, and temporary service provision (Danaj et al., 2020: 6).

Social protection of workers in different “posting” situations

The above explained different situations that are all usually but mistakenly considered as “posting”, lead to different levels of social protection. Table 2 presents the social protection of workers in different situations that are considered and/or dubbed posting, compared to the potential situation s/he would have had as a standard worker in Serbia in the typical posting sectors.

Table 2. Level of social protection for different “posting” situations

	Social protection of workers		Responsibility	
	Very low/low	Medium to high	Country	Institutions
A. Posting from Serbia to EU country		X	Serbia	Tax administration (contributions payment/ contribution base level) Labour inspection (labour contract/ minimum wage) Institute for social insurance (health bilateral agreements) Ministry of Labour, Employment, Veteran and Social Affairs (regulations, supervision)



	Social protection of workers		Responsibility	
	Very low/low	Medium to high	Country	Institutions
B. Temporary workers from Serbia illegally working in EU	X		Country of destination	Country of destination institutions
C. Emigration to EU countries with help of Serbian institutions		X	Country of immigration	Country of immigration institutions
D. Posting Serbian nationals residing/working in EU as third country nationals (as EU immigrants within EU)		X	Country of immigration (sending country)	Sending country institutions

Source: Author's own assessment

When it comes to “regular” posting, as defined by EU institutions (situation A), according to Stanić & Matković (2021), there has been significant improvement in legislation regulating posted work in Serbia. Posting of workers from Serbia abroad is regulated by the overarching *Law on conditions for posting workers abroad and their protection* (LCPW), which entered into force in 2016 and was amended in 2018. A special category of posting workers is regulated by the International Agreement signed with the Federal Republic of Germany in 1989. In addition, posting of workers is regulated by general laws, such as *Labour Law*, the *Law on contributions for mandatory social insurance* (LCMSI), Health insurance Law, etc. As mentioned before, posting via temporary work agencies is currently not possible in Serbia.

Legislation, especially the LCPW, is aligned with the EU posting directives 1996/2014 directives. It still has not been harmonized with the latest 2018 directive, however, as the minimum wage guarantee was not changed to remuneration and does not mention long-term postings (longer than 12 or 18 months).

However, the LCMSI is not aligned with LCPW. The LCPW presumes that the worker earns the minimum gross wage in the receiving country, while the LCMSI



explicitly mentions the amount of salary they would earn on the same or similar job position in Serbia, which cannot be lower than 70% of the average monthly salary in Serbia. This leaves significant difference between minimum gross wage in the receiving country compared to the minimum contribution base for posted workers in Serbia. This has long-term consequences for workers in terms of future pensions, but also short-term consequences in case of injuries/sickness as the sick leave is in that case only 65% of the contribution base (100% in case of employment injury).

In practice, it is almost certain that employers do not pay contributions on the difference between the payment above two minimum contribution bases since this is not required by the LCMSI. This may give some scope for employers to make a profit at the expense of contributions payment, as workers are satisfied with the net wage that they would earn in the receiving country, so they simply agree to contributions not being paid. In addition, it is difficult to find out whether posted workers are exceeding maximum working hours defined by collective bargaining agreements, but it is very likely that posted workers agree to work overtime. Trade unions think that workers negotiate their wage with employers per hour or day hence they do not see it as overtime work. In addition, working overtime in Serbia is a widespread practice, hence this is a “normal” situation for working abroad particularly when fees are higher (Stanić & Matković, 2021: 23).

Different situations imply different policy responses, though there are common recommendations for all: improvement of workers’ rights in the country of origin, increasing information of employees on their rights, transnational cooperation between the enforcement agencies

Temporary emigration and illegal work (situation B) are often confused with posting. However, in this case the worker is actually part of the receiving country’s labour market and sending country authorities do not have as much space for acting. In most of the Member States, labour inspectorates are responsible for identifying illegal employment and carrying out inspections. The EU has been mandated to adopt measures to prevent and tackle illegal employment of TCNs, most notably through the Employers’ Sanctions Directive 2009/52/EC, which tackles irregularly staying TCNs (EC, 2017). Employees working illegally are either completely unsecured, without any form of social security and in some cases (with fictitious employers in Serbia) they can even be subject to fraud and linked to trafficking in human beings for labour exploitation (Ibid). Illegal work via a hiring agency, most often in the care sector, is not connected to labour exploitation, but there is again no social security for employees, except perhaps on some other basis (for example, early retired or family pensioner in Serbia).

Emigration with the help of official institutions (situation C) is actually typical emigration, integrated into the labour market of the country of destination. Accordingly, they are eligible for the same level of social protection as EU nationals.



When it comes to Serbian nationals posted from one EU country to another as TCNs (situation D), though posting can offer some benefits to third-country nationals, Danaj & Geyer (2020) argue that it also creates significant challenges for the individuals who are posted and for the countries they are posted to. In general, being posted creates the risk of being exploited and of suffering from dangerous working conditions and being a posted third-country national further exacerbates those risks. However, if their posting from the residing EU country to other EU countries is done according to the rules, their social protection lies with the sending EU country, and they should be fully covered by this country's social protection system.

Conclusion and Policy Recommendations

The term posting of workers is often confused with other temporary forms of emigration. Four situations are identified in non-member states (Serbia being an example) related to the concept of posting: a) "regular" posting; b) temporary illegal emigration; c) emigration to EU with the help of official institutions; and d) TCN posting. These four types of situations imply different policy responses, though there are common recommendations important for all four cases. They include increasing information of employees on their rights, and generally increasing workers' rights in the country of origin. In addition, transnational cooperation between the enforcement agencies is essential.

When it comes to situation A, one of the issues could be whether it is important to have a specific Law on posting, as it is the case in Serbia, or posting can be regulated with the general Labour Law, and what are advantages and disadvantages of each approach. According to Stanić and Matković (2021), Serbia has significantly improved their legislation on posting with the introduction of LCPW, which is to a certain extent harmonized with the respective EU regulations. This effort needs to continue when it comes to LCPW compliance with the revised EU posting directive. In addition, there is a need for harmonised national legislation between LCMSI and LCPW regarding the notion of the contribution base. This situation of non-payment of contributions on the overall amount of the wage can have lasting consequences for workers, in terms of future pensions, but also short-term consequences in case of injuries/sickness as the sick leave is in that case only 65% of the contribution base (100% in case of employment injury). This is something that needs to be addressed. When it comes to health insurance, it is important to have bilateral agreements with more EU countries as the lack of such agreements is a major source of problems for posted workers from Serbia.



Situation B mainly requires policy recommendations for EU countries, where illegal work is performed. Those are a set of standard policy measures on eradicating the informal economy and include those specific to immigrants working in the informal economy. Some steps have already been taken, such as Directive 2009/52/EC, which tackles irregularly staying TCNs.

The clarification of the workers status is the first step in identifying the social protection mechanisms they are entitled to and the appropriate authorities where to address any issues they might have

Situation C does not require policy recommendations in terms of increase of social protection of workers, but rather in terms of non-emigration policy, which is outside the scope of this brief, and which refer to a very broad set of policies on economic development and social well-being in the home country.

When it comes to situation D, candidate countries, as countries of origin, do not have much influence on what is happening with their citizens once they emigrate, and the main policy response is in the “yards” of EU sending and receiving country. The recommendations for the EU countries among which TCN workers are posted include to provide posted workers with systematic and easily accessible information on their rights and to improve cooperation among the enforcement agencies and between enforcement agencies and the social insurance providers. A more specific recommendation to tackle the vulnerabilities that derive from TCN posting would be by improving regular migration pathways for third-country nationals i.e., by reviewing the work permit criteria in sending countries (Danaj & Geyer, 2020).

In conclusion, it is important to identify the specific circumstances in which workers from Serbia move to other countries for work and define the situation appropriately. The clarification of the workers status is the first step in identifying the social protection mechanisms they are entitled to and the appropriate authorities where to address any issues they might have. To achieve that, better information on the different situations, whether it is posting or not, is necessary for Serbian workers to be better protected.



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