



The case of North Macedonia: Posted workers - developing patterns and trends*

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Introduction

Although North Macedonia is not yet an EU member state, the country is already experiencing inflows and outflows of posted workers (Ilijevski and Iloska, 2018). Under the existing national regulatory framework, a posted worker is defined as a worker working on a temporary basis in the territory of a Member State other than the State in which he/she has full-time employment. This definition is not fully consistent with the definition in Posting of Workers Directive (96/71/EC), where a posted worker is defined as an employee who is sent by his employer to carry out a service in another EU Member State on a temporary basis, in the context of a contract of services, an intra-group posting or a hiring out through a temporary agency.

In the policy brief, we describe the main characteristics of the posting of citizens of North Macedonia to countries in the European Union. The main focus is on the construction sector. The analysis is based on data collected through reviews of the existing academic and grey literature on migration and labour mobility and the national legislative and institutional framework. Additional data was gathered through ten semi-structured interviews with representatives of social partners (trade unions and employers' associations), public institutions (Ministry of Labour and Social Policies, Ministry of Internal Affairs, and the Commission on Posting) and North Macedonian employers posting workers abroad.

This policy brief is structured as follows: we first describe the (lack of) data on labour migration and posting of workers from North Macedonia and how existing

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policies enable different forms of posting. Thereafter, we discuss reasons for the vulnerability of workers posted from North Macedonia and challenges faced by North Macedonian employers when posting workers abroad. The policy brief concludes with recommendations on how the observed problems could be addressed.

Labour migration - a trend that is difficult to capture

In North Macedonia, a complete analysis of migration is significantly hampered by the lack of reliable and detailed data. There is no administrative data on the exact number of persons who leave, the length of their stay abroad or the personal characteristics of emigrants such as their gender, age and education. In recent decades only a small proportion of citizens have officially reported their stay abroad (Government of the Republic of North Macedonia-Minister in charge of Diaspora, 2019). However, it is clear that a large number of North Macedonians live and work abroad. The World Bank’s Bilateral Migration Matrix shows that in 2018, there were 564,949 Macedonians living abroad, most of them (55%) in high-income countries (Switzerland, Austria, Germany). For comparison, the total population of North Macedonia was estimated to be 2,077,132 in the same year (State Statistical Office, 2019).

In the period from 2008-2018, in total 158.265 citizens from North Macedonia were issued with residence permits from an EU country

Data by Eurostat suggests that the number of labour emigrations from North Macedonia to EU countries has increased over the last decade. Table 1 shows that since 2012 there is a growing trend of Macedonian citizens who were issued with first residence permits by EU Member States. During 2018, of all residence permits issued for Macedonian citizens, 47.4 percent were issued by Germany, followed by Italy with 9.1 percent and Slovenia with 8.4 percent.

In addition, between 2008-2017 52,770 Macedonian citizens acquired the citizenship of an EU country which brings new rights and opportunities, such as the right to move, live and work freely within the EU. Three fifths (60.3 %) of citizens of North Macedonia who acquired the citizenship of an EU Member State in 2017 became Italians, followed by Germans with 16.5 percent and Austrians with 4.6 percent.

Table 1: Number of citizens from North Macedonia issued with first residence permits and acquisition of citizenship (2008-2018)

Year	Total	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Number of citizens issued with first residence permits	158265	20895	15172	13129	10906	9816	10349	10174	12129	14336	16917	24442
Acquisition of citizenship	52770	6834	3625	3439	3328	3522	4231	4615	7569	9235	6372	N/A

Source: EUROSTAT (2021)



Existing Public Policy - an enabler of different patterns of posting

The existing regulatory framework enables posting under a contract of services and intra-group posting, but not via temporary agencies

The transposition of the regulation on posting in North Macedonia is part of the EU integration process the country is undergoing and the approximation of the national legislation to the *Acquis Communautaire*. So far, the Posting of Workers Directive (96/71/EC) has been partially transposed, whereas the Enforcement Directive (2014/67/EU) has not (Danaj et al, 2019). The Posting of Workers Directive is being transposed in two parts. First, the posting of EU workers to North Macedonia is regulated through the Law on Employment and Work of Foreigners. Second, the posting of Macedonian nationals to other countries is regulated through the Law on Labour Relations and the Law on Posting of Workers from the Republic of North Macedonia to Other Countries for Carrying Out Construction Works Through Project Contracts and Other Seasonal Works (hereinafter referred to as the Law on Posting).

Generally, the current posting regulatory framework does not cover only posting to the EU but all workers who are sent temporarily to work in another foreign country. The existing regulatory framework allows for posting under a contract of services and intra-group posting. The posting of workers through temporary work agencies, which is covered by the Posting of Workers Directive, is not possible within the existing regulatory framework in North Macedonia. The articles of the Enforcement Directive that refer to cooperation on information (establishment of liaison offices, monitoring and control of labour migration flows) and measures in the event of failure to comply with the Posting of Workers Directive have not been transposed yet.

Our field research shows that the existing regulatory framework in North Macedonia enables two different forms of posting by North Macedonian companies. First, the posting of workers that is regulated in the Law on Labour Relations. This form of posting has not been further operationalized with clear by-laws and procedures and is often characterised by irregular practices. Second, the posting of workers that is fully regulated in the Law on Posting and has been further operationalized with bilateral agreements.

The Law on Labour Relations gives North Macedonian companies the right to provide services abroad. This right has been exercised by various companies from different sectors (e.g., construction, consultancy, telecommunications, IT). Following this regulatory framework, companies are sending their workers to Germany, Turkey, Ukraine, Bosnia and Herzegovina, Poland.

However, workers are not officially registered or reported to national authorities as posted workers. The absence of clear guidelines and protocols that are in line



with the requirements foreseen in the Posting of Workers Directive and that provide information for both workers and employers before the posting, create conditions for abuse of workers' rights.

The current Law on Posting has been designed to answer the identified labour shortages in the German labour market in the construction industry and is based on a quota (on average 570 workers annually). Currently, North Macedonia has signed only one bilateral agreement for posting with Germany. This Law is fully implemented and the quota of posted workers is fully met as defined by the request of the German employment agency.

The Law on Posting interacts with a variety of regulations that cover different aspects of posting such as social security and health insurance. In terms of these issue-relevant matters, the country has 22 bilateral agreements for coordination of social security systems, 14 of which are with EU Member States. Moreover, there are nine agreements on the use of the European Health Insurance Card between the country and various EU Member States. These bilateral agreements are properly integrated with the existing national Law on Pension and Disability Insurance, the Law on Compulsory Social Insurance Contributions, and the Law on Health Care. It is difficult to assess the impact these regulations make in preventing or minimizing vulnerabilities posted workers might be exposed to because Macedonian institutions are not informed when a worker is posted and therefore they cannot monitor under what terms and conditions these workers operate.

Challenges in the posting of Macedonian workers

Generally, the Macedonian context is very fragile in terms of labour rights and violations, due to the various challenges associated with the labour market, such as a relatively large informal economy, low wages, and labour shortages in certain industries. These factors and the ability to receive higher wages stimulate high interest among workers to work abroad. However, the available research literature provides evidence that posting creates several vulnerabilities for workers from third countries and creates the risk of being exploited and of working in dangerous conditions (Danaj and Zólyomi, 2019; Iljeovski and Iloska., 2018; Danaj et al., 2019; Danaj et al., 2020).

Public institutions and enforcement agencies have little insight on the working conditions of Macedonian citizens working abroad

Public institutions and enforcement agencies have little insight into the working conditions of Macedonian citizens working abroad. Taking into consideration the limited level of development of social partners, the weak social dialogue and practice, the mechanisms for worker protection during posting are weak and underdeveloped.



Lack of information - a major obstacle for workers, employers, public authorities and social partners

In practice, posted workers have little information about their rights, including information on how to protect their basic rights as workers. Prior to the posting they receive very little information on the working and living conditions, working hours, etc. Despite these findings, the conducted research confirms that there is an increasing interest among Macedonian workers, especially in the construction sector, to work abroad because of ability to earn higher wages than in North Macedonia.

Employers and social partners also have no guidance on procedures to follow when posting workers. There is no national website with information nor a national contact point established by the national authorities that provide guidance for employers. None of employers and social partners interviewed by us knew of the websites on posting operated by EU countries.

On the other hand, enforcement agencies such as the labour inspectorate have never conducted onsite inspections on the working conditions of Macedonian workers abroad, although this issue is under their competence. Also, they have not conducted any inspections to investigate potential irregularities in the payment of salaries and the protection of workers' rights. On the contrary, our research provides evidence that except of the workers posted to Germany whose posting is regulated with the existing Law on Posting, employers do not report to authorities when sending workers abroad.

Generally, stakeholders from North Macedonia have limited knowledge on the Posting of Workers Directive (96/71/EC), the Enforcement Directive (Directive 2014/67/EU and the revision of the Directive in 2018[‡].

European Union countries have the obligation to provide information on the terms and conditions of employment, including the constituent elements of remuneration to be applied to workers posted to their territory. Moreover, the employer must reimburse the posted worker for travel, board and lodging expenditure in accordance with the national law and/or practice. The amounts paid by the employer (or the reimbursements made) concerning travel, board and lodging are not part of remuneration. Our research provides evidence that employers from North Macedonia are not familiar with this obligation, meaning that workers posted from North Macedonia tend to be paid less than they are entitled too.

[‡] (see Directive [EU] 2018/957 of the European Parliament and of the Council of 28 June 2018 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services)



With the revision of the Posting of Workers Directive (Directive EU 2018/957, posted workers in all economic sectors are guaranteed equal pay as locally hired workers based on rules set by law or universally applicable collective agreements. However, if sending country working conditions are more favorable, they become applicable to posted workers (European Commission, 2019). None of the stakeholders interviewed by us is familiar with the above-mentioned obligations.

Neither employers, nor social partners are familiar with the information that the employer should provide in writing to the worker before the posting. None of the employers interviewed within the research reported that they have been approached by the trade unions of the host Member State to engage into collective bargaining.

The majority of workers in North Macedonia are not well informed on their rights nor have information on how and where to report abuse of their rights

All stakeholders we interviewed agree that the majority of workers in North Macedonia are not well informed on their rights nor have information how and where to report abuse of their rights. Some of the people interviewed see the reason for the lack of workers' knowledge in the insufficient engagement of Macedonian trade unions. In their view, trade unions should follow posting more proactively, inform workers and favour the protection of their rights.

None of the interviewed stakeholders had information on national guidelines on working hours and existing collective bargaining agreement that exist in host countries, nor has awareness that they should be consulted prior the posting. Many workers and companies in North Macedonia are not part of trade unions and have no collective agreement on company level. Stakeholders argue that the society has not yet recognized the power of collective bargaining. A positive practice is that in cases when trade unions start a court procedure against companies for unfulfilled collective rights, such cases always end with positive outcomes for workers. Interviewed trade union representatives confirmed that so far, they have not had any cases when posted workers have been represented by a trade union.

The employers' perspective

Companies are not trying to bypass national legislation, but face challenges in accessing information in order to comply with the regulations

The absence of clear regulatory framework, access to information and procedures for posting, including monitoring and control mechanisms, create practices that are not in the best interest of workers and not in accordance with the Posting of Workers Directive and its Enforcement Directive.

Our research confirms that companies are not trying to bypass national legislation, but face challenges in accessing information in order to comply



The absence of clear protocols and procedures for posting creates uncertainty among employers

with the regulations. The absence of clear protocols and procedures for posting creates uncertainty among employers. A detailed guideline in Macedonian language should be established. This might significantly reduce the challenges for companies when posting workers.

Employers have different practices, depending on the sector and the number of workers they are posting. In cases when few workers are posted, mostly for consultancy projects, the company directly covers the expenses for travel and accommodation and an additional allowance is directly paid to the worker, in cash or as honorarium.

The practice shows that companies are trying to avoid increases in salaries due to the high amount of taxes that need to be paid. This, however, is not always possible in the construction sector where the salary of workers is calculated on the basis of a construction norm (payment per performance). In the absence of clear guideline to calculate the remuneration when posting a worker, the research shows that companies follow their own internal rules for defining the remuneration and the additional compensation.

Employers do not inform state authorities nor have awareness on this step in the process of posting

When it comes to informing the state authorities in North Macedonia, our research shows that employers do not inform state authorities nor are aware of this step in the process of posting. The only legal step that employers undertake in North Macedonia is signing a new contract with workers, that regulates their work abroad. Small consultancy companies that provide project-based consultancy services abroad do not use any procedures or protocols when posting workers abroad. Our research provides evidence that, this type of employers usually provides short-term services and use the visa-free stay in EU countries for up to 90 days and in this way, they regulate the stay of workers abroad.

Companies from the construction sector that post workers abroad have different posting practices in different countries. Our research provides evidence that posting is regulated by the laws and regulations of the host country, while national state authorities in North Macedonia are not informed or involved. Construction companies that post workers abroad, in practice usually open a branch office in the host country. As part of that branch office, they hire an employee, usually from the host country that provides advice on the conditions for health and safety at work and ensures that all necessary paperwork is in order/available in case of labour inspection.

Recommendations – next steps?

Several recommendations have been suggested by the stakeholders who participated in the study. These comprise the following:

- Ensure full transposition of the Posting of Workers Directive and its Enforcement Directive in the national regulatory framework. It means to develop a systematic approach to posting including clear regulation of the posting under new regulatory framework, that will regulate both outflows and inflows of posting. The new regulatory framework should ensure that posted workers are reported and registered by public authorities.
- Ensure an adequate institutional arrangement responsible specifically for the implementation of posting, such as establishment of liaison offices, and clearly defined mandates for public authorities. Moreover, clear channels of cooperation, information sharing and exchange between national institutions and EU Member States and EU-level institutions should be established.
- A detailed guideline that clearly explains the procedure, rights and obligations of workers and employers when posting workers to and from North Macedonia should be developed and disseminated. The procedure for posting should be digitalized and ensured through a one stop bureau. Workers should be provided with access to easily accessible information on their rights prior the posting especially when it comes to wages and allowances.
- The close monitoring and control of workplaces where Macedonian citizens are engaged should be ensured and any violations of the rights of posted worker should be reported to national authorities in North Macedonia.
- Strengthen capacities of social partners on the Posting of Workers Directive and its Enforcement Directive (with focus on remuneration, taxation, working hours, collective bargaining agreements, health and safety at the workplace) and ensure that mechanisms for worker protection are in place and are fully operational. Ensure sufficient engagement of trade unions who should follow posting more proactively, inform workers and support the protection of their rights.



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