



POSTED WORKERS FROM AND TO AUSTRIA

FACTS AND FIGURES

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Abstract

This country report presents a comprehensive overview of the posting of workers between EU/EEA countries and Austria. The available data show postings to and from Austria occur at large and increasing numbers. We estimate the number of postings to Austria in 2019 to have been at least 320,480, the number of unique posted workers at least 85,697, and posted persons in full-time equivalents 41,462, i.e., about 1.7% of the work carried out by individuals living in Austria in 2019. Outgoing postings have also increased but remain below the number of incoming postings. Data show seasonal characteristics with the peak reached in the period July-October. Estimates on sectoral incoming postings are possible only for construction (28%) and transport (three fourths of all postings). Yet, in full-time equivalents postings in construction represent 44.5% of all posted work (excluding the transport sector) done in Austria. Industry and construction were the dominant sectors for outgoing postings. In 2019, the number of construction workers posted to Austria was equivalent to 5.2% of all people working in the Austrian construction sector. About one fifth of workers posted to Austria are non-EU citizens. Based on data from the inspection authorities, we estimate between 0.9% and 10% of all individuals posted to Austria were underpaid in 2019, and the most prevalent sector is construction. Among the inspections, the non-notifications of postings account for 0.56 of complaints. Although fake postings, hazardous working conditions and bogus self-employment are identified as occurring, more data are required to estimate their true extent. There was a drop in the number of postings at the onset of the COVID-19 pandemic in early 2020 followed by a fast recovery after March 2020. The Austrian experience shows that the application of the equal pay principle now incorporated in the Directive (EU) 2018/957 did not prevent a steady increase in postings to Austria, and that certain posting undertakings might still circumvent their obligations. Additional data are necessary to estimate the scope of posting more accurately and comprehensively and to better measure its impact on the Austrian economy. Better data would also help better trace issues of fraud and legal violations in the posting of workers, which would inform enforcement agencies on where to concentrate their efforts.

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List of Acronyms

AK	Arbeiterkammer (Chamber of Labour in Austria)
AVRAG	Arbeitsvertragsrechts-Anpassungsgesetz (Act on labour contracts in Austria)
BUAK	Bauarbeiter-Urlaubs- und Abfertigungskasse (Construction Workers' Annual Leave and Severance Pay Fund)
EC	European Commission
ECJ	European Court of Justice
EEA	European Economic Area
EESSI	Electronic Exchange of Social Security Information
EFTA	European Free Trade Association
EU	European Union
FTE	Full-time Equivalent
IMI	Internal Market Information System
LSD-BG	Lohn- und SozialdumpingBekämpfungsgesetz (Law Against Wage and Social Dumping, year 2017)
LSDB-G	Lohn- und SozialdumpingBekämpfungsgesetz (Austrian Act to Fight Wage and Social Dumping, year 2011)
ÖGB	Österreichischer Gewerkschaftsbund (Austrian Trade Union Federation)
OSH	Occupational Safety and Health
PD A1	Portable Documents A1
PWD	Posting of Workers Directive
SPÖ	Social Democratic Party of Austria
TCN	Third Country Nationals
WGKK	Wiener Gebietskrankenkasse (former Austrian Insurance Fund)
WKO	Wirtschaftskammer (Chamber of Commerce in Austria)
ZKO	Zentrale Koordinationsstelle des Bundesministeriums für Finanzen

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Executive Summary

This report presents a comprehensive overview of posting to and from Austria, which includes estimates of the number of postings and posted individuals, evidence of legal violations and fraud related to postings to Austria, the impact of the COVID-19 pandemic, and the impact of the transposition of Directive (EU) 2018/957 amending the Posting of Workers Directive 96/71/EC. The analysis is based primarily on quantitative data drawn from PD A1 forms, the Austrian national prior notification tool (ZKO3, ZKO3T, and ZKO4 forms), and data from the Competence Centre Wage and Social Dumping, the Austrian Financial Police and the Construction Workers' Annual Leave and Severance Pay Fund (BUAK).

The analysis of the scope and characteristics of posting in Austria indicates an increase in the posting of workers to Austria between 2011 to 2019. We estimated the number of postings to Austria in 2019 to have been at least 320,480, the number of unique posted workers at least 85,697, and the volume of work provided by the number of workers posted to Austria in 2019 in full-time equivalents to be 41,462, which represents about 1.7% of the work carried out by individuals living in Austria during the same period. The number of postings from Austria has also increased significantly between 2017 and 2019 to 197,627 but remains below the number of incoming postings. Hence, Austria remains a predominantly receiving country. The number of active postings changes throughout the year peaking between July and October and reaching its lowest in winter. Estimates on sectoral incoming postings are possible only for construction (28%) and transport (three fourths of all postings). Yet in full-time equivalents postings in construction represent 44.5% of all posted work (excluding the transport sector) done in Austria. Industry and construction were the dominant sectors for outgoing postings. In 2019, the number of construction workers posted to Austria was equivalent to 5.2% of all people working in the Austrian construction sector. Finally, about one fifth of workers posted to Austria are non-EU Eastern European citizens.

Posting-related violations include underpayment, social dumping and fake postings, hazardous working conditions, non-notification of posting, and bogus self-employment. Based on inspection authorities' data, we estimate between 0.9% and 10% of all individuals posted to Austria were underpaid in 2019. The underpayment of posted workers is most prevalent in the construction sector. Inspection data show that posting companies are much more likely to underpay their workers than domestic companies, especially in the construction sector where 0.9% of the inspected Austrian companies were suspected of underpayment compared to 38% of the inspected posting undertakings. Among the inspected companies, the share of postings not notified in advance and the share of posted workers not carrying the required documentation (proof of prior notification, PD A1 form) seem widespread, particularly in the transport sector. Although fake postings, hazardous working conditions, and bogus self-employment are identified as occurring, more data is required to estimate their true extent.

The analysis of the impact of COVID-19 pandemic on postings to Austria show a steep drop at the onset of the pandemic in early 2020, but also a fast recovery after March 2020. For the remainder of 2020 and during 2021, the number of postings in sectors other than transport and construction remained under the level of 2019. In contrast, in 2021, postings notified for the transport sector were 42% above the 2019 level, whereas postings in construction were 7% higher than in 2019. This indicates that the number of postings to Austria in sectors other than transport and construction, are plateauing. Yet, the high number of postings

notified even in the unprecedented context of a global pandemic, shutdowns and travel restrictions suggests posted workers are an important element of the Austrian economy.

The transposition of the Directive (EU) 2018/957 was completed in September 2021. The ECJ's recommendation on the joined cases of *Maksimovic and others vs Austrian public authorities* to put a cap on administrative fines was reflected in the revised law. Austria had already applied the equal pay principle on foreign companies providing services in the country before the new Directive was passed. The Austrian experience shows that the application of the equal pay principle did not prevent a steady increase in postings to Austria, and that certain posting undertakings might still circumvent their obligations.

The main recommendation drawn from this study is the need for more detailed and accurate administrative data necessary to estimate the scope of posting more comprehensively and to better measure its impact on the Austrian economy. Better data would also help better trace issues of legal violations related to the posting of workers, which would inform enforcement agencies on where to concentrate their efforts.

Zusammenfassung

Dieser Bericht bietet einen umfassenden Überblick über die Entsendung von ArbeitnehmerInnen nach und aus Österreich. Er umfasst Schätzungen der Anzahl der Entsendungen und der entsandten Personen, Beweise für Rechtsverstöße und Betrug im Zusammenhang mit Entsendungen nach Österreich, die Auswirkungen der COVID-19-Pandemie und die Auswirkungen der Umsetzung der Richtlinie (EU) 2018/957 zur Änderung der Entsenderichtlinie 96/71/EG. Die Analyse basiert in erster Linie auf quantitativen Daten aus den PD A1-Formularen, dem Online-Tool zur Meldung von Entsendungen nach Österreich an die Zentrale Koordinationsstelle (ZKO3, ZKO3T- und ZKO4-Formulare) sowie auf Daten des Kompetenzzentrum Lohn- und Sozialdumping Bekämpfung (Kompetenzzentrum LSDB), der Finanzpolizei und der Bauarbeiter-Urlaubs- und Abfertigungskasse (BUAK).

Die Analyse des Umfangs und der Merkmale der Entsendung in Österreich deutet auf einen Anstieg der Entsendung von ArbeitnehmerInnen nach Österreich zwischen 2011 und 2019 hin. Wir schätzten die Zahl der Entsendungen nach Österreich im Jahr 2019 auf mindestens 320 480, die Zahl der einzelnen entsandten ArbeitnehmerInnen auf mindestens 85 697 und das Arbeitsvolumen der im Jahr 2019 nach Österreich entsandten ArbeitnehmerInnen in Vollzeitäquivalenten auf 41 462, was etwa 1,7 % der von in Österreich lebenden Personen im selben Zeitraum geleisteten Arbeit entspricht. Die Zahl der Entsendungen aus Österreich ist zwischen 2017 und 2019 ebenfalls deutlich auf 197 627 gestiegen, liegt aber weiterhin unter der Zahl der Entsendungen. Österreich ist damit weiterhin primär ein Zielland für Entsendungen. Die Zahl der aktiven Entsendungen verändert sich im Laufe des Jahres und erreicht ihren Höhepunkt zwischen Juli und Oktober und ihren Tiefpunkt im Winter. Schätzungen zu den sektoralen Entsendungen sind nur für das Baugewerbe (28%) und den Verkehr (drei Viertel aller Entsendungen) möglich. In Vollzeitäquivalenten machen die Entsendungen im Baugewerbe jedoch 44,5 % aller Entsendungen (ohne den Verkehrssektor) nach Österreich aus. Bei den Entsendungen aus Österreich dominierten die Industrie und das Baugewerbe. Im Jahr 2019 entsprach die Zahl der nach Österreich entsandten Bauarbeiter 5,2 % aller in der österreichischen Bauwirtschaft tätigen Personen. Etwa ein Fünftel der nach Österreich entsandten ArbeitnehmerInnen sind osteuropäische Nicht-EU-BürgerInnen.

Zu den Verstößen im Zusammenhang mit der Entsendung gehören Unterbezahlung, Sozialdumping und Scheinentsendungen, gefährliche Arbeitsbedingungen, Nichtmeldung der Entsendung und Scheinselbstständigkeit. Basierend auf den Daten der Kontrollbehörden schätzen wir, dass zwischen 0,9 und 10% aller nach Österreich entsandten Personen im Jahr 2019 unterbezahlt waren. Die Unterbezahlung von entsandten ArbeitnehmerInnen ist im Bausektor am weitesten verbreitet. Die Inspektionsdaten zeigen, dass entsendende Unternehmen ihre ArbeitnehmerInnen viel häufiger unterbezahlen als inländische Unternehmen, insbesondere im Bausektor, wo 0,9 % der kontrollierten österreichischen Unternehmen im Verdacht der Unterbezahlung standen, verglichen mit 38 % der kontrollierten entsendenden Unternehmen. Unter den kontrollierten Unternehmen scheinen der Anteil der nicht im Voraus angemeldeten Entsendungen und der Anteil der entsandten ArbeitnehmerInnen, die nicht die erforderlichen Unterlagen (Nachweis der vorherigen Anmeldung, Formular PD A1) mit sich führen, weit verbreitet zu sein, insbesondere im Verkehrssektor. Obwohl festgestellt wurde, dass Scheinentsendungen, gefährliche Arbeitsbedingungen und Scheinselbstständigkeit vorkommen, sind mehr Daten erforderlich, um ihr wahres Ausmaß zu schätzen.

Die Analyse der Auswirkungen der COVID-19-Pandemie auf die Entsendungen nach Österreich zeigt einen starken Rückgang zu Beginn der Pandemie Anfang 2020, aber auch eine schnelle Erholung nach März 2020. Für den Rest des Jahres 2020 und im Laufe des Jahres 2021 blieb die Zahl der Entsendungen in allen Wirtschaftsbereichen, mit Ausnahme des Verkehrssektors und des Baugewerbes, unter dem Niveau von 2019. Dagegen lagen die Entsendungen für den Verkehrssektor im Jahr 2021 um 42 % und im Baugewerbe um 7 % über dem Niveau von 2019. Dies deutet darauf hin, dass die Zahl der Entsendungen nach Österreich in den meisten Sektoren, mit den genannten Ausnahmen Verkehr und Bau, zu stagnieren scheint. Die hohe Zahl der gemeldeten Entsendungen, selbst vor dem Hintergrund einer weltweiten Pandemie, von Betriebsschließungen und Reisebeschränkungen, deutet jedoch darauf hin, dass entsandte ArbeitnehmerInnen ein wichtiger Bestandteil der österreichischen Wirtschaft sind.

Die Umsetzung der Richtlinie (EU) 2018/957 wurde im September 2021 abgeschlossen. Die Empfehlung des EuGH in der gemeinsamen Rechtssache „Maksimovic und andere gegen österreichische Behörden“, eine Obergrenze für Geldbußen einzuführen, wurde in das überarbeitete Gesetz aufgenommen. Österreich hatte den Grundsatz des gleichen Entgelts bereits vor der Verabschiedung der neuen Richtlinie auf ausländische Unternehmen angewandt, die Dienstleistungen im Land erbringen. Obwohl die österreichische Erfahrung zeigt, dass die Anwendung des Grundsatzes des gleichen Entgelts einen stetigen Anstieg der Entsendungen nach Österreich nicht verhindert hat, könnten bestimmte Entsendeunternehmen ihre Verpflichtungen umgehen.

Die wichtigste Empfehlung, die aus dieser Studie abgeleitet wird, ist der Bedarf an detaillierteren und genaueren Verwaltungsdaten, die notwendig sind, um den Umfang der Entsendung umfassender abzuschätzen und ihre Auswirkungen auf die österreichische Wirtschaft besser zu messen. Bessere Daten würden auch dazu beitragen, Rechtsverstöße im Zusammenhang mit der Entsendung von ArbeitnehmerInnen besser aufzuspüren, was den Vollzugsbehörden Aufschluss darüber geben würde, worauf sie ihre Bemühungen konzentrieren sollten.

1. Introduction

This country report on Austria was produced within the Posting.Stat project¹ and serves a dual purpose. Firstly, it answers substantive questions regarding postings to and from Austria. These answers include estimates of the number of postings and posted individuals, evidence of legal violations related to postings to Austria, the impact of the COVID-19 pandemic, and the transposition of the amended Posting of Workers Directive (i.e., Directive (EU) 2018/957 amending Directive 96/71/EC). Secondly, this report addresses questions of data and methods. More specifically, it describes what quantitative data are and are not available regarding postings to and from Austria, and how these data can and should be interpreted. In doing so, the report builds a foundation for further research into the Austrian case as well as for comparative work on posting in Austria and other EU countries.

There is already considerable research on the posting of workers to Austria. Some studies have focused on how the Posting of Workers Directive (i.e., Directive 96/71/EC) (hereinafter referred to as PWD or the Directive) was transposed in Austria and the role social partners played in the process (see e.g., Afonso, 2012; Krings, 2009; Menz, 2005) and more recently also on how the European Court of Justice's deliberation on the joined cases of 'Maksimovic and others vs. Austrian public authorities'² influenced the transposition of the amended PWD in Austria (Danaj & Kahlert, 2021). Some studies have focused on posted workers' working conditions evidencing vulnerabilities and inequalities between posted workers and locally hired workers in terms of pay, working conditions and occupational safety and health (e.g., Danaj, Hollan and Scoppetta 2020; Danaj et al., 2020; Krings, 2019; Hollan and Danaj, 2018; Haidinger, 2016; Hofstadler et al., 2016; Schmatz & Wetzel, 2014). Other studies have taken a more institutional approach and examined rule implementation and anti-dumping enforcement efforts at the national level (e.g., Haidinger, 2018; Gagawczuk, 2019; Kahlert and Danaj, 2021; Riesenfelder et al., 2012).

While Austria has always featured in the comparative reports of the European Commission on Portable Documents A1 (PDs A1) (see e.g., De Wispelaere, De Smedt, & Pacolet, 2019) and on the prior notification tools (see De Wispelaere, De Smedt, & Pacolet, 2021), this report is the first systematic study to provide an in-depth quantitative assessment of the scope and characteristics of intra-EU posting to and from Austria. Likewise, while qualitative evidence has already been provided on legal violations related to postings to Austria, this report provides for the first time a comprehensive analysis of various data available on posting-related violations in the country. Finally, the study at hand also analyses for the first time the impact of the COVID-19 on posting to Austria, and reflects on the recent transposition of Directive (EU) 2018/957 and its potential impact.

¹ POSTING.STAT brings together a consortium of universities and research centres from 10 different Member States, supported by several European social partner organisations and public authorities. HIVA-KU Leuven is responsible for the project management and the overall coordination of the project activities. The geographical scope of the project proposal covers the six main 'sending' Member States (Germany, Poland, Italy, Spain, Slovenia and Luxembourg) and the six main 'receiving' Member States (Germany, France, Belgium, Austria, the Netherlands and Luxembourg) of posted workers. [Link to the publications of the POSTING.STAT project.](#)

² Judgment of the Court on 12 September 2019 (ECLI:EU:C:2019:723) in the proceedings Zoran Maksimovic and Others, <http://curia.europa.eu/juris/document/document.jsf?text=&docid=217671&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=10498232>

The report is structured into eight chapters. After this introduction, chapter 2 provides a short review on the literature on postings to and from Austria and chapter 3 briefly describes the data and methods used for this report.

Chapter 4 analyses the characteristics and impact of intra-EU postings in Austria until 2019. A strong focus of this chapter is on the question how to measure posting. This includes a discussion of different measurements (the number of postings, unique posted persons, active postings, posted workers in full-time equivalents), data sources and level of disaggregation (e.g., by sector of activity, duration of posting, citizenship of posted workers). The chapter shows that Austria is primarily a receiving country, with a higher number of incoming than outgoing postings. The number of incoming postings increased significantly from 2011 to 2019. Between 2017 and 2019, however, the number of outgoing postings increased even more rapidly by some measures, indicating a rapprochement of the number of people posted to and from Austria.

Chapter 5 focusses on legal violations related to postings to Austria. The chapter relies primarily on data by Austrian authorities on the number of complaints (i.e., the formal charging of a company for committing legal violations) and decisions against posting companies for the underpayment of posted workers and the non-notification of postings. While the true extent of underpayment is unknown, we estimate between 0.9% and 10% of all individuals posted to Austria were underpaid in 2019. In the construction sector, the number may be even higher as 38% of inspected companies are suspected of underpaying their workers. Posting companies are significantly more likely to underpay their workers than firms located in Austria. Furthermore, underpayment appears to be most widespread in the construction sector. The non-notification of posting is also a significant problem.

Chapter 6 analyses the impact of the COVID-19 pandemic and the policies enacted in response to it on postings to Austria. Monthly data show a significant drop in the number of notified postings at the start of the pandemic between January and April of 2020. From April 2020 until December 2021, the number of postings notified for the transport sector increased strongly to pre-pandemic levels. Postings in the construction sector recovered more quickly than other non-transport sectors and in 2021 increased slightly above the 2019 level. Whereas postings notified to other sectors recovered but remained below the 2019 level. This suggests the pandemic had a significant impact on postings to Austria. However, it is unclear whether the reduction in incoming postings is only a temporary effect or signifies an end to the upward trend in incoming postings since 2011.

Chapter 7 briefly discusses the application of Directive (EU) 2018/957 amending the Posting of Workers Directive (i.e., Directive 96/71/EC). This directive was implemented into national law in Austria only in September 2021. Hence, there is only little information on its application so far. However, the most important element of this Directive, the equal pay provision for posted and domestic workers, was introduced in Austria already in 2011. Therefore, this chapter outlines how national legislation was amended in compliance both with the Directive (EU) 2018/957 and the European Court of Justice's ruling on the proportionality of punitive measures and discusses what may and may not change in Austria with the transposition of the Directive.

The last chapter summarises the principal findings and spells out conclusions and recommendations. In line with the report's dual purpose, the recommendations include suggestions related to policy questions as well as on questions regarding the collection of data.

2. Literature Review

The literature on posting in Austria has developed in three main strands: a) national response strategies to the European free market policies such as the PWD and the role social partners played in shaping these policies, b) posted workers' working conditions, and c) anti-dumping enforcement efforts at the national level. We will discuss these three main strands briefly in this section of the report.

The early literature on posting in Austria (Afonso, 2012; Krings, 2009; Menz, 2001; 2002; 2003; 2005; 2011) discussed how the country responded to the adoption of the PWD at the national level. The corporatist Austrian model where social partners have a strong centralized standing in terms of wage setting seems to have dictated a rather protectionist approach to the posting of workers. The Austrian social partners consist of the union umbrella organization ÖGB, the Chamber of Labour (Arbeiterkammer – AK), the employers' association Wirtschaftskammer (WKO) and the farmers' association Landwirtschaftskammer. The social partners are formally involved in policy making and wages are decided through a bipartite collective bargaining process. Every person employed in Austria pays contributions to AK and every employer must be a member of WKO, whereas union membership is voluntary, but still quite high.³ This makes their level of influence in policy making quite considerable, and commentators have argued fundamental for the approach Austria has taken to the posting of workers. These actors lobbied for the Austrian state to adopt legislation in favour of protecting national standards that would require posted workers to be paid equally to locally hired workers (Afonso, 2012; Krings, 2009; Menz, 2005).

Hence in the early stages of the transposition of the PWD, Austria made certain amendments to the transposed Directive of 1996, to be later replaced by a law that dealt extensively with the issue of preventing and punishing wage and social dumping. The first act was the “Austrian Act to Fight Wage and Social Dumping” (LSDB-G), which was part of the Act on labour contracts (Arbeitsvertragsrechts-Anpassungsgesetz, AVRAG), enacted on May 1st, 2011 (WGKK, 2017). An updated Anti-Wage and Social Dumping Act was passed in 2017 (LSD-BG), replacing the previous one and incorporating the transposition of both the PWD and the Enforcement Directive. In 2021, the law was revised again to change the calculation of fines and to transpose Directive (EU) 2018/957 amending the PWD (Danaj & Kahlert, 2021). The law regulates postings to Austria and defines the charges for violations that ranged from administrative penalties to imprisonment⁴.

Despite the existence of national regulation on equal terms for posted workers and locally hired workers, there is a strand of the literature studying the unequal conditions posted workers face in Austria (Danaj and Scoppetta, 2021; Kahlert and Danaj, 2021; Danaj et al., 2019; Krings, 2019; Hollan and Danaj, 2018; Haidinger, 2016; Hofstadler et al., 2016). Through mostly qualitative research, these authors have reported several inequalities faced by posted workers in the Austrian labour market ranging from irregularities with their wages, social contributions, and health insurance to occupational safety and health (OSH). The main argument in these studies is that the prevalence of subcontracting chains and the location of posted workers at the end of the chain exposes posted workers to more vulnerabilities compared to the directly employed workforce, particularly in sectors like construction. Qualitative evidence drawn from insights provided by

³ As of 2020, the Austrian Trade Union Federation had 1.2 million members. This represents about 26.3% of all employees.

⁴ A more detailed account on the punitive measures of the law is presented in chapter 5, whereas chapter 7 provides insights into how the content and application of the law relate to the revised directive.

posted workers, public authorities and social partners indicate that some posted workers are paid less than their locally hired colleagues due to misreporting of the employment status (part-time instead of full time), of the working time (undeclared overtime), or of the skill level/category of the worker (lower/unskilled instead of specialized/skilled) (see Kahlert and Danaj, 2021; Krings, 2019; Hofstadler et al., 2016; Schmatz & Wetzel, 2014). Unpaid social security contributions and insufficient health care coverage have also been found among posted workers (Kahlert and Danaj, 2021; Hollan and Danaj, 2018). In terms of occupational safety and health, Austria is reportedly taking better measures to monitor safety in the workplace, yet posted workers seem to remain quite vulnerable, usually due to a disregard on the importance of observing OSH rules and obligations and training from the side of both employers and workers caused by the temporary nature of the posting assignments (Hollan and Danaj, 2018). Furthermore, breaches of OSH rules often go undetected or unreported due to the workers' fear of losing their jobs (Danaj, Hollan and Scopetta, 2020).

More recently, the literature has focused on third country nationals (TCN) being posted to Austria (Danaj et al., 2020; Hollan and Danaj, 2018). Findings suggest that most TCN workers are posted to Austria from the Western Balkan countries via Slovenia. In their recent study, Danaj et al. (2020) argue that the cloaking effect of the posting employment characterized by subcontracting, cross-border mobility and temporary service provision combined with TCN workers' migration status, increases the layers of vulnerability for this type of posted workers. Posted TCN workers are inclined to accept substandard terms and conditions if they remain relatively better than those of the home and sending countries and if they depend on the employer for the renewal of their work permits in the sending countries. These workers are also more difficult to trace, and their vulnerabilities are usually uncovered when they are faced with dire circumstances, such as an accident at work, where they find themselves without the proper social security and care coverage (Hollan and Danaj, 2018).

The third strand relates to both the regulatory response and the reporting of unequal conditions of workers posted to Austria as well as the efforts of the Austrian authorities to enforce national standards and protect posted workers (Haidinger, 2018; Gagawczuk, 2019; Kahlert and Danaj, 2021; Riesenfelder et al., 2012). The enforcement literature studies the gaps between legislation and practice in the posting of workers and outlines the challenges enforcement agencies in Austria have encountered at the national and the transnational level. At the national level, several structures in place have been actively monitoring the posting of workers regulation such as the Competence Centre Wage and Social Dumping, the Austrian Financial Police, the Labour Inspectorate and the Construction Workers' Annual Leave and Severance Pay Fund (BUAK), which together with the Social Security (Sozialversicherung) are also the authorities that collect the administrative data on posting in Austria used in this report. The studies on the capacities of these institutions suggest that while a lot is being done to prevent social dumping in Austria, authorities face a few challenges such as the insufficient number of personnel (e.g., inspectors to conduct field visits) or language barriers (to communicate with posted workers) (Haidinger, 2018; Hollan and Danaj, 2018; Kahlert and Danaj, 2021). More recently, the effort of Austrian authorities to prevent social dumping have faced some resistance from the prosecuted posting undertakings, which have taken these authorities to court, with certain cases, such as the joined cases of 'Maksimovic and others vs. Austrian public authorities', eventually sent to the European Court of Justice for an opinion. The deliberation of the court that administrative fines issued by Austrian authorities were incommensurate compared to the offence have influenced Austrian authorities to revise their national legislation and might also have an impact on future efforts of enforcement (further discussed in chapter 7; see also Danaj and Kahlert, 2021).

Transnationally, Austria is the country that makes the most use of the Internal Market Information System (IMI), having sent 1,871 requests with questions about sending posting companies in 2019 alone (Danaj et al., 2021). However, communication with sending countries' authorities has at times been slow and insufficient (Haidinger, 2018). The Electronic Exchange of Social Security Information (EESSI) system, which would facilitate the process of the verification of Portable Documents A1 forms (PDs A1) is still not

fully operational and currently Austria has established regular exchanges with Slovenia; however, more needs to be done for the system to be functional with all EU Member States (Kahlert and Danaj, 2021). The literature also reports on cross-border collaborative efforts for joint inspections, which currently remain *ad hoc* and/or project-based, therefore not sustained in the longer run (Hollan and Danaj, 2018).

3. Methodology

This report uses primarily quantitative data drawn from different administrative sources. Questions regarding the number and nature of postings to Austria (Chapters 4, 6, and 7) were answered with the help of data from PD A1 forms issued for individuals posted to Austria and data from the Austrian national prior notification tool (ZKO3, ZKO3T, and ZKO4 forms). The analysis for violations related to posting to Austria (Chapter 5) uses data from the Competence Centre Wage and Social Dumping, the Austrian Financial Police and the Construction Workers' Annual Leave and Severance Pay Fund (BUAK). These data include both administrative data on legal violations by posting companies as well as data on enforcement activities by the Financial Police and BUAKE. Additional contextual data were drawn from Eurostat and the Austrian statistical office. More information on each dataset is provided in the relevant chapters.

Several expert interviews were conducted to validate the interpretation of the data and the results of the quantitative analysis. Phone interviews were carried out during August-October 2021 with representatives of:

- The Austrian Federal Ministry of Finance;
- The Austrian Federal Ministry of Labour;
- The Austrian Financial Police;
- The Construction Workers' Annual Leave and Severance Pay Fund;
- The Competence Centre "Wage and Social Dumping";
- The European Labour Authority;
- The transport sector union "Vida";
- The umbrella organisation of the Austrian social security institution ("Dachverband der Sozialversicherungsträger").

4. Scope and characteristics of intra-EU posting in Austria

This chapter analyses the scope and characteristics of posting to and from Austria. Austria is predominately a receiving country, which means that the number of workers posted to Austria is higher than the number of workers posted from Austria. Against this background, this report focuses mainly on the receiving perspective.

Measuring the scope of postings is challenging for conceptual reasons and because of a lack of adequate data. Therefore, the first section discusses *what* to measure when analysing posting flows as well as *how* to measure it. Four different measures for the extent of posting are proposed: the number of postings, the number of unique posted workers, the number of posted workers in full-time equivalents (FTE), and the number of active postings at a specific point in time. In terms of the *how*, the section outlines the most common way of counting postings based on the number of PD A1 forms and prior notifications issued. Thereafter, the section provides recent data on postings to and from Austria.

The second section provides information on the characteristics of postings to Austria. This includes data on the duration of services offered, differences in the number of postings throughout the year, differences across sectors, as well as the share of posted workers, who are not citizens of European Union countries (also referred to as Third Country Nationals (TCN) posted workers).

The third section looks at postings from a different perspective, namely the value of services provided across borders. To this end, this section analyses the correlation between postings and the import of services to Austria. Throughout the chapter, the primary focus is on the reference year 2019, the last year before the outbreak of the COVID-19 pandemic and the year for which the richest set of data are available. The most recent data on postings to Austria (January 2020 – May 2021) will be analysed in chapter 6 on the impact of COVID-19. The fourth section summarises the main findings and draws conclusions from the analysis.

4.1 Estimating the scope of posting to and from Austria

When discussing the “true” extent of posting, it is important to first discuss *what* to measure and *how* to measure it. Regarding the *what*, we propose four different measurements summarised in Box 4.1. Firstly, the **number of postings**. This reflects each individual instance a person is sent to another EU country under the Posting of Workers Directive to provide services. Secondly, we propose measuring the number of **unique posted workers**. This number represents the sum of persons posted to another EU country at least once during a given year. In other words, individuals posted several times within the period of one year are only counted once. Thirdly, the number of **posted workers in full-time equivalents (FTE)** reflects the amount of time posted workers provide services abroad. One posted worker in FTE represents one person from another Member State providing a service in Austria on a full-time basis for an entire year. Lastly, the number of **active postings** represent the number of posted individuals working in a given EU country at one specific point in time.

Box 4.1: Terminology

Posting: The event when a person is sent to another EU country under the Posting of Workers Directive to work abroad for a limited period. A person can be posted several times per year.

Unique posted workers: The number of individuals posted to another Member State at least once within a given year.

Posted workers in full-time equivalents (FTE): This indicator refers to the total duration of all postings and indicates how many persons were posted to Austria to work for a full year if all postings were added together (full-year equivalents).

Active postings: Number of postings taking place at a given time, i.e., the number of posted workers working in Austria at a given time.

Regarding the *how*, there are two primary data sources that are commonly used: **PD A1 forms** issued by the relevant authorities in the sending country and **prior notifications forms** for intended postings submitted by the posting undertakings to the authorities in the receiving country prior to posting their workers (De Wispelaere, De Smedt, & Pacolet, 2020; De Wispelaere, De Smedt, & Pacolet, 2021).

PDs A1 (portable documents A1) must be carried by the posted workers to work in another country. PDs A1 are issued by social security providers in the sending country. The form provides evidence that the posted worker is covered by the social security system of the sending country and that this person, therefore, does not have to pay social security contributions in the receiving country. The use of PDs A1 is based on Regulation (EC) No 883/2004 — on the coordination of social security systems (*Basic Regulation*) and further specified by Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems (*Implementing Regulation*). PD A1 forms can be issued according to Article 12 and Article 13 of the Basic Regulation. The main difference between the two relates to the number of countries individuals are posted to: A1 forms issued under Article 12 are issued to employed or self-employed individuals who normally work in one EU Member State and who are posted to another Member State. PDs A1 issued according to Article 13 are for individuals who work as employees or self-employed in two or more Member States. A1 is issued under Article 13 also when a person pursues employed work and another self-employed economic activity in different Member States.

Prior notifications notify an undertaking's intention to send posted workers to an EU Member State, in our case: Austria. The requirement to notify postings to Austria is based on the Directive 2014/67/EU (*Enforcement Directive*) and the Austrian Law against Wage and Social Dumping (LSD-BG)⁵. While PDs A1 are issued by the competent authorities in the sending countries, the prior notifications must be submitted by the posting undertaking to the Austrian Financial Police. There are three different types of prior notification forms.

- **ZKO3** are used to notify the posting of workers to Austria. In the form, the sending company must specify *inter alia* the number of people posted and the duration of their posting.
- **ZKO3T** forms are a special notification form introduced in 2017 to notify postings of 'mobile employees in the transport sector' (excluding individuals working exclusively in transit traffic). Thereby, mobile employees in the transport sector are defined as individuals that work as drivers or accompanying personnel in the transport of passengers and goods.⁶ In contrast to postings in other sectors, employers do not have to specify the duration of postings in the transport sector. Instead, the ZKO3T form can be submitted for a period of six months, and companies only must

⁵ Lohn- und Sozialdumping-Bekämpfungsgesetz – LSD-BG

⁶ §1 (9) Lohn- und Sozialdumping-Bekämpfungsgesetz – LSD-BG

list the names of the persons they intend to post. Consequently, ZKO3T forms provide less information than ZKO3 forms.

- **ZKO4** forms are used to notify “cross-border secondments”.

The difference between postings and cross-border secondments is that posted workers provide services in Austria under the direction of the sending company. Seconded workers, in contrast, are employed by a foreign undertaking, but work under the direction of an Austrian employer.⁷ This distinction, however, is based on Austrian law. Under European law, both posted and seconded workers are considered posted workers.⁸ Hence, we also count individuals notified through ZKO4 forms as posted workers.

PDs A1 **cover a wider range of people** than ZKO forms. Firstly, PDs A1 are also used by people other than posted workers. Secondly, PDs A1 must also be used by *self*-employed individuals who temporarily pursue an activity in another EU Member State, while ZKO forms only cover employed individuals. In contrast, all individuals working in Austria based on a ZKO notification must carry a PD A1.⁹ The differences in coverage are outlined in Table 1.

Table 1: Coverage and exemptions of PDs A1 and ZKO forms

	PD A1 forms	Prior notifications (ZKO3, ZKO3T, ZKO4)
Who is covered?	<ul style="list-style-type: none"> - Employed and self-employed individuals pursuing activities in another Member State on the basis of Article 12; - Individuals pursuing activities in two or more Member States on the basis of Article 13; - Individuals covered by special agreements between the competent authorities of two or more EU Members States ('Article 16 agreements'); - civil servants; - mariners; - flight or cabin crew members; - contract staff of the EU (De Wispelaere, De Smedt, & Pacolet, 2020) 	<ul style="list-style-type: none"> - Workers posted to Austria - Workers seconded ("hired out") to Austria (§ 19 LSD-BG) - Mobile employees in the transport sector are defined as individuals that work as driver or accompanying personnel in the transport of passengers and goods (ZKO 3T)
Who is exempted?	<ul style="list-style-type: none"> - postings longer than two years - repetitive postings (De Wispelaere, De Smedt, & Pacolet, 2020) 	<p>Exemptions from the duty to notify postings exist for work that is of "small-scale and short duration". Specifically exempted are</p> <ul style="list-style-type: none"> - business meetings and participation in seminars or lectures without rendering a service, - participating in trade fairs, conferences, - participation in the organisation of cultural events in the areas of music, dance, theatre (if part of a tour in which the event in Austria is only of minor significance), - mobile transport workers and crew members working exclusively in transit traffic, - some activities in the field of international higher education and research, - employees of Austrian stock companies and limited liability corporations that earn a certain minimum monthly income.¹⁰

⁷ <https://www.bmf.gv.at/en/topics/combating-fraud/zko.html>

⁸ Specifically, cross-border secondments fall under the realm of Article 1, 3. (c) of Directive 96/71/EC (Posting Directive) which states that the Directive also applies to temporary employment undertakings or placement agencies that "hire out a worker to a user undertaking established or operating in the territory of a Member State, provided there is an employment relationship between the temporary employment undertaking or placement agency and the worker during the period of posting".

⁹ § 21 (1) 1 and § 21 (3) 1 LSD-BG.

¹⁰ See <https://www.bmf.gv.at/en/topics/combating-fraud/zko.html>

Apart from differences in coverage, PD A1 forms and prior notifications contain different information and there are differences in the availability of data. Most importantly, data on the number of postings from a receiving perspective is only available for PD A1 forms issued according to article 12 of the Basic Regulation. When it comes to PD A1 forms issued for individuals working in two or more Member States (Art. 13), information is only available on the sending country (which issues the form) and not on the receiving countries (where the person will work). Furthermore, the data collected through PD A1 forms and prior notifications allows for different levels of disaggregation, such as by sector of activity or duration of the posting. For this reason, depending on the question, we use either the PDs A1 forms or prior notification data or both, and complement each analysis with additional data from other sources, as relevant. We inform on the data used accordingly.

The use of data gathered from PD A1 and prior notification forms to measure the scope and characteristics of posting is **limited** by the fact that both documents do not measure postings as such, but the intention to provide services in another Member State. This – as will be discussed in the next section as well as in chapter 5 – can result in the under- or overestimation of posting flows.

4.1.1 Number of postings to Austria

The **number of postings to Austria** can be measured by the number of PD A1 forms issued according to Article 12 only – as there is a lack of data on the PDs A1 issued under Article 13 – and by the number of postings notified through prior notification forms. Estimates for the annual number of posted workers based on both approaches are presented in Figure 1.

Both approaches show an **increase in the number of workers posted to Austria** from 2011 to 2019. The number of PD A1 forms issued according to Article 12 for postings to Austria increased steadily from 2011 to 2017. It fell in 2018 before more than doubling between 2018 and 2019. The data on PDs A1 as already explained above does not include forms issued under Article 13 for individuals active in two or more Member States. In 2019, the total number of PD A1 forms issued under Article 13 by all EU and EFTA countries was 1,361,460, compared to 3,206,680 forms issued under Article 12 (De Wispelaere, De Smedt, & Pacolet, 2020). It is not clear how many of the individuals with a PD A1 form issued under Article 13 worked in Austria. However, it should be assumed that a non-negligible share of the 1,361,460 individuals with PD A1 form issued under Article 13 worked in Austria and that the number of PD A1 forms issued according to Article 12, therefore, likely underestimates the true number of postings to Austria in 2019.

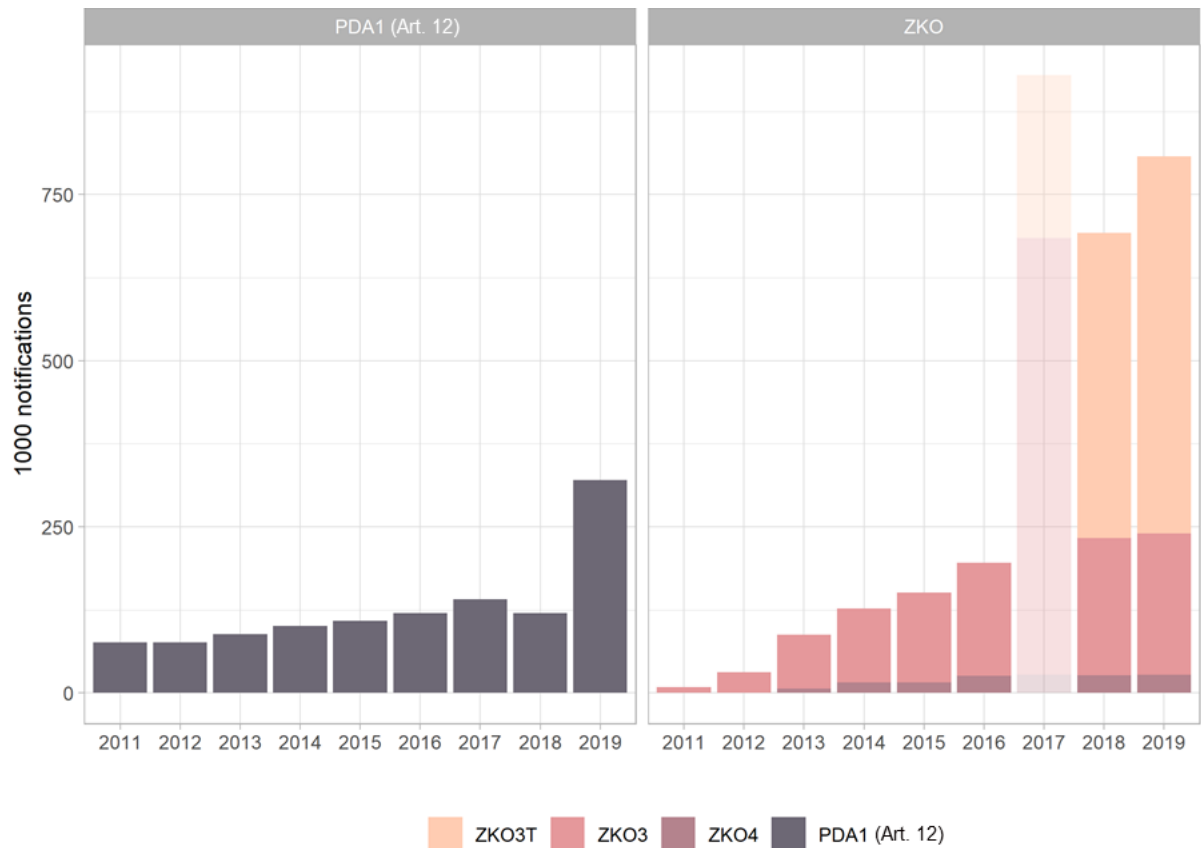
This assessment is also supported by the fact that the number of postings notified through prior notifications (ZKO forms) since 2014 was between 1.26 to 5.77-times the number of postings indicated through Article 12 PD A1 forms (see also Table 2). The number of postings notified through ZKO forms increased steeply between 2011 and 2016. From 2016 to 2017, the number of postings notified through ZKO forms more than tripled, but this increase appears to have been driven in large parts by a technical error rather than a true increase in postings.¹¹ The numbers fell in 2018, before increasing again between 2018 and 2019.

Looking at the type of prior notifications, Figure 1 shows that until 2016 most postings were notified through ZKO3 forms. In 2017, ZKO3T forms were introduced as a separate form to notify postings in the transport sector. In 2018 and 2019, ZKO3T forms accounted for around two-thirds of all postings notified through the Austrian prior notification system. As such, nearly the entire increase in notified postings

¹¹ In 2017, the system of applying for prior notifications was changed following the reform of the LSD-BG. This resulted in significant confusion and a temporary breakdown of the online system to notify postings. Against this background, it must be assumed that several employers submitted prior notifications multiple times for the same posting. Hence, the number of postings notified for the year 2017 do not present a reliable estimate for the true number of postings executed in that year.

between 2016 and 2019 was driven by postings notified for the transport sector. ZKO4 forms account for the smallest share of notified postings.

Figure 1: Development of postings to Austria 2011 – 2019 based on PD A1 (Art. 12) and ZKO forms



Note: Number of prior notifications (ZKO) not reliable in 2017 (break in timeseries)

As indicated above, there are problems with both approaches for measuring the scope of postings to Austria. With respect to counting postings to Austria through PD A1 forms, there are two main problems. Firstly, there is the already mentioned lack of data on postings to Austria under Article 13. Secondly, not all individuals posted to Austria may have applied for a PD A1 form with the competent authorities in their sending country. Both problems likely result in an underestimation of the true scope of postings to Austria.

Counting the number of postings based on data collected through the prior notification tool (ZKO forms) may over- and underestimate the true number of postings. On the one hand, companies may not notify postings in advance. As it will be shown in chapter 5, at least among the pool of companies inspected by the Financial Police, this seems to be a significant problem. On the other hand, employers may notify postings but end up not actually sending these workers. As it will be discussed in chapter 6, it is quite likely that this happened at the beginning of the COVID-19 pandemic, when lockdowns and border closures prevented companies from providing services they had planned to.

In addition, the interpretation of data from ZKO3T forms presents specific challenges. Firstly, it appears likely that employers in the transport sector indicate more individuals in the ZKO3T forms than are posted. As mentioned above, prior notifications in the transport sector have different characteristics from regular ZKO3 or ZKO4 forms. Specifically, ZKO3T forms are issued for six months, usually twice per year. A

close look at the data shows that while in most prior notifications only one worker is notified, we find that there is a large number of ZKO-3T forms notifying the posting of more than 100 workers. Considering that the notification of postings carries no direct costs (other than the administrative burden) for employers, there may be an incentive for transport companies to include all their employees in the submitted ZKO forms. This practice would inflate the number of notifications.

On the other hand, companies posting their employees multiple times within six months do not need to file separate prior notifications. Because of this, the number of notified postings might underestimate the number of actual postings in the transport sector. Hence, a reliable interpretation of the number of ZKO3T forms is difficult and a comparison with ZKO4 and ZKO3 forms not meaningful. Therefore, we distinguish, as far as possible, between ordinary postings and postings in the transport sector in the following sections.

In sum, it must be concluded that the number of postings to Austria cannot be measured with accuracy. The number of PD A1 forms issued under Article 12 is likely an underestimation of the true number while the number of postings notified through ZKO forms may be an overestimate. Nevertheless, using the number of PD A1 forms issued under Article 12 as a lower boundary, we estimate that **in 2019, at least 320,480 postings to Austria** took place.

Table 2: Number of posting notifications to Austria 2012-2020 by type of notification

	2012	2013	2014	2015	2016	2017	2018	2019	2020
ZKO (total)	31,251	87,800	127,054	150,979	195,687	929,533*	692,203	807,516	870,483
% change prev. year	242%	181%	45%	19%	30%	375*%	-26%	17%	8%
ZKO3	31,251	81,504	111,525	135,447	169,605	657,307*	206,230	212,653	182,627
% change prev. year	242%	161%	37%	21%	25%	288*%	-69%	3%	-14%
ZKO4	0	6,296	15,529	15,532	26,082	27,491*	26,749	27,074	17,812
% change prev. year	-	-	147%	0%	68%	5*%	-3%	1%	-34%
ZKO3T	-	-	-	-	-	244,735*	45,9224	567,789	670,044
% change prev. year	-	-	-	-	-	-	88%	24%	18%
PD A1 incoming (Art. 12)	76,445	88,596	101,015	108,627	120,150	141,046	119,907	320,480	232,003
% change prev. year	0%	16%	14%	8%	11%	17%	-15%	167%	-28%
Ratio: ZKO/ PD A1 (Art. 12)	0.41	0.99	1.26	1.39	1.63	6.59	5.77	2.52	3.75

Source : Austrian Financial Police (De Wispelaere, De Smedt, & Pacolet, 2020 ; 2021a)

* A technical error in 2017 likely resulted in many forms being submitted several times

4.1.2 Number of unique posted workers to Austria

Turning to the **number of unique posted workers to Austria**, a comparative report based on the ZKO data estimates this number to be 395,322 for 2019 (De Wispelaere, De Smedt, & Pacolet, 2021, p. 44). However, this number may be an overestimate, because the estimated total includes a very large share (79%)

of transport workers. Excluding transport, De Wispelaere, De Smedt, & Pacolet (2021b, p. 18) estimate the number of individuals posted to Austria at least once in 2019 to be 85,697. As described above, it seems likely that ZKO3T forms to notify postings in the transport sector include the names of more people than are being posted. Hence, we use the number of unique posted workers outside the transport sector to estimate a lower boundary. Accordingly, we conclude that in **2019 at least 85,697 individuals were posted to Austria at least once.**

4.1.3 Incoming postings in relation to the Austrian economy

To gauge the extent of postings to Austria, it is useful to put it in relation to the country's economy. This can be done by comparing the number of unique posted workers and posted workers in FTE to the Austrian labour force. With respect to the first approach, we use the estimate of 85,697 unique posted workers for the year 2019. In the same year, about 4,280,300 persons were employed or self-employed in Austria (Statistik Austria, 2021). Accordingly, in that year the **share of incoming postings in total employment** amounted to **2.0%.**

However, since not all unique posted workers spend the entire year working in Austria, a more accurate estimate of incoming postings in relation to the Austrian economy can be derived by calculating the number of **full-time equivalents** and putting this number in relation to the number of hours worked by individuals employed in Austria. We use data from ZKO forms to assess the total number of working days of the collective of all posted workers in the non-transport sectors. In this way, we can calculate the number of full-time equivalents, i.e., how many posted workers would work throughout the year, if all postings were added together. For that we assume that all posted workers work on a full-time basis. We find that postings to Austria outside the transport sector amounted to **41,462 full-time equivalents in 2019** compared to the total full-year and full-time work equivalent in Austria of 2,441,575. In other words, the full-time equivalent of workers posted to Austria was **1.7% of the full-time equivalent of the Austrian labour force.**

4.1.4 Outgoing postings

For the examination of postings from the **sending perspective**, only information from PD A1 forms (Article 12 and 13) is available for Austria. As shown in Table 3, the number of postings from Austria has increased significantly from 40,038 in 2012 to 197,627 in 2019. Notable is also a strong increase in the number of postings to two or more countries (Article 13) in recent years from 8,137 in 2015 to 97,516 in 2019. The share of workers posted from Austria in the total Austrian working population increased from 1.0% in 2012 to 4.6% in 2019 (Statistik Austria, 2021; De Wispelaere & Pacolet, 2020; 2019; 2018).

Table 3: PD A1 forms issued by Austrian authorities

	2011	2012	2013	2014	2015	2016	2017	2018	2019
Art. 12	28,806	35,671	36,959	41,114	55,532	62,526	50,303	88,117	98,965
% change prev. year		24%	4%	11%	35%	13%	-20%	75%	12%
Art. 13	n.d.	3,606	4,258	6,392	8,137	11,624	17,810	20,973	97,516
% change prev. year			18%	50%	27%	43%	53%	18%	365%
Total	n.d.	40,038	42,171	48,815	64,373	75,132	68,956	110,687	197,627
% change prev. year			5%	16%	32%	17%	-8%	61%	79%

This development shows the increasing importance of posting for Austria, also from a sending country perspective. Despite the strong growth in the number of outgoing postings, in 2019 the number of PD A1 forms issued for workers posted to Austria issued according to Article 12 still exceeded the total number (Article 12 and 13 combined) of PD A1 forms issued by Austria by 122,853, i.e., by 62%. In other words, Austria continues to be a predominantly sending country.

4.2 Characteristics of posting to Austria

After discussing the concepts and methods to measure the scope of posting, we now turn to the characteristics of posting to Austria. More specifically, this section provides an overview on the duration of postings, seasonal effects in the number of postings, differences across economic sectors, and the extent of the posting of individuals from third countries.

4.2.1 The duration of services provided

There are **different estimates** regarding the **average duration of services** provided by workers posted to Austria. According to calculations by the Austrian Ministry of Finance based on information from ZKO forms, postings in 2019 were notified for 154 days on average (De Wispelaere, De Smedt, & Pacolet, 2021, p. 26). About 13% of all postings were notified for less than a week. Only very few, namely 5% of postings notified, indicated a duration of more than one week, but less than one month. About a quarter of postings notified (23.1%) indicated a duration between one and six months and 57% between six and twelve months. As described above, the postings of mobile workers in the transport industry are always notified for six months (182 to 185 days). Hence, most postings indicating a duration of around six months can be assumed to be postings in the transport sector notified through ZKO 3T forms. Less than 2% of all postings in 2019 lasted for more than 18 months (Table 4). However, there may be some errors associated with postings over 18 months, because in some cases these postings notify periods exceeding the legal limit of 2 years. In short, they may include cases of individuals mistakenly entering the wrong period into the ZKO online form.

Table 4: Average duration of postings to Austria in 2019 (including the transport sector)

Duration	Share of postings
Less than 8 days	13.3%
Between 8 days and 1 month	4.7%
Between 1 month and 6 months	23.1%
Between 6 months and 12 months	57.1%
Between 12 months and 18 months	0.6%
Longer than 18 months	1.1%

Source: (De Wispelaere, De Smedt, & Pacolet, 2021)

A different analysis carried out by the research firm L&R estimates the average duration of postings to be much shorter. For the year 2016 and 2017, their analysis estimates postings to last on average 100 days. For 2018, their analysis estimates an average duration of 91 days (Riesenfelder & Reichert, 2021).

Again, it would be interesting to differentiate between postings in the transport sector and other postings. We have repeated the analysis with the ZKO microdata provided by the Financial Police, taking into account those postings that took place in 2019 and excluding cases indicating a duration of more than 24 months, assuming that these cases are erroneous. In addition, there are numerous misreportings where the year of

termination of the posting was incorrectly dated. Those cases would distort the average significantly upwards and are, therefore, excluded as well. From our analysis, we conclude that on average the duration of a posting in 2019 was 156 days. As already mentioned, this figure is largely determined by postings in the transport sector, whose prior notification always has a validity of about six months (182 to 185 days). The duration of postings notified via ZKO3 and ZKO4 forms varies between one day and two years. The average duration of a posting outside the transport sector is 67 days. Postings notified through **ZKO3** forms last on average **54 days**, while postings notified through **ZKO4** forms last **163 days**.

The duration of a posting varies considerably between individuals. As stated above, postings notified through ZKO3 forms are in general short. A quarter of postings have a duration of one day, and more than half of all postings last for a week or less. 70% of all postings have a duration of one month or less, and only 3% exceed one year. ZKO4 postings are longer with a third of them having a duration of one month or less. Most postings notified through ZKO4 forms last between one month and one year, and only 8% last longer than a year. Except for the transport sector, the construction sector is the only sector that can be analysed individually. We find that, on average, posting in **construction lasted for 104 days in 2019**. About 10% of postings have a duration of one day and 30% a duration of a week or less. Only 6% lasted longer than one year.

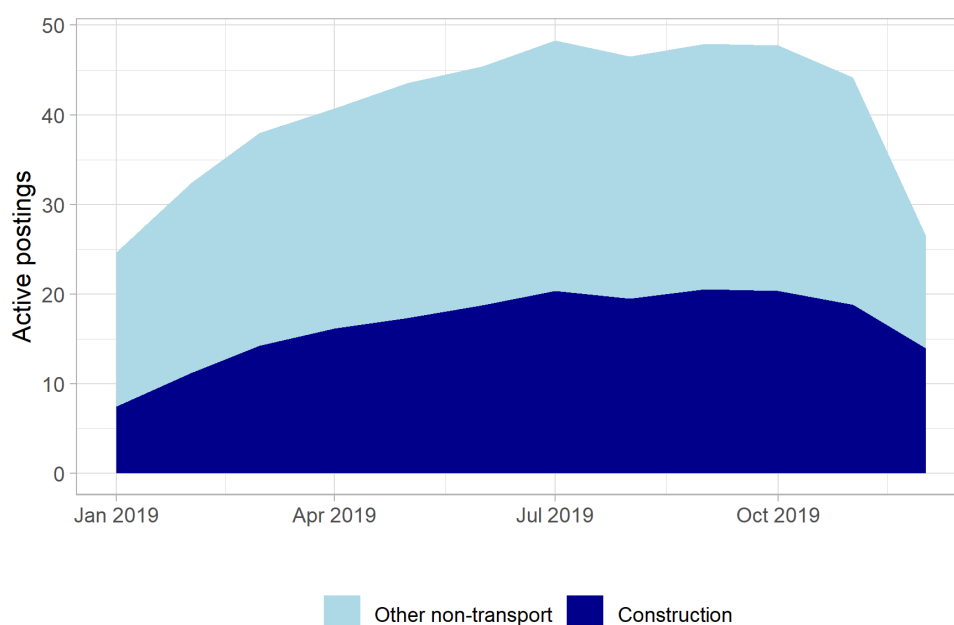
4.2.2 Seasonal effects and differences in postings throughout the year

In this section we discuss the number of postings throughout the year. For this question it is important to distinguish between the date of notification and the time a posted worker actually works abroad. We base our analysis on ZKO microdata. We distinguish between the **date of notification** and the **starting date of a posting**.

For postings notified via ZKO3 and ZKO4 forms, we find that the number of postings fluctuates only moderately. In 2019, the highest number of postings was notified and started in January, namely 22,951 and 24,689 respectively. The second highest value was recorded in July, also with more than 20,000 postings. At the end of the year, in December, the fewest posted workers were registered (13,631) and posted (12,354). Postings in the **construction sector** follow the same seasonal pattern. The duration of the postings is also longest in January and becomes shorter towards the end of the year.

In the transport sector, there is no clear pattern regarding the month of notification. However, when looking at the starting date of postings, we find that the highest numbers are recorded in January and July. The difference to other months is considerable: In January 2019, 84,140 workers were posted to Austria. In July the number was 81,022. The number of posted workers who started their work in the other months of the year was generally less than half that number. This can be interpreted as a further indication that postings in the transport sector are notified pro forma at regular intervals for many workers. Unfortunately, it is not possible to read from the data in which months workers carry out assignments in Austria.

Figure 2: Cumulative number of active postings by month in 2019



For a deeper understanding of the seasonal effects of posting, we also look at the **number of active postings** per month. For example, if a worker is posted from January to August, this posting is active for the first eight months of the year. Figure 2 shows the number of active postings in 2019 based on ZKO3 and ZKO4 forms. The fewest workers work in Austria in the winter months, especially in January and December. The numbers are **highest in summer and autumn with the maximum in July**. The pattern in the construction sector is similar to that in other non-transport sectors.

4.2.3 Postings to and from Austria in different economic sectors

Another interesting question relates to variation in postings across sectors. It would be interesting to further investigate the number and conditions of postings to sectors that receive less attention in the public debate like the live performance, healthcare, or research and technology sectors or to zoom in in more detail on subsectors of the labour-intensive sectors like construction.

Unfortunately, there is little data available on **posting to Austria** by sector. While the prior notification forms (ZKO forms) ask for information on the sector of activity of posted workers, this information is provided in a form that makes it very difficult to process. The ZKO forms do not provide standardised classifications, but instead applicants freely describe the activity they intend to pursue, often in their native language. Hence, classifying each posting according to a standardised system like NACE would be very time consuming and is practically not possible.

There are only two sectors that are reported individually: the construction sector and, since 2017, the transport sector. Figures on the **construction sector** are to be interpreted with caution, however, as there is a financial incentive for companies in the construction sector to declare posting in a different sector. The reason is that national regulations foresee a supplementary insurance for construction workers, the so-called Construction Workers' Annual Leave and Severance Pay Fund (Bauarbeiter Urlaubs- und Abfertigungskasse BUAK). The insurance contribution must also be paid for posted workers, which is why some firms do not

declare that they work in the construction sector. Nevertheless, careful estimates on the postings to the Austrian construction sector can be gathered from the prior notification forms.¹²

In 2019, 83,634 postings in the **construction sector** were recorded by prior notifications. The share of postings in the construction sector out of all **postings** is 8% (28% in all postings excluding the transport sector based on ZKO3 and ZKO4 forms). The number of **unique posted workers** in the construction sector was **20,717**, which represents 3% of the total number of unique posted workers. When we exclude the transport sector from total postings, the share of unique posted workers in construction increases to 18%.

The number of **full-time equivalents** in construction in 2019 was **18,441**, which represents 44.5% of the total 41,462 full-time equivalents of posted work to Austria in the same year (excluding transport). In other words, the construction sector accounts for a much larger share of the total amount of work hours by construction workers posted to Austria than the number of postings alone would suggest.

The number of **posted workers** at a given point in time was **16,561**. For comparison, in the same year 309,440 people were employed in the Austrian construction sector. In other words, in 2019 the number of construction workers posted to Austria was equivalent to **5.2%** of all people working in the Austrian construction sector.

Postings in the **transport sector** account for about three-fourths of all postings to Austria in 2019. There were 793,258 postings recorded in the transport sector in 2019. Due to the long validity of prior notifications, this figure also includes all postings that started after June 2018. The number of ZKO3T notifications in 2019 was 567,789. Because of the change in data collection in 2017, this figure can only be compared with the data from the previous year. In 2018, the number of notifications was 459,224, which corresponds to an increase of 23.6% between 2018 and 2019. The number of unique posted workers that had a valid prior notification in 2019 was 314,745, i.e., 79% of all posted workers. Due to the different characteristics of prior notifications, it is useful to always discuss postings based on ZKO data within and outside the transport sector separately.

Looking at **postings from Austria** to other countries (Table 5), we can see that in 2019 most postings – 71.1% of all PD A1 forms issued under Article 12 – occurred in industry (71.1%), about half of which in construction (35%). Other important sectors include wholesale and retail trade services (14.3%) and education, health and social work, arts, and other services (7.3%). For PD A1 forms issued by Austrian authorities under Article 13, data on the sector of activity is missing in most cases (71.8%). Most forms for which this information is available were issued in the sectors of industry (12.8%) and education, health and social work, arts, and other services (7.0%).

A comparison of postings to and from Austria by economic sector based on the available data shows two interesting results. Firstly, the **Austrian construction sector** is an **important destination as well as source of posted workers**. Secondly, the opposite holds true for the Austrian transport sector. Whereas three fourths of all prior notifications in 2019 for postings to Austria were made for the transport sector, this sector plays hardly any role from a sending perspective. Only 1% of PD A1 forms under Article 12 and 3.7% of PD A1 forms under Article 13 issued by Austrian authorities were for postings in this sector. In

¹² BUAK also collects data on the number of unique posted workers in the construction sector paying BUAK contributions. For 2019, BUAK counted 11,591 individuals. However, there are bilateral agreements with Germany, France, and Italy that exempt workers from these insurance payments, as these countries have a comparable insurance scheme to protect workers (BUAK interview). 5,419 workers from Germany and Italy were exempt from social insurance payments to BUAK, which adds up to a total number of 17,010 workers in the construction sector. The figures do not only include posted workers for whom a ZKO3 or ZKO4 form indicating the sector "construction" was filed, but also workers identified during construction site inspections and using information from the construction sites database. However, given that not all workers posted in the construction sector pay BUAK contributions, we focus on the more comprehensive data available from ZKO forms instead.

short, there is a **significant number of postings to Austria in the transport sector**, but **only a small number of Austrian transport workers are posted to other countries**.

Table 5: Share of PD A1 forms issued from Austria by Article and sector of activity (2019)

Sector of activity (NACE)		Art. 12	Art. 13
Agriculture, hunting and fishing NACE A		0.7%	0.0%
Industry NACE B to F		71.1%	12.8%
Of which – Construction NACE F		35.0%	1.9%
Services NACE G to T Industry		28.2%	15.4%
Of which	Wholesale and retail trade NACE G	14.3%	2.6%
	Accommodation and food service activities NACE I	3.5%	1.4%
	Transportation and storage; information and communication NACE H and J	1.0%	3.7%
	of which – Freight transport by road NACE H – Group 49.4	0.0%	1.2%
	Financial and insurance; real estate; professional; scientific and technical activities; administrative and support service activities NACE K.L. M and N	2.0%	1.0%
	of which – Temporary employment agency NACE N – Group 78.2	0.3%	0.2%
	Education, health and social work, arts and other services NACE P. Q. R and S	7.3%	7.0%
	of which – Human health and social work activities NACE Q	0.1%	0.1%
No information		0%	71.8%

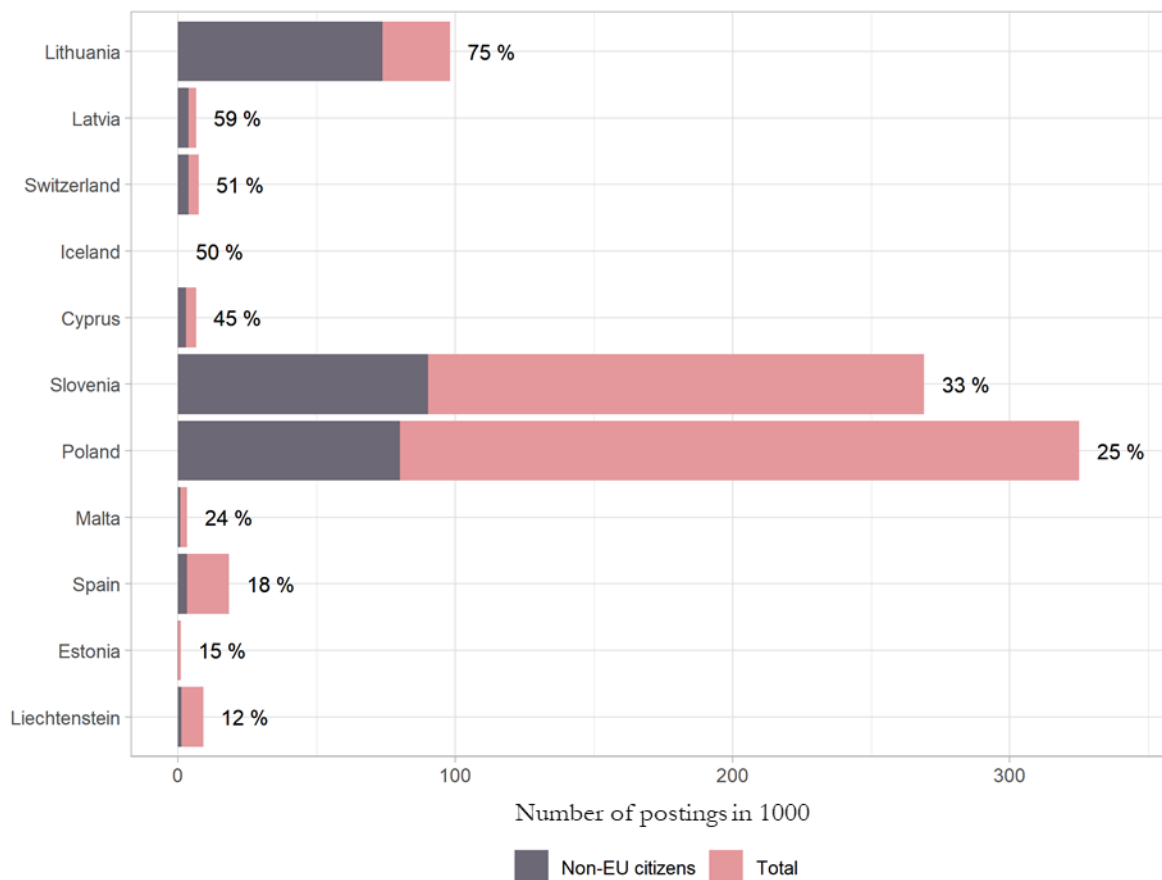
Source: (De Wispelaere, De Smedt, & Pacolet, 2020)

4.2.4 What is the extent of workers from outside the EU who have valid work and residence permits in one Member State posted to other Member States?

The majority of individuals posted to Austria have the citizenship of the country they are posted from. For example, most individuals posted to Austria were citizens of Poland (24.9%) and Germany (18.7%), Hungary (9.7%), Romania (7.9%), Slovenia (6.4%) and the Slovak Republic (5.8%), which are also the countries from where most postings originated.

Furthermore, most individuals (78%) posted to Austria in 2019 had the citizenship of an EU country. Conversely, about one fifth of workers posted to Austria are citizens of a non-EU country. Figure 3 shows the share of non-EU citizens among all posted workers by sending country in 2019. The countries with the highest total number of postings of third-country nationals to Austria are Lithuania, Slovenia, and Poland. Latvia, Switzerland, Iceland, and Cyprus also have a high share of non-EU nationals among their workers posted to Austria, but the total number of postings from these countries is comparatively small.

Figure 3: Non-EU citizens among posted workers by sending country (2019)



The majority (95%) of non-EU/non-EFTA individuals posted to Austria were citizens of another European country, mostly Ukrainian, Bosnian, Belarusian or Serbian. Previous research showed that third country nationals that are posted often come from countries that are geographically close to or have historical ties with the sending country. Postings from Lithuania often involve Ukrainian citizens. Workers posted from Poland are often citizens of Ukraine and Belarus (Danaj, Geyer, Krilić, & Toplak, 2020; Kall, Brzozowska, Lillie, Matuszczyk, & Salamońska, 2020). Third country nationals posted to Austria from Slovenia are often Bosnian or Serbian (Danaj, Geyer, Krilić, & Toplak, 2020). Other countries – notably Latvia, Switzerland, Iceland, and Cyprus – also counted a large share of third country nationals among their workers posted to Austria in 2019. However, the total number of postings from these three countries was comparatively small.

A differentiation between ZKO3T forms and postings outside the transport sector reveals interesting patterns. In the non-transport sector, mostly EU citizens are posted (94%). In the construction sector the share of EU citizens is 88%. Among third country nationals, Bosnians, Turks, Serbs, and Kosovars are posted to Austria most frequently. On the contrary, the share of postings in the transport sector involving EU citizens is a bit lower at 71%. Of the 29% of postings of third country nationals, almost two thirds are Ukrainians and another 12% Belarusians.

4.3 What is the correlation with the export and import of services?

Workers are posted to provide services across borders. Therefore, there should be a positive correlation between the extent of posting to Austria and the value of services Austria imports from countries that post workers.

Data provided by Eurostat¹³ shows that this is indeed the case: the value of imports of services from EEA countries to Austria is positively correlated with the number of incoming postings. When measuring postings by the number of issued PD A1 forms, the Pearson correlation coefficient is **0.79**. For the number of postings counted through ZKO forms, the coefficient is even higher with **0.87**.

The data on imports can be disaggregated by sectors and compared to the number of postings in the two sectors for which disaggregated posting data are available: transport and construction. Regarding **transport**, the data shows a steady increase in the value of imported services between 2012 and 2019. The increase in imported services was particularly strong for the subsector of road transport (See Table 6). As expected, the **correlation** between **services imported in road transport** and the **number of postings** notified through ZKO3T forms is **very high with 0.99**. However, it is important to note that the ZKO3T data only cover a period of three years (2017-2019). With respect to the **construction** sector, the picture is very different. Here, the value of imported services fluctuated between 2012 and 2019 without significantly increasing. In contrast, the number of postings notified for the construction sector nearly doubled during the same period. Correspondingly, the correlation coefficient for the construction sector is **negative with a value of -0.42**.

The negative correlation between the number of incoming postings in construction and the value of imported construction services is surprising, because it suggests an increase in the number of incoming workers while the total value of services provided by these remained constant. One possible explanation could be that there has been a change in the value of services provided by posted workers. For example, it could be that there has been a shift from more specialised construction workers with higher pay to less specialised workers with lower pay. In any case, however, the correlation between the import of services and the work provided by incoming posted workers warrants more research.

Table 6: Import of services to Austria from EEA countries in mio. Euro

	Total (S)	Transport (SC)	Road transport (SC3C)	Construction (SE)	Construction in the reporting economy (SE2)
2012	28,059	8,551	4,519	631	367
2013	31,637	9,389	5,508	664	423
2014	34,666	10,084	5,837	692	430
2015	35,941	10,398	6,324	685	433
2016	37,656	10,858	6,931	580	377
2017	41,168	11,822	7,530	616	387
2018	45,192	12,440	8,056	627	387
2019	48,693	13,165	8,493	675	400

Source: Eurostat [bop_its6_det]

¹³ [bop_its6_det]

4.4 Chapter summary

This chapter showed that there are different ways to estimate the extent of postings to Austria as well as different data sources to use for this process. The most common way of estimating the number and extent of postings is to use information contained in the PD A1 forms issued by social security organisations in the sending countries and the prior notification forms collected by the Austrian Financial Police. However, it is important to note that both forms do not count postings as such. The available data, therefore, only allow for estimates of the actual number of individuals crossing borders within the European Union to provide services.

Regarding the number of postings, we rely on the number of PD A1 forms issued as a lower boundary estimate. Accordingly, we estimate the **number of postings** to Austria in 2019 to have been at least **320,480**. The number of **unique posted workers** in the same period was estimated to be between **85,697 and 320,480**. Regarding the volume of work provided, we estimate the number of workers posted to Austria in 2019 in **full-time equivalents** to be **41,462**. This represents about 1.7% of the work carried out by individuals living in Austria during the same period. In 2019, the number of construction workers posted to Austria was equivalent to 5.2% of all people working in the Austrian construction sector.

The data also show an increase in the number of postings from Austria from 2011 to 2019. The number of **postings from Austria** has increased significantly between 2017 and 2019 but remains below the number of incoming postings. The number of postings from Austria has increased significantly to 197,627 in 2019 but remains below the number of incoming postings. Hence, **Austria remains a predominantly receiving country**.

Our data show **seasonal effects**. The number of active postings changes throughout the year peaking between July and October and reaching its lowest during the winter months.

The available data do not allow for an analysis differentiating incoming postings between **economic sectors** in detail. The only sectors for which separate information is available are construction and transport. Postings in **construction** accounted for **28% of postings to Austria in 2019 excluding transport**. Posting notifications in the **transport sector** accounted for **three fourths** of all postings to Austria. However, information on the latter is of debatable quality, because prior notifications for transport sector postings are submitted *en bulk* and likely overestimate the true number of postings. As far as outgoing postings are concerned, industry and construction were the dominant sectors. Postings from Austria in the transport sector, in contrast, play only a marginal role.

Most individuals posted to Austria are EU-citizens. About one fifth of workers posted to Austria are citizens of non-EU countries, mostly of countries in Eastern Europe (Ukraine, Bosnia and Herzegovina, Serbia, Belarus).

In sum, the available data show postings to and from Austria occur at large and increasing numbers. However, additional data are necessary to estimate the scope of posting more accurately and comprehensively and to better measure its impact on the Austrian economy. Specifically, data on whether postings notified indeed occur would be helpful as would be information on the value of services provided by posted workers (e.g., their hourly wage). A more accurate reporting of all sectors of activity where posted workers to Austria operate in would also be useful.

5. Legal violations related to postings to Austria

Legal violations – primarily wage and social dumping – related to incoming postings are a significant concern in Austria. Data for the first three quarters of 2020 shows that Austria used the European Union’s Internal Market Information System (IMI) more than any other country to request information on posting EU companies potentially violating national regulation on posting. During this period, Austria executed a total of 2,394 posting information exchanges¹⁴, more than all other EU countries combined (1,673). Using the same indicator, infringements related to postings from Austria appear to be more limited, as Austrian authorities received only 10 requests for information and one communication of irregularities during the same period.¹⁵ Therefore, this chapter will focus on fraudulent postings to Austria (receiving country perspective).

The primary concerns in Austria related to postings are wage and social dumping, and the working conditions and protection of posted workers (Schmatz & Wetzel, 2014; Gagawczuk, 2019; Danaj, Hollan, & Scoppetta, 2020; Krings, 2019). Wage dumping and social dumping occur when the employment costs of posted workers are lower than the employment costs of domestic workers and companies in Austria replace domestic for posted workers to save costs. Employment costs can differ, because of differences in the wages (wage dumping) and non-wage costs like social insurance contributions (social dumping). Wage and social dumping create downward pressures on wages and social standards in the receiving country.

The chapter relies primarily on quantitative data on inspections of companies and violations of the Austrian Law Against Wage and Social Dumping (LSD-BG) collected by the Austrian Financial Police, the Construction Workers Annual Leave and Severance Pay Fund (BUAK) and the Competence Centre Wage and Social Dumping (LSDB Competence Centre). In addition, secondary literature is used where no such data are available. The analysis shows that several violations of existing laws are relatively common in postings to Austria. Specifically, posted workers are much more likely to be paid less to what they are legally entitled than Austrian workers. This practice appears to be most widespread in the construction and transport industry. Other forms of legal violations include social dumping and non-compliance by posting companies with occupational health and safety (OSH) regulations. The data also show that, at least among the inspected companies, a significant share of postings is not notified in advance.

The chapter is structured in the following way. The first section describes the legal framework and the institutions regulating posting as well as the data collected by them. The second section describes the types and scale of fraudulent posting to Austria with a focus on the underpayment of posted workers, social dumping, and the non-notification of postings. Section 3 compares the incidence of fraudulent postings across economic sectors. Section 4 compares posting undertakings with domestic companies with regards to the underpayment of workers. Section 5 summarises the main findings. Section 6 provides tables with additional data.

¹⁴ Posting information exchanges include information requests, requests to send documents, requests to recover a penalty or fine, notifications of decisions, the communication of irregularities and urgent requests.

¹⁵ European Commission Internal Market Information System (IMI) https://ec.europa.eu/internal_market/imi-net/statistics/2020/10/posting-of-workers/index_en.htm

5.1 Anti-dumping in Austria: regulatory framework, institutions, and data

In 2011, Austria passed the Law Against Wage and Social Dumping (LSD-BG)¹⁶ which set up the regulatory framework to detect and prevent wage and social dumping. Three organisations are involved in enforcing the law (Haidinger, 2018):

- The **Financial Police** that receive the Prior Notification forms and carries out inspections to control posted workers' documents, wages, and social insurance status.
- The Construction Workers Annual Leave and Severance Pay Fund (**BUAK**) that inspects companies in the construction sector. BUAK inspectors control whether posted workers and their employers have the required documentation and are paid the correct wages.
- The Competence Centre for Combating Wage and Social Dumping (**LSDB Competence Centre**) validates charges against posting companies brought by BUAK and the Financial Police. In addition, the Competence Centre operates a database (*Zentrale Strafevidenz*) on charges brought and decisions taken based on the Law Against Wage and Social Dumping (see Box 2). The Competence Centre is situated at the Austrian public health insurance providers.

In addition, the Labour Inspectorate controls compliance with occupational health and safety (OSH) standards and working time regulations (Haidinger, 2018). The data collected by the Financial Police, BUAK and the LSDB Competence Centre only provide insights into fraudulent posting to Austria (receiving country perspective). Additional insights into fraud related to posting to Austria and posting from Austria (sending country perspective) can be gained from the use of the IMI system.

Box 2. Data collected by the LSDB Competence Centre

The LSDB Competence Centre collects data on **complaints, i.e., the formal charging of a company for committing legal violations**, brought by individuals and public authorities against companies for a violation of the Law Against Wage and Social Dumping as well as on **decisions and final decisions** taken against companies for violations of this law. Complaints can be brought by the Financial Police, the BUAK, the Gesundheitskassen [public health insurance companies], and private parties. Decisions on violations are taken by local authorities (*Bezirksverwaltungsbehörde*). Decisions become final when they are not appealed within a given period of time. The data on complaints, decisions and final decisions recorded by the LSDB Competence Centre include information on

- the type of infringement (the paragraph of the LSD-BG that was violated),
- the involved authority (e.g., BUAK, Health Insurance),
- location (federal province),
- economy sector of the involved company,
- country of origin of the involved company,
- the number of employees involved,
- the amount of the fine demanded by the prosecution and
- the amount of the fine imposed.

The **types of infringements** covered are underpayment of employees, non-provision of required documents, non-disclosure of required documents and obstructing an inspection by the Financial Police. In addition, companies violating the Law Against Wage and Social Dumping can be banned from providing services in Austria for a specific period of time. The database by the LSDB Competence Centre includes information on cases in which companies were banned as well as on cases in which companies violated the ban to provide services.

The LSDB database is **not fully exhaustive**; it does not cover all proceedings following infringements of the Law Against Wage and Social Dumping. Most importantly, the database does not include data on complaints brought by the Financial Police and by private individuals. Data on decisions and final decisions, too, are missing in some instances. Data on decisions and final decisions must be provided to the LSDB Competence Centre by the involved local authorities (*Bezirksverwaltungsbehörden*). However, some decisions are communicated to the Competence Centre only after significant delays or not at all.

Data on complaints and decisions are **not linked and may not match**: one complaint can result in several decisions (e.g., several people on one construction site are charged in a single complaint but sentenced individually) and several complaints can lead to a single decision (e.g., several inspections of the same company lead to four complaints which are decided in a single decision).

¹⁶ Lohn- und Sozialdumping-Bekämpfungsgesetz (LSD-BG)

5.2 Types of legal violations related to posting to Austria

Legal violations related to postings to Austria can occur in several areas. This section provides information on the following five areas: the underpayment of posted workers; social dumping and fake postings; exposure of posted workers to dangerous working conditions; postings not correctly notified; and other forms of fraud and legal violations related to postings to Austria.

5.2.1 Underpayment of posted workers

Posted workers are entitled to the same statutory and collectively negotiated minimum wages as domestic workers. However, in practice, posted workers often receive less than that (Schmatz & Wetzel, 2014; Danaj, Geyer, Krilić, & Toplak, 2020; Haidinger, 2018; Krings, 2019). In some cases, posted workers are paid less than the hourly wage they are entitled too. More often, however, employers use “creative” tactics to reduce the effective wage paid. This includes not paying holiday or sick pay, paying part-time wages for full-time work, or wrongly classifying skilled work as unskilled to apply a lower pay grade within Austria’s system of collectively negotiated wages (Schmatz & Wetzel, 2014; Krings, 2019). Another strategy is paying posted workers the full wage they are entitled too, but then subtracting substantial fees, for example for accommodation (Schmatz & Wetzel, 2014). The problem of underpayment is directly related to the problem of **wage dumping**: By being able to underpay posted workers, posting companies gain a price advantage over Austrian firms. This creates downward pressure on Austrian wages because domestic workers become less competitive (Gagawczuk, 2019).

While there are several reports on the underpayment of posted workers, the true extent is unknown. In the absence of data on each instance of underpayment, we suggest that the lower and upper boundary of the scale of underpayment of workers can be estimated based on data collected by the Austrian Financial Police, BUAk and the LSDB Competence Centre.

An estimate for the **lower boundary** can be gained from the share of posted workers found to be underpaid. There cannot be fewer people underpaid than those who were indeed found by court to have been paid less than they were entitled to. Table 7 shows the number of companies and posted workers in final decisions (*Rechtskräftige Entscheidungen*) on underpayment as reported to the LSDB Competence Centre. For example, in 2019, 303 companies were served with financial penalties for underpaying workers in cases including 796 workers. This number accounts for 0.9% of the number of 85,697 individuals posted at least once to Austria during that year (unique posted workers). Put differently, it can be estimated that **at least 0.9% of all individuals posted to Austria were underpaid in 2019**.

Table 7: Number of foreign companies and workers in final decision on underpayment (LSDB Data)

	2011-2016	2017	2018	2019	2020	2021 (Jan-Feb)	Total
Number of companies involved	566	108	208	303	344	67	1,596
Number of workers involved	1,437	704	660	796	1,058	233	4,888

Annual sum of final decisions to impose penalties based on § 7i Abs. 3 AVRAG (idF BGBl. I Nr. 24/2011), § 7i Abs. 5 AVRAG (idF BGBl. I Nr. 94/2014), § 7i Abs. 6 AVRAG (idF BGBl. I Nr. 94/2014), § 29 Abs. 1 LSD-BG (idF BGBl. I Nr. 44/2016) or § 29 Abs. 3 LSD-BG (idF BGBl. I Nr. 44/2016).

Source decisions on underpayment: LSDB Competence Centre

The true number of underpaid posted workers, however, is likely much higher. First of all, not all cases of underpayment are detected and reported. Posted workers are often not aware of the level of the wage they are entitled to, and the enforcement agencies tasked with detecting underpayment have complained about

a lack of staff (Haidinger, 2018). In addition, not all detected cases of underpayment lead to charges and even fewer result in convictions. Employers can prevent criminal charges if the underpaid amount is small¹⁷ and they reimburse their workers within a set period (§ 29 (3) and (4) LSD-BG). Furthermore, companies may obstruct inspections or withhold documents proving underpayment, like wage records, because the fines for not providing such documents are less severe than the penalties for underpaying workers. In other words, companies may prevent inspections based on economic calculations (Danaj & Kahlert, 2021). Data collected by the LSDB-Competence Centre (Table 8) show that since 2011, companies were fined for obstructing inspections in 1285 cases involving 4368 workers. During the same period, companies were fined in 3260 cases involving 8064 workers for not providing wage documentation (e.g., payroll) to inspectors. Based on the research by Kahlert and Danaj (2021), it should be assumed that at least some of these cases represent successful attempts by firms to cover up their underpayment of posted workers. Finally, it must be assumed that a number of final decisions are simply not reported to the LSDB Competence Centre.

Table 8: Obstruction of inspections

	2011-2016	2017	2018	2019	2020	2021 (Jan-Feb)	Total (2011- 2021)
Final decision against foreign companies for obstructing inspections							
Number of decisions	256	191	176	276	307	79	1,285
Number of workers involved	636	779	658	870	1,174	251	4,368
Final decision against foreign companies for not providing wage documentation							
Number of decisions	1,230	410	381	539	596	104	3,260
Number of workers involved	1,385	1,928	1,315	1,308	1,901	227	8,064

Annual sum of final decisions to impose penalties for obstruction based on § 7i Abs. 1 AVRAG (idF BGBl. I Nr. 24/2011), § 7i Abs. 1 AVRAG (idF BGBl. I Nr. 94/2014), § 7i Abs. 2 AVRAG (idF BGBl. I Nr. 94/2014), § 7i Abs. 2a AVRAG (idF BGBl. I Nr. 94/2014), § 7i Abs. 3 AVRAG (idF BGBl. I Nr. 94/2014), § 27 Abs. 1 LSD-BG (idF BGBl. I Nr. 44/2016), § 27 Abs. 2 LSD-BG (idF BGBl. I Nr. 44/2016), § 27 Abs. 3 LSD-BG (idF BGBl. I Nr. 44/2016), and § 27 Abs. 4 LSD-BG (idF BGBl. I Nr. 44/2016); for not providing wage documentation based on § 7i Abs. 2 AVRAG (idF BGBl. I Nr. 24/2011), § 7i Abs. 4 AVRAG (idF BGBl. I Nr. 94/2014), § 28 Z 1 LSD-BG (idF BGBl. I Nr. 44/2016), § 28 Z 2 LSD-BG (idF BGBl. I Nr. 44/2016) and § 28 Z 3 LSD-BG (idF BGBl. I Nr. 44/2016).

Source: LSDB Competence Centre

To arrive at a more accurate understanding of the number and share of underpaid posted workers, we, thus, also estimate the **upper boundary**. This estimate is based on the share of inspected companies that are suspected of underpaying their workers and the share of posted workers suspected of being underpaid. These numbers can serve as an upper boundary, because inspections are not carried out randomly. Instead, inspections are conducted strategically based on the inspecting authority's belief on which industries and companies are most likely to violate the law against wage and social dumping (Finanzpolizei, 2020). The share of suspected cases within the most suspicious areas and industries can hence be interpreted as an upper boundary. The Financial Police suspected about **one in ten** posted or seconded **individuals** controlled in 2019 to be underpaid (Finanzpolizei, 2020).

¹⁷ Underpayments of less than 10% of the correct wage can be reimbursed by the employer without charge.

The numbers for the construction sector collected by BUAK are even higher: Out of 11,147 foreign construction companies inspected from 2015 to 2020, over one third (38%) were suspected of underpaying their workers. In 12% of cases, BUAK inspectors went further and charged the inspected company with underpaying its workers. This suggests inspectors found enough evidence and/or saw sufficient chances of success to start legal proceedings.

In 2018, nearly every second inspected company (47%) in the construction sector was suspected of some form of underpayment (Table 9). However, it is important to note that the data by BUAK refers to inspected companies, not individuals. The data collected by BUAK and the Financial Police are, therefore, not directly comparable.

Table 9: Inspections and charges for underpayment in the construction sector (BUAK data)

	2015	2016	2017	2018	2019	2020	Total
Foreign companies inspected	1,481	1,632	1,795	2,222	2,134	1,883	11,147
Inspected foreign companies suspected of underpaying	398	698	799	1,034	788	568	4,285
Suspected cases as share of all foreign companies inspected	27%	43%	45%	47%	37%	30%	38%
Foreign companies charged for underpaying workers	91	111	236	260	317	337	1,352
Foreign companies charged as share of companies inspected	6%	7%	13%	12%	15%	18%	12%

Source: BUAK

Taken together, the data on final decisions taken against foreign companies charged with underpaying their workers and the share of posted workers suspected of being underpaid suggests that on average between 0.9% and 10% of posted workers are paid less than what they are entitled to. In the construction sector, the number may be as high as 38% of inspected companies suspected of underpayment. The data presented here does not tell us about the degree of underpayment. In other words, the data does not show whether posted workers are paid 10% or 50% less than what they are entitled too. Nevertheless, it must be concluded that the underpayment of workers posted to Austria is a widespread problem.

A related problem not covered by the data presented is the **non-payment** of outstanding wages to posted workers in the case of **bankruptcy** (Gagawaczuk, 2019). This appears to be a problem especially in the construction sector where the use of letterbox companies is also prevalent. Yet, there are no figures we can present to indicate the scale of the phenomenon at the country or sectoral level.

5.2.2 Social dumping and “fake postings”

Social dumping describes the practice by employers in Austria of replacing domestic workers with posted workers for the sole purpose of paying less social insurance payments (Gagawaczuk, 2019). A particularly egregious form of social dumping is referred to as **fake posting**. The term describes the practice of Austrian companies firing their employees only to re-hire them through a **letterbox** company registered in another EU country with lower social insurance contributions for companies. In the case of Austria, such companies are reportedly located in Slovenia (Danaj, Geyer, Krilić, & Toplak, 2020). The employees continue to work for their former Austrian employer, but are, on paper, now employees of the foreign letterbox company

posted to Austria. This allows the Austrian company to only pay the lower social insurance contributions of the “sending” country.

Fake postings have been described as a problem in several (group) interviews with Austrian stakeholders and policy experts (Haidinger, 2018; Krings, 2019; Danaj, Geyer, Krilić, & Toplak, 2020). However, the true extent of this problem is difficult to estimate. Firstly, the LSDB database and the Financial Police do not record data on the number of “fake postings” detected. Secondly, one major problem is that fake postings are difficult to prove for Austrian enforcement agencies. To show that a posting is indeed a fake posting, the BUAK or the Financial Police must prove that the person supposedly posted to Austria did not reside in the sending country prior to being posted to Austria. For this the Austrian authorities rely on the cooperation of their counterparts in the sending country. However, the cross-border cooperation between enforcement authorities in the field of posting has often been criticised as being insufficient (Gagawczuk, 2019; Haidinger, 2018).

Due to a lack of data, we cannot provide a numerical estimate of the extent of fake posting and social dumping. Most of the literature covering fake postings and social dumping in Austria, however, used evidence from the construction sector (Danaj, Geyer, Krilić, & Toplak, 2020; Krings, 2019). This suggests that, like underpayment, the practice of fake postings is more prevalent in construction than in other industries.

5.2.3 Working conditions of posted workers

Qualitative research shows that workers posted to Austria are often exposed to significant occupational health and safety risks (Danaj, Hollan, & Scoppetta, 2020; Hollan & Danaj, 2018). These risks are a result of several overlapping factors. Firstly, posted workers often work in industries with structurally high OSH-risks such as construction. Secondly, posted workers are often economically dependent on their job and paid by the hour, which creates pressure to work very long hours with high intensity and to disregard working-time regulations. The resulting exhaustion increases the risk of injuries and other negative health effects. In addition, posted workers are sometimes not properly trained in the use of safety equipment. Thirdly, a lack of knowledge of the local language and applicable laws can lead to uncertainty and risky behaviour (see Danaj, Hollan, & Scoppetta, 2020).

We do not have quantitative data on the number of posted workers suffering from inferior working conditions. However, studies indicate that posted workers employed by letterbox companies or by companies at the end of long subcontracting chains seem to be more likely to be exposed to OSH risks (Danaj, Geyer, Krilić, & Toplak, 2020; Danaj, Hollan, & Scoppetta, 2020). Among them, posted workers from third countries – i.e., individuals that do not have the citizenship of a European Union country – are among the most vulnerable. Third country nationals tend to be economically dependent on their jobs and sometimes on their current employer for a work permit for the European market. As such, posted third country nationals are under pressure to accept dangerous working conditions, not report accidents and accept inadequate healthcare services (Danaj, Hollan, & Scoppetta, 2020, p. 126).

5.2.4 Postings not notified in advance and non-/ under-payment of social security contributions

Companies are required to notify postings to Austria in advance. However, they may not always do so, for example, because they want to avoid the bureaucratic process. In other instances, this can be unintentional. For example, some companies may not be familiar with the posting process and may not be aware that

sending workers to Austria to provide a service requires them to submit a ZKO form in advance. In addition, posted workers must carry PD A1 forms issued by the competent authorities in the sending country. PD A1 forms attest that the posted worker (and the posting company) pay social insurance contributions in the sending country and that the posted worker is covered by the sending country's social security system. However, this may not always be the case. Some posting companies may not pay these contributions to save costs.

Like the share of posted workers that are underpaid, the share of postings not notified in advance and the share of posted workers that do not have a valid PD A1 form is unknown. However, under the Law Against Wage and Social Dumping, posted workers must provide valid ZKO and PD A1 forms upon inspection. As such, the Financial Police and the LSDB Competence Centre record the number of complaints against postings not notified in advance and changes to prior notifications not made on time, as well as complaints for not providing valid ZKO and PD A1 forms upon inspections.

As shown in Table 10, between 2017 and 2020, there were 3,415 complaints against companies for the failure to notify a posting or a change in posting in advance. In addition, there were 2,692 complaints for cases in which posted workers failed to present valid prior notification (ZKO) or PD A1 forms upon inspection. The largest share of all complaints (98% between 2017-2021) was reported by the Financial Police. The remaining 2% were reported by BUAK. The third row of Table 10 shows the number of companies inspected by the Financial Police. The fourth and fifth rows divide the number of inspections carried out by the organisation by the number of complaints filed for a failure to notify postings or change to posting in advance and failure to present the required documentation upon inspection.

Table 10: Complaints related to the non-notification of postings (Financial Police & LSDB)

	2017	2018	2019	2020	Total (2017-2020)
Complaints for failure to notify posting or change to posting in advance*	502	1,023	1,093	797	3,415
Complaints for failing to present prior notification documentation or PD A1 form upon inspection**	352	805	895	640	2,692
Number of companies inspected by the financial police	838	1,696	1,776	1,351	5,661
Ratio: Complaints for failure to notify posting/ companies inspected	59%	56%	56%	55%	56%
Ratio: Complaints for failing to present prior notification or PD A1/ companies inspected	42%	47%	48%	44%	46%

*Annual sum of complaints pursuant to § 26 Abs. 1 Z 1 LSD-BG (idF BGBl. I Nr. 44/2016)

**Annual sum of complaints pursuant to § 26 Abs. 1 Z 2 LSD-BG (idF BGBl. I Nr. 44/2016), § 26 Abs. 1 Z 3 LSD-BG (idF BGBl. I Nr. 44/2016) and § 26 Abs. 2 LSD-BG (idF BGBl. I Nr. 44/2016).

Source for complaints: Financial Police, LSDB Competence Centre

The ratios presented in Table 10 show that on average, more than half of inspections carried out by the Financial Police resulted in complaints (charges) for not notifying a posting or a change in posting in advance. In nearly half of all cases, an inspection resulted in a complaint for failing to present at least some of the required documentation (proof of prior notification, PD A1 form).

The presented data must be interpreted with care. As stated above, inspections are likely concentrated on those companies (sectors, activities, geographic areas) the Financial Police assumes most likely to violate the law. Furthermore, a charge of not notifying a posting or carrying the required documentation does not

necessarily mean a company or person committed this violation. Hence, the described ratios should not be extrapolated to the entire population of posting undertakings. In other words, it should not be concluded that 56% of *all* posting undertakings do not notify postings in advance. However, at least among those companies inspected by the Austrian Financial Police, the non-notification of postings and a failure to carry the required documentation appears to be a widespread problem.

5.2.5 Other fraud and legal violations

Another form of wage and social dumping related to posting is **bogus self-employment** (Schmatz & Wetzel, 2014). Bogus self-employment occurs when a worker living in another European Union country pretends to work as a self-employed in Austria, while performing activities that under Austrian law would be classified as the work of employees. The self-employed are generally not covered by collective agreements and have fewer rights than regular employees. In addition, companies do not have to pay social insurance contributions for self-employed contractors as they must for employees in most countries (Riesenfelder & Wetzel, 2012). Falsely declaring workers as self-employed is, therefore, done by companies to reduce employment costs. Cases of bogus self-employment of individuals living in other EU countries have been reported in the construction sector (Riesenfelder & Wetzel, 2012). However, we are not aware of up-to-date data on this form of fraud. Hence, the extent of bogus self-employment among individuals posted to Austria is unknown.

5.3 Are some sectors more confronted with fraudulent postings than others?

Fraud related to posting is more common in some sectors than others. Data collected by BUAK, the LSDB Competence Centre and the Financial Police shows that the sectors most affected in Austria are construction and transport.

In **construction**, the **underpayment** of posted workers is particularly widespread. As described above, the Financial Police suspected about 10% of **inspected** posting undertakings to underpay their workers. For BUAK, which only controls construction companies, this number was nearly four times higher with 38%. Additional data on differences between industries is available from the LSDB Competence Centre. Table 11 below shows the number of complaints for the underpayment of workers by sector. This data must be interpreted carefully, because it covers both domestic and posted workers. The overall picture, however, is clear: about half of all complaints (2,092 out of 4,231) were recorded in construction followed by food and beverage services (376), and transport (242).

As shown in chapter 4, the construction sector accounted for about 44.5% of full-time equivalents posted to Austria in 2019 (excluding transport) but accounted for 52% of complaints for underpayment (excluding transport). This means that the underpayment of posted workers in the construction sector is about 1.8-times more common than in other industries. The quantitative data is further supported by qualitative research. Several studies found evidence that the underpayment of posted workers, the use of letterbox companies and the use of fake postings in Austria is most widespread in the construction sector (Schmatz & Wetzel, 2014; Krings, 2019; Riesenfelder & Wetzel, 2012; Danaj, Geyer, Krilić, & Toplak, 2020).

The number of complaints against posting undertakings for failing to notify postings in advance, i.e., for not having the required ZKO and PD A1 forms, and for not providing payroll documentation is largest in the transport and construction sectors (see Table 1 and Table 12 below). From 2017 to 2021, a total of 2,680 complaints were made by the Austrian Financial Police against posting companies for failure to provide payroll documents. Out of those, 821 (30.1%) were filed against construction companies and 1,402 (52.3%)

against undertakings in the transport sector. During the same period, 3,411 complaints were filed for failure to provide payroll documentation to inspectors. Of those, 1,321 (28.7%) were filed against construction companies and 1,484 (43.5%) against undertakings in the transport sector.

Table 11: Number of complaints against foreign and domestic firms for underpayment by economic sector (LSDB Database excl. complaints by the Financial Police)

NACE 2 Division	Nace 2 Category	2011-2016	2017	2018	2019	2020	2021 (Jan-Feb)	Total (2011-2021)
41	Construction of buildings	501	116	149	283	301	29	1,379
43	Specialised construction activities	394	110	66	78	56	9	713
	Unknown	0	155	131	47	-7	3	473
56	Food and beverage service activities	246	51	43	34	0	2	376
49	Land transport and transport via pipelines	71	20	34	70	39	8	242
47	Retail trade, except of motor vehicles and motorcycles	94	16	13	10	1	1	135
42	Civil engineering	10	2	4	38	55	9	118
81	Services to buildings and landscape activities	67	23	15	9	0	1	115
78	Employment activities	62	7	17	2	1	2	91
46	Wholesale trade, except of motor vehicles and motorcycles	54	14	8	5	1	0	82
55	Accommodation	28	5	4	1	1	0	39
96	Other personal service activities	25	2	2	6	1	0	36
45	Wholesale and retail trade and repair of motor vehicles and motorcycles	22	5	3	3	1	0	34
25	Manufacture of fabricated metal products, except machinery and equipment	19	8	2	3	1	1	34
10	Manufacture of food products	27	3	0	2	2	0	34
01	Crop and animal production, hunting and related service activities	24	3	0	0	3	0	30
71	Architectural and engineering activities; technical testing and analysis	13	5	2	1	1	0	22
68	Real estate activities	12	2	2	2	0	0	18
33	Repair and installation of machinery and equipment	10	2	4	1	1	0	18
82	Office administrative, office support and other business support activities	9	1	4	2	0	0	16
31	Manufacture of furniture	9	4	0	1	1	0	15
52	Warehousing and support activities for transportation	11	2	1	0	1	0	15
53	Postal and courier activities	8	1	2	1	0	0	12
79	Travel agency, tour operator reservation service and related activities	6	1	2	1	1	0	11
85	Education	6	1	3	0	0	0	10
16	Manufacture of wood and of products of wood and cork, except furniture; manufacture of articles of straw and plaiting materials	7	3	0	0	0	0	10
77	Rental and leasing activities	4	1	0	4	1	0	10

Other (categories <10 complaints total)	101	20	11	10	3	1	143
Total	1,840	583	522	614	465	66	4,231

Annual sum of criminal complaints based on § 7i Abs. 3 AVRAG (idF BGBl. I Nr. 24/2011), § 7i Abs. 5 AVRAG (idF BGBl. I Nr. 94/2014), § 7i Abs. 6 AVRAG (idF BGBl. I Nr. 94/2014), § 29 Abs. 1 LSD-BG (idF BGBl. I Nr. 44/2016), and § 29 Abs. 3 LSD-BG (idF BGBl. I Nr. 44/2016).

Source: LSDB Competence Centre

Note: Complaints are often recategorised retroactively. Negative values show that complaints attributed to one country in the past were attributed to a different country during that year.

5.4 Do posting undertakings commit more infringements in percentage terms than domestic companies?

Data collected by the LSDB Competence Centre and BUAk suggests that posting companies indeed commit (significantly) more infringements than domestic companies, at least as far as the underpayment of workers is concerned.

Table 12 shows that **about half** (2,146 out of 4,234) of all criminal complaints for **underpayment** recorded by the LSDB Competence Centre between 2011 and 2021 were directed against companies located outside Austria. The largest number of companies accused of underpaying workers in Austria were based in Slovenia (642), Hungary (406), Slovakia (332), and Poland (206). Only 20% of complaints were directed at companies registered in Austria. For 30% of all complaints for underpayment, the country in which the company was located was unknown.

To compare the complaints brought against domestic and posting companies and to understand whether posting companies commit more infringements, it is important to consider comparing the size of the domestic and the posting economy. As outlined in Chapter 4, this can be done by comparing the number of full-time equivalent workers in both economies. This calculation shows that in 2019, postings outside the transport sector accounted for only 1.7% of the work volume produced by domestic workers. In the same year, one quarter of all criminal complaints for underpayment were made against foreign companies (Table 12). Given the high number of cases in that year for which the country of origin of the company against which the complaint was filed is (yet) unknown, this number is likely to be revised in the future. On the other hand, the exclusion of the transport sector from the calculation means that the true size of the posting economy is likely larger than the calculated 1.7% of the Austrian domestic economy. Nevertheless, if we use the numbers presented here, it suggests that foreign companies are about 14.7-times more likely to be the subject of complaints for underpaying their workers. Thus, it must be concluded that posting companies are significantly more likely to commit infringements of the Austrian law against wage and social dumping than domestic firms.

Data collected by BUAk indicate that in the **construction sector**, the contrast between foreign and domestic firms is even stronger. Since 2011, 84,865 inspections of Austrian construction companies were carried out. In 732 cases out of the 84,865 inspections (0.9%), the inspected company was suspected of underpaying its workers. During the same period, foreign construction companies were inspected by BUAk in 14,898 cases. Out of those, the inspected company was suspected of not paying its workers their full wage in more than one-third (5,409) of the cases. Put differently, in the construction sector posting companies were more than 30 times more likely to be suspected of underpaying workers than companies located in Austria. The number of complaints paint the same picture with 95% of all charges for underpayment brought by BUAk between 2011 and 2021 directed against companies located outside Austria.

It is important to note, however, that **domestic companies** may **benefit from** and in fact **contribute to** the underpayment of posted workers. As Krings (2019) points out, the cross-border subcontracting of

services tends to be characterised by a hierarchical relationship between the domestic and the foreign firms. The stronger position allows the domestic firm to pressure subcontractors to offer cheaper services. The subcontracted firms, in turn, try to reduce employment costs through legal and illegal practices (see also Kahlert and Danaj, 2021; Schmatz & Wetzel, 2014). Thereby, domestic companies profit from the underpayment of workers even without the domestic firm itself violating any laws. The LSD-BG makes Austrian user companies liable as well; however, the data provided do not tell us on the number of Austrian companies that make use of posting against which there has been a posting related complaint, decision, or final decision.

5.5 Chapter summary

This chapter used data provided by Austrian enforcement agencies as well as secondary literature to analyse legal violations related to postings to Austria. The evidence shows that workers posted to Austria are subject to different kinds of exploitation. First and foremost, data collected by Austrian authorities show that about 0.9% of unique posted workers were found to be underpaid, but the true extent of underpayment is likely to be higher, especially in the construction sector. The Financial Police estimates 10% of workers they control to be underpaid while BUAK, which carries out inspections in the construction sector, suspects 38% of inspected companies of underpaying their workers. In addition, other studies have found that posted workers have a higher risk of being exposed to dangerous working conditions than domestic workers. Other forms of fraud and legal violations include fake postings and the use of letterbox companies. This problem has been known for a while. However, more data is required to explore the issue in more detail and to estimate the true extent of fake postings.

The share of postings not notified in advance and the share of posted workers not carrying the required documentation (proof of prior notification, PD A1 form) cannot be determined with certainty. However, among the companies inspected by the Austrian financial police, both violations appear to be widespread. On average, the Financial Police issued 0.56 complaints for non-notification of postings and 0.46 complaints for failure to provide the required documents per inspected company.

A comparison across sectors shows that the underpayment of posted workers is most prevalent in the construction sector. The most complaints against companies for not notifying postings in advance or for not providing the right kind of documents (ZKO and PD A1 forms) upon inspections were filed against companies in the transport sector. Most importantly, the data show that posting companies are much more likely to underpay their workers than domestic companies. The data indicate that this is especially the case in the construction sector where only 0.9% of the inspected Austrian companies were suspected of underpayment compared to 38% of the inspected posting undertakings. This indicates that continuous efforts are necessary to protect posted workers from exploitation.

Against this background, a recent reform of the Austrian Law Against Wage and Social Dumping is noteworthy. Following the European Court of Justice's ruling in *Maksimovic and others vs Austrian public authorities*¹⁸, the Austrian legislature in June 2021 reformed the Law against Wage and Social Dumping (see also Chapter 7) altering the level of fines that can be imposed on posting companies, in particular, by abolishing the option to impose fines cumulatively e.g., for each individual case of underpayment. While this step was welcome by business representatives (APA, 2021a), social democratic politicians and the Chamber of Labour warned it makes "organised social dumping cheaper" (APA, 2021b), potentially creating incentives for more posting companies to underpay workers.

¹⁸ Joined cases C-64/18, C-140/18, C-146/18 and C-148/18

5.6 Additional data

Table 12: Number of complaints for underpayment by company's country of origin
(LSDB Database excl. complaints by the Financial Police)

	2011- 2016	2017	2018	2019	2020	2021 (Jan- Feb)	Total (2011- 2021)
Bosnia and Herzegovina	0	0	0	0	0	1	1
Bulgaria	7	4	4	5	0	0	20
Germany	73	18	23	1	10	3	128
Denmark	0	0	1	0	1	0	2
Estonia	0	0	0	0	4	0	4
Greece	0	0	0	0	1	0	1
Italy	20	3	4	-7	3	3	26
Croatia	11	6	5	10	11	7	50
Latvia	1	0	0	4	1	0	6
Lithuania	2	0	0	1	5	0	8
Netherlands	5	1	1	0	-2	-1	4
Poland	63	31	33	34	37	8	206
Portugal	51	19	11	16	-3	-1	93
Romania	28	9	9	12	19	0	77
Switzerland	1	1	0	6	-1	0	7
Serbia	0	0	0	1	1	1	3
Slovakia	124	50	60	52	41	5	332
Slovenia	244	139	97	55	96	11	642
Spain	1	6	0	0	0	0	7
Czech Republic	56	18	27	10	2	2	115
Turkey	0	0	0	0	0	0	0
UK	4	2	3	0	-1	0	8
Hungary	324	73	82	-46	-24	-3	406
Unknown	0	0	0	665	494	63	1,222
Austria	968	203	162	-204	-230	-33	866
Total	1,983	583	522	615	465	66	4,234
Total Foreign (excl. unknown)	1,015	380	360	154	201	36	2,146

Annual sum of criminal complaints based on § 7i Abs. 3 AVRAG (idF BGBl. I Nr. 24/2011), § 7i Abs. 5 AVRAG (idF BGBl. I Nr. 94/2014), § 7i Abs. 6 AVRAG (idF BGBl. I Nr. 94/2014), § 29 Abs. 1 LSD-BG (idF BGBl. I Nr. 44/2016), and § 29 Abs. 3 LSD-BG (idF BGBl. I Nr. 44/2016).

Source: LSDB Competence Centre

Note: Complaints are often recategorised retroactively. Negative values show that complaints attributed to one country in the past were attributed to a different country during that year.

Table 13: Number of complaints for not providing ZKO and A1 forms documents upon inspection against foreign firms by sector (Financial Police data)

Sector	2017	2018	2019	2020	2021 (Jan-Feb)	Total
A – Agriculture, Forestry and Fishing	10	2	4	4	1	21
B – Mining and Quarrying	0	0	1	0	0	1
C – Manufacturing	34	59	47	27	5	172
D – Electricity, Gas, Steam and Air Conditioning Supply	0	1	3	0	0	4
E – Water Supply; Sewerage, Waste Management and Remediation Activities	0	0	0	2	0	2
F – Construction	193	231	198	171	28	821
G – Wholesale and Retail Trade; Repair of Motor Vehicles and Motorcycles	8	27	33	17	2	87
H – Transportation and Storage	64	439	511	351	37	1,402
I – Accommodation and Food Service Activities	6	5	3	0	0	14
J – Information and Communication	4	3	2	3	1	13
L – Real Estate Activities	1	0	2	1	0	4
M – Professional, Scientific and Technical Activities	16	7	8	6	0	37
N – Administrative and Support Service Activities	10	12	23	8	0	53
R – Arts, Entertainment and Recreation	1	0	6	0	0	7
S – Other Service Activities	5	8	18	7	0	38
T – Activities of Households as Employers; Undifferentiated Goods and Services Producing Activities of Households for Own Use	0	2	2	0	0	4
Total	352	796	861	597	74	2,680

Sum of complaints for not providing ZKO and A1 forms documents upon inspection (§ 21 LSD-BG)

Source: Financial Police

Table 14: Number of complaints against posting firms for not providing payroll documentation upon inspection by industry (Financial Police data)

Sector	2017	2018	2019	2020	2021 (Jan-May)	Total
A – Agriculture, Forestry and Fishing	9	2	1	4	1	17
B – Mining and Quarrying	0	3	1	1	0	5
C – Manufacturing	39	73	70	54	6	242
D – Electricity, Gas, Steam and Air Conditioning Supply	0	1	1	1	2	5
E – Water Supply; Sewerage, Waste Management and Remediation Activities	0	0	1	2	0	3
F – Construction	318	360	321	279	43	1,321
G – Wholesale and Retail Trade; Repair of Motor Vehicles and Motorcycles	10	29	29	22	1	91
H – Transportation and Storage	54	464	569	362	35	1,484
I – Accommodation and Food Service Activities	8	7	1	0	0	16
J – Information and Communication	3	6	2	2	1	14
L – Real Estate Activities	1	0	2	2	0	5
M – Professional, Scientific and Technical Activities	18	17	7	7	0	49
N – Administrative and Support Service Activities	16	27	36	21	0	100
R – Arts, Entertainment and Recreation	1	1	6	0	0	8
S – Other Service Activities	2	11	17	16	1	47
T – Activities of Households as Employers; Undifferentiated Goods and Services Producing Activities of Households for Own Use	0	2	2	0	0	4
Total	479	1,003	1,066	773	90	3,411

Sum of complaints for not providing payroll documentation upon inspection (§ 22 LSD-BG)

Source: Financial Police

6. The impact of the COVID-19 pandemic in Austria

This chapter analyses the development of postings to Austria since the beginning of the COVID-19 pandemic which resulted in several unprecedented measures affecting labour markets and cross-border travel in 2020 and 2021.

The first infections with the coronavirus in Austria were detected in late February 2020. On March 11, the World Health Organisation declared COVID-19 a pandemic. On March 16, the Austrian government declared the first nation-wide “lockdown”: a closure of all non-essential business. Travel to Austria was restricted. Travellers entering the country were required to provide a negative COVID-19 test and had to self-quarantine for 14 days upon arrival. The first lockdown was relaxed starting from May 15, 2020. On June 16, the travel restrictions for travellers from most European Union countries were terminated. A second and third hard lockdown mandating the closure of all non-essential business and schools followed in November and December 2020. The third lockdown was relaxed on February 8, 2021 (Die Presse, 2021; Der Standard, 2020). On 19 May 2021 the (soft) lockdown ended. The pandemic and the policies used to counter it created uncertainty for travellers and resulted in a significant drop in employment. In the first two weeks of the first lockdown, 600,000 people applied for short term work programmes and another 200,000 individuals lost their jobs (Bock-Schappelwein, Huemer, & Hyll, 2020).

We analyse the effect the crisis and the imposed countermeasures had on posting to Austria based on the monthly number of postings notified through ZKO forms from the beginning of 2019 to the end of 2021. This data shows a steep drop in the number of postings notified from January until April 2020. Thereafter, the number of notified postings increased again to levels above the 2019 average. This increase was primarily driven by postings notified in the transport sector. In addition, postings in the construction sector recovered quickly as construction sites remained open and the Austrian social partners in the construction sector negotiated arrangements to facilitate the return of foreign workers (Geyer, Danaj & Scoppetta, 2020), and in 2021, increased above the 2019 level.

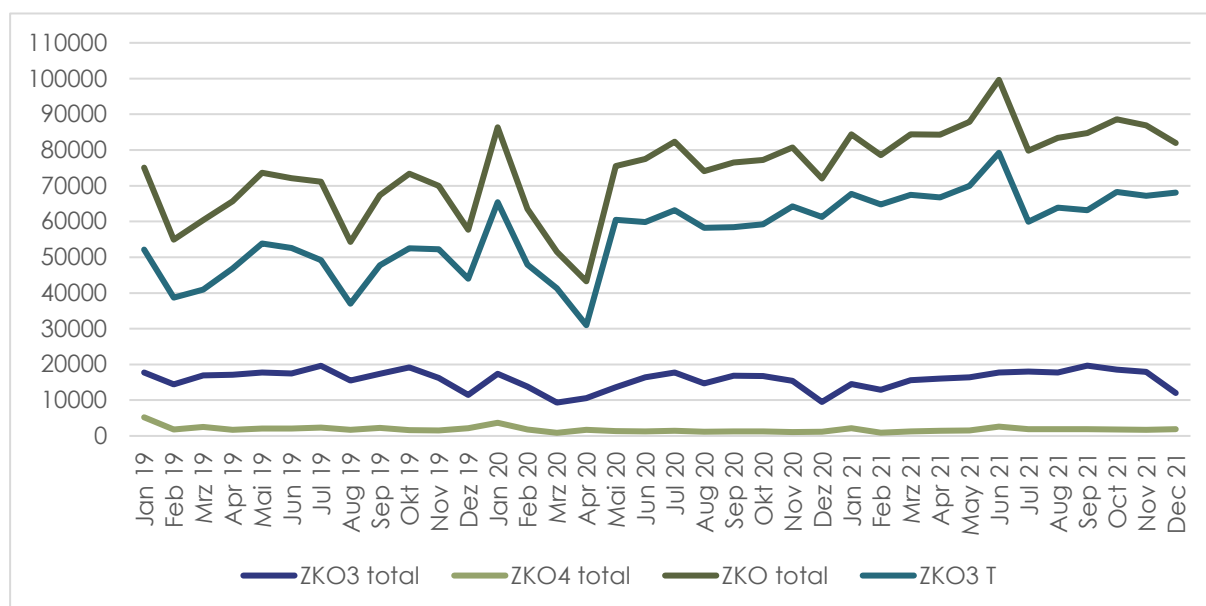
Excluding postings notified in the transport sector, however, the number of postings notified through ZKO forms until May 2021 remained slightly below the 2019 level. This signifies a change in the long-term of steady year-on-year increases in the number of workers posted to Austria between 2011 and 2019.

6.1 The development of postings notified since 2019

To understand the impact of the COVID-19 pandemic on postings to Austria, we use data on the number of postings notified through different types of ZKO forms.

The line chart in Figure 4 below shows the development of the monthly number of postings notified through ZKO forms from January 2019 to December 2021. The lines show the strong differences in the numbers of postings notified through three different types of documents: the number of postings through ZKO4 forms is by far the lowest with 1,836 postings per month on average. The number of postings notified through ZKO3 forms was about 8.6 times higher with a monthly average of 15,836. The number of postings declared through ZKO3T forms, the form exclusively used for postings in the transport sector, was 3.6 times this with a monthly average of 56,802 (see Table 15 for details).

Figure 4: Monthly number of notified postings to Austria (Jan 2019-Dec 2021)

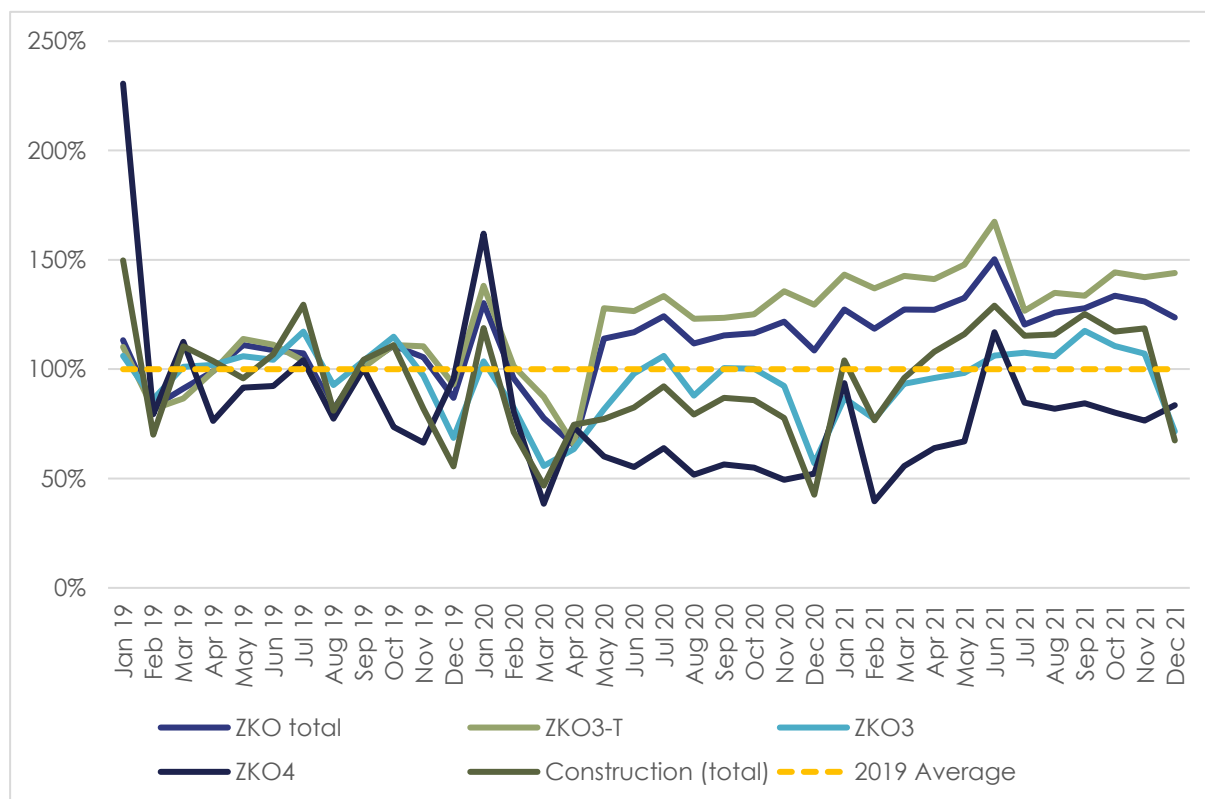


Source: Financial Police

All lines show a certain level of seasonal fluctuation. In particular, the number of postings notified through all three types of documents falls in December and February but jumps in January of each year. In addition, the chart shows a drop in the summer months of (2019 and 2020) and July (2021). Apart from these seasonal effects, the graph in Figure 4 shows a significant drop in the number of notified postings in February, March, and April of 2020. Thereafter, the total number of postings recovered and even increased slightly compared to 2019.

The line chart in Figure 5 provides a different perspective on the same data. Instead of total numbers, the lines show the number of notified postings per month relative to the 2019 average. Again, the seasonal effects in the months of December, January, February, as well as July and August are clearly visible. In addition, the graph shows that the relative decline in the number of postings in March and April of 2020 was strongest for ZKO4 forms followed by ZKO3 forms, and weakest for ZKO3T forms. This could be an indication for a reduction in posting activity. At the same time, it could also be that the employers reduced the number of postings while *increasing* their duration to minimise the number of necessary border crossings. Furthermore, the chart in Figure 5 shows that the recovery in the total number of postings in May 2020 and the high number of postings notified since then was driven primarily by postings notified in the transport sector (ZKO3T forms). The number of notified postings in this industry increased in May 2020 to 128% of the 2019 average and continued to increase to more than 150% in June 2021. For the year 2021, the average number of postings notified in the transport sector was 142% of the 2019 level. In contrast, the number of postings notified through ZKO3 forms remained below the 2019 average since the beginning of 2020. The average monthly number of notified ZKO3 postings declined by 14% from 16,731 to 14,346 from 2019 to 2020. In 2021, the numbers recovered, but remained slightly (-1.8%) below the 2019 level. The number of postings through ZKO4 forms fell to an even lower level. Compared to 2019, the total number of ZKO4 postings was 33% lower in 2020. In 2021, the ZKO4 numbers recovered as well, but remained 22% below the 2019 level.

Figure 5: Monthly number of notified postings to Austria (Jan 2019 - Dec 2021) compared to the 2019 average



Source: Financial Police

6.2 Differences across sectors

The data in Figure 4 and Figure 5 show that the number of postings notified for the transport sector recovered much more quickly than the number of postings notified for other areas. However, this does not necessarily mean that the number of posted transport workers who travelled to Austria to provide services increased equally strongly. As discussed in Chapter 4, there are important differences between ZKO3 and ZKO3T forms. While ZKO3 forms must be submitted for each person and posting individually, ZKO3T forms can be used to notify postings in the transport industry in bulk. Therefore, it must be assumed that out of convenience many companies notify the posting of many more workers than actually end up providing services abroad. Against this background, the number of postings notified through ZKO3T forms should not be treated as a reliable indicator of actual postings. Nevertheless, the large number of submitted forms still indicates that companies in the transport sector were at least hoping to restart posting workers to Austria after the initial months of the pandemic.

Postings in the construction sector also recovered quickly. In contrast to other businesses, construction sites remained open during the lockdowns. Furthermore, the social partners in the construction industry negotiated a sectoral agreement to facilitate posted construction workers coming to Austria even during the periods of travel restrictions (Geyer, Danaj, & Scoppetta, 2020). These actions seem to not have prevented an initial decline in postings but may have supported a quicker recovery. Figure 5 shows that the initial decline in the number of notified postings was stronger in construction than in other sectors (excluding transport) with the average monthly number of posted workers declining by 22% from 5,320 in 2019 to

4,148 in 2020. However, in 2021, the construction sector saw a strong increase in posting activity compared to the previous year (+33%), with the average number of postings reaching even above the 2019 level (+7%).

6.3 COVID-19 or part of a long-term trend?

The sudden, significant drop in the number of notified postings in February, March and April 2020 can clearly be attributed to the COVID-19 pandemic and the associated policy response by the Austrian government. However, as far as longer-term developments are concerned, it is important to separate the COVID-effect from other trends.

The data provided in chapter 4 showed that, as far as postings notified through ZKO3 and ZKO4 forms are concerned, there appears to have been a decrease in the rate of growth between 2018 and 2019, whereas the number of postings notified through ZKO3T forms has continued to increase strongly. Against this background, the data presented in this chapter appears to show an acceleration of the unequal growth with postings notified for the transport sector continuing to increase rapidly, postings in construction showing moderate growth, and postings in all other sectors stabilising around the 2019 level. Hence, the overall trend of postings notified since 2019 appear to be driven not only by the pandemic.

6.4 Chapter summary

The monthly data on postings notified since 2019 show a steep drop at the onset of the COVID-19 pandemic in early 2020, but also a fast recovery after March of the same year. For the remainder of 2020 and during 2021, the average monthly number of postings in sectors other than transport and construction remained under the level of 2019.

The results must be considered with care, because not all postings notified did occur. However, even a careful analysis allows for two interesting conclusions. Firstly, the number of postings to Austria in sectors other than transport and construction seems to be plateauing, which signifies a change in the trend of strong growth for most of the last decade. Secondly, the high number of postings notified even in the unprecedented context of a global pandemic, shutdowns and travel restrictions suggests posted workers are an important element of the Austrian economy. This is also evidenced by the fact that the social partners in the construction sector took rapid measures to facilitate the continued access of posted workers to Austrian construction sites.

6.5 Additional tables

Table 15: Monthly number of postings January 2019 - December 2021

PERIOD	ZKO3		ZKO4		ZKO3T		TOTAL	
	Per month	Annual average	Per month	Annual average	Per month	Annual average	Per month	Annual average
	Of which constr.		Of which constr.					
2019	Jan	17,744	4,411	5,207	3,556	52,152	75,103	
	Feb	14,438	3,209	1,793	521	38,695	54,926	
	Mar	16,913	4,729	2,540	1,152	40,968	60,421	
	April	17,071	4,886	1,723	634	46,870	65,664	
	May	17,735	4,271	2,068	829	53,871	73,674	
	June	17,442	4,844	2,085	838	52,591	72,118	
	July	19,598	6,084	2,353	806	49,142	71,093	66,306
	Aug	15,530	3,732	1,749	579	36,980	54,259	
	Sept	17,385	4,615	2,265	936	47,730	67,380	
	Oct	19,212	5,246	1,660	652	52,525	73,397	
	Nov	16,237	3,850	1,498	512	52,239	69,974	
	Dec	11,473	2,270	2,158	683	44,026	57,657	
2020	Jan	17,340	4,552	3,657	1,767	65,359	86,356	
	Feb	13,788	2,950	1,819	840	47,955	63,562	
	Mar	9,328	2,156	869	333	41,306	51,503	
	April	10,619	2,905	1,663	1,066	30,987	43,269	
	May	13,663	3,390	1,358	720	60,510	75,531	
	June	16,396	3,968	1,247	420	59,882	77,525	
	July	17,757	4,377	1,444	525	63,165	82,366	71,726
	Aug	14,704	3,768	1,170	454	58,229	74,103	
	Sept	16,818	4,092	1,274	531	58,408	76,500	
	Oct	16,772	4,041	1,242	525	59,226	77,240	
	Nov	15,435	3,505	1,116	626	64,199	80,750	
	Dec	9,538	1,616	1,180	651	61,290	72,008	
2021	Jan	14,522	4,216	2,113	1,317	67,759	84,394	
	Feb	12,925	3,549	895	527	64,780	78,600	
	Mar	15,627	4,411	1,258	695	67,486	84,371	
	April	16,070	4,775	1,444	971	66,789	84,303	
	May	16,438	5,142	1,512	1,031	69,953	87,903	
	June	17,782	5,038	2,640	1,831	79,224	99,646	
	July	17,998	5,155	1,914	981	59,930	79,842	85,391
	Aug	17,717	5,147	1,851	1,020	63,858	83,426	
	Sept	19,667	5,653	1,905	1,010	63,179	84,751	
	Oct	18,514	5,252	1,811	987	68,290	88,615	
	Nov	17,927	5,432	1,729	881	67,202	86,858	
	Dec	11,965	2,974	1,885	612	68,128	81,978	

Source: Financial Police

7. The application of Directive (EU) 2018/957 amending the Posting of Workers Directive

Austria transposed the Directive (EU) 2018/957 in September 2021 (Federal Law Gazette I No. 174/2021), about one year behind schedule. The recent transposition of the Directive does not allow us to draw conclusions on its impact yet. However, one core element of the Directive – the equal pay principle mandating that posted workers are paid the same as individuals employed in Austria – was introduced in Austria already in 2011. Hence, the Austrian case can provide some insights on how this affects the number of postings, the terms and conditions of posted workers and what challenges do authorities encounter when enforcing it. Hence in this chapter we discuss the application of the equal pay principle in Austria prior to the transposition of the amended Directive as well as the intricacies of national enforcement efforts to protect national standards and prevent wage and social dumping derived from the tension between the different levels of EU and national regulation and governance.

As already discussed earlier in the report, Austria has transposed both the original 1996 Directive, the Enforcement Directive of 2014 through its Law Against Wage and Social Dumping (Lohn- und Sozialdumping-Bekämpfungsgesetz). The first law (LSDB-G), which also included provisions on the development of inspection mechanisms and fines to enforce the equal pay principle was passed in 2011. A new and amended version of the law (LSD-BG) passed in 2017 and included the requirements of the Enforcement Directive.

One of the main elements of the Austrian Law Against Wage and Social Dumping is the application of the principle of equal wages for posted workers according to national standards of pay, including collectively bargained pay rates. To enforce these rules, several punitive measures were included, the most important the clauses on cumulative administrative fines, in which posting undertakings and user undertakings were charged for the same violation for each individual worker involved without a cap, which could potentially lead to substantially high fines amounting to millions of euros. In 2019, the European Court ruled that this practice of cumulative fines was in violation of European law.¹⁹ In response, the LSD-BG was reformed again in 2021²⁰ to abolish this practice.

Despite the early introduction of the equal pay requirement and its enforcement through punitive measures since 2011 and, especially since 2017, Austria continued to draw posting undertakings to its labour market indicated by the steady increase in the number of postings during 2011-2019, as the results in chapter 4 show. The continued increase in postings to Austria between 2018 and 2019 again suggests that the passing of the law with an equal pay principle did not deter posting undertakings to take on business in Austria.

One of the reasons why the equal payment of *wages* does not deter postings might be that the social contribution costs from sending companies are lower than what they would pay in Austria. This is due to the differential percentage of social insurance contribution between the sending countries and Austria. Most countries sending posted workers to Austria are lower-income countries with lower social insurance contributions than Austria. For example, while social insurance contribution equals 27% of the gross wage

¹⁹ Joined cases C-64/18, C-140/18, C-146/18 and C-148/18 Maksimovic and others vs Austrian public authorities; see also section 5.2.1 of this report.

²⁰ BGBl. I Nr. 174/2021

in Austria, in Slovenia it is 16% (Hofstadler et al., 2016), which can lead to at least 10-15% reduction of overall costs for workers posted from Slovenia, and even more in the case of workers posted from other countries where the contributions are less (Kahlert and Danaj, 2021). Differences in the criteria for social contribution obligations between the sending and the receiving country are an additional factor. Taking again Slovenia as an example, posting undertakings based in the country, are obliged to pay social contributions based on the minimum gross wage the worker would have received for the same work in Slovenia (Zirnstein, Sedmak & Širok, 2021), which leads to lower costs for posting workers from Slovenia to Austria. Notwithstanding, posting undertakings and user undertakings might incur additional costs in terms of technical support provided by specialized legal and/or accounting consultants that help them abide by host country posting obligations. Previous research suggests that larger companies are inclined to pay such costs to avoid any violations, but they are not necessarily affordable by the smaller outfits (Kahlert and Danaj, 2021). Although recent research suggests that such costs do not necessarily outweigh the benefits of posting, also because not all companies might use specialized services, further research would be necessary for a proper assessment.

Another reason might also be that the equal pay principle is not observed in practice by all posting undertakings. As chapter 5 shows, Austrian authorities encounter many violations during their inspections and the data they have collected suggest that up to one third of all workers posted to Austria are paid less than what they are legally entitled to. This means that a considerable number of posting undertakings are inclined to not abide by national wage standards to preserve or increase the benefits of posting. This is likely to continue, especially since some of the strongest punitive measures prescribed in the 2017 LSD-BG have already been revised along with the process of transposing the (EU) 2018/957 Directive.

The amendment introduces two types of changes. Firstly, it allows the exemption from the equal pay principle for workers posted to Austria to perform assembly/installation work, commissioning and associated training, or repair and service work that cannot be performed by domestic workers, under the condition that their stay in Austria does not exceed a period of three months. Likewise, transit workers who deliver goods produced abroad and those sent to Austria for training purposes are not considered posted workers, hence are not entitled to the same entitlements posted workers are, including the right to equal pay based on receiving country rates. Considering that the activity performed in Austria is self-declared by the posting undertakings, some of them might take advantage of the existence of exemption categories to report their workers under one of these categories and limit their posting period to under three months. Latest figures (reference year 2019) prior to the amendment indicate that 18% of the postings to Austria lasted up to 1 month, and 41.1 up to 6 months (see Table 4). It remains to be seen whether the share of postings under 3 months will increase with the coming in force of the amended LSD-BG.

The second change to the LSD-BG affects the penalty measures for cases of fraud and other violations foreseen in the law, which have been revised reflecting the ECJ ruling on the joined cases of ‘Maksimovic and others versus Bezirkshauptmannschaft Murtal and Finanzpolizei’ (referred to throughout this report as ‘Maksimovic and others vs Austrian public authorities’). “Maksimovic and others” involved the Croatian company Maksimovic subcontracted by an Austrian engineering firm, which were themselves subcontracted by the Austrian paper-pulp company Zellstoff Pöls to make repair work. The Austrian Financial Police visited the construction site three times, and each time the Croatian and the Austrian engineering firms failed to provide the necessary documentation for the 217 posted workers that were present on site. Both undertakings were fined cumulatively at the amount of 13 million EUR for not complying with administrative obligations and payroll documentation. Both undertakings appealed the penalties to the Styrian Regional Administrative Court, which in 2018 requested a preliminary ruling from the ECJ on four cases related to that inspection (C-64/18, C-140/18, C-146/18 and C-148/18).

The ECJ was asked by the Styrian Regional Administrative Court whether national law is precluded from imposing heavy and cumulative fines and imposing imprisonment if fines are not paid? The ECJ addressed the cases in one joined ruling replying that the Posting of Workers Directive and the Enforcement Directive are not relevant for answering the question, because monitoring measures are not covered by these directives. Yet, the ECJ concluded that the practice of imposing high, cumulative fines is incompatible with the freedom to provide services in the European Union as outlined in Article 56 of the Treaty on the Functioning of the EU. According to the ECJ recommendation, national administrative or punitive measures must not surpass necessary measures to reach the objectives legitimately pursued by that legislation, which means that high cumulative administrative fines as prescribed by the LSD-BG should not be permitted.

In response to the ECJ's recommendation of proportionate penalties, the amended LSD-BG introduces five stages of severity of breach of law, each with their own sum of administrative fines rescaled based on the number of posted workers involved and/or the sum of the withheld payment. Failure to report posting is subject to an administrative fine of 20,000 EUR and failure to keep and present the relevant documentation is subject to an administrative fine of 40,000 EUR. Underpayment is punishable with a single fine of 50,000 EUR irrespective of the number of posted workers, which is adjustable to maximum 20,000 EUR if the employer in question has posted up to nine workers and the amount withheld from them is less than 20,000 EUR. If the sum of the withheld payment is higher than 50,000 EUR, the fine can be up to 100,000 EUR. If the sum of the withheld payment is higher than 100,000 EUR, the fine is up to 250,000 EUR. If the sum of the withheld remuneration is higher than 100,000 EUR and if the remuneration is withheld intentionally by an average of more than 40% of the remuneration during wage payment periods, the fine is up to 400,000 EUR (the highest amount any posting company can be fined). In case of collaboration to remedy the underpayment, the penalty can be reduced between 100,000 to 250,000 EUR (see Table 16). The fundamental difference in the fining system as it can be observed in Table 16 is that prior to the amendment, offending employers were considered as committing a separate violation per each employee, which meant that the fines were cumulative and there was no cap to the amount potentially reaching millions of euros. The 2021 amendment considers any type of violation by a posting or user undertaking as a single one, regardless of the number of employees involved, and provides a cap for each fine.

The Government and business organizations were supportive of the revision of the Law Against Wage and Social Dumping (APA, 2021a). The Minister of Labour, Kocher, argued that the revision of the law was necessary both to combat unfair competition and to conform Austrian legislation with EU regulations. Whereas Wirtschaftsbund (The Austrian Business Association) was pleased that the revised law made a difference between minor and larger offences (ibid). The passing of the amendment was not without its critics. The SPÖ (Social Democratic Party of Austria – an opposition party at the time of the report) and the Chamber of Labour, for example, were concerned that the cap on the cumulation of fines will have a negative impact on the prevention and prosecution of social dumping, as more posting undertakings might be inclined to engage in 'economic calculation' (APA, 2021b; Ungerboeck, 2021b), and hence calculate that due to the relatively low risk of inspection (the likelihood of being inspected by the Financial Police is 10%) and the limited sum an undertaking can be fined, especially if they refuse to provide documentation that would implicate them in more severe offences such as underpayment, it might be beneficial to circumvent the equal pay obligation. The ÖGB (the Austrian Trade Union Federation) also expressed concern that the limitations in the penalties would turn wage and social dumping in trivial offences and the law would thus lose its deterrent effect (Ungerboeck, 2021a).

Table 16: Type of violations and the corresponding fines in the 2016 and 2021 Austrian Law Against Wage and Social Dumping

Violation	Fines in LSD-BG 2016 ²¹	Fines in LSD-BG 2021 ²²
§ 26 Violations in connection with the reporting and availability obligations	commits an administrative offense and is to be punished by the district administrative authority for each employee with a fine of 1,000 to 10,000 EUR, in the case of a repeat offense of 2,000 to 20,000 EUR.	commits a single administrative violation, regardless of the number of employees affected by the administrative violation, and is liable to a fine of up to 20,000 EUR.
§ 27 Frustrating (Obstruction) acts in connection with wage control (1) Anyone who fails to submit the required documents for anti-fraud surveys (2) Anyone who, refuses access to the business premises (3) Anyone who refuses the inspection of social security or wage documents	 is subject to a fine of 500 to 5,000 EUR for each employee by the district administrative authority, in the case of a repeat offense of 1,000 to 10,000 EUR to punish euros. commits an administrative offense and is to be punished with a fine of 1,000 to 10,000 EUR, in the case of a repeat offense of 2,000 to 20,000 EUR commits an administrative offense and is subject to a fine of 1,000 EUR to 10,000 EUR for each employee , or 2,000 EUR in the case of a repeat offense fined up to 20,000 EUR.	 commits a single administrative violation, regardless of the number of employees affected by the administrative violation, and is subject to a fine of up to EUR 40,000 commits a single administrative violation and is to be punished with a fine of up to 40,000 euros commits a single administrative violation, regardless of the number of employees affected by the administrative violation, and is subject to a fine of up to 40,000 EUR
§ 28 Failure to provide payroll documents	commits an administrative offense and is fined by the district administrative authority for each employee from 1,000 to 10,000 EUR, in the case of a repeat offense from 2,000 to 20,000 EUR, more than three employees are affected, for each employee a fine of 2,000 EUR up to 20,000 EUR, and in the event of a repeat offense from 4,000 to 50,000 EUR.	commits a single administrative violation, regardless of the number of employees affected by the administrative violation, and is to be fined up to 20,000 EUR by the district administrative authority, or up to 40,000 EUR in the event of a repeat offense
§ 29 Underpay	If a maximum of three employees are affected by underpayment, the fine for each employee is 1,000 to 10,000 EUR in the event of a repeat offense 2,000 to 20,000 EUR. If more than three employees are affected, the fine is 2,000 to 20,000 EUR for each employee, in case of recurrence 4,000 to 50,000 EUR.	commits a single administrative violation, regardless of the number of employees affected by the administrative violation and is liable to a fine of up to 50,000 EUR by the district administrative authority. If, in the first instance, the sum of the withheld remuneration is less than 20,000 EUR for employers with up to nine employees, the fine is up to 20,000 EUR. If the sum of the withheld payment is more than 50,000 EUR, the fine is up to 100,000 EUR. If the sum of the withheld payment is more than 100,000 EUR, the fine is up to 250,000 EUR. If the sum of the withheld wages is more than 100,000 EUR and if the wages were intentionally withheld by an average of more than 40% of the wages during wage payment periods, the fine is up to 400,000 EUR . If the employer cooperates immediately and fully in clarifying the truth, the lower penalty range is to be applied instead of the penalty range of up to 100,000 EUR or up to 250,000 EUR.

In summary, the Austrian experience shows that the introduction of the equal pay principle does not necessarily prevent an increase in the use of posting. Despite the existence of such legislation, certain posting undertakings will circumvent this obligation and underpay their workers. The ECJ's recommendation for putting a cap on administrative fines puts a question mark on national enforcement measures and requires national public authorities to increase the frequency of their inspections to be able to detect and deter abuse (Danaj and Kahlert, 2021).

²¹ https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2016_I_44/BGBLA_2016_I_44.html

²² https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2021_I_174/BGBLA_2021_I_174.html

8. Conclusions and Recommendations

This country report on Austria presents a comprehensive overview of posting to and from Austria, which includes estimates of the number of postings and posted individuals, evidence of legal violations and fraud related to postings to Austria, the impact of the COVID-19 pandemic, and the impact of the amended Posting of Workers Directive (EU) 2018/957. The analysis is based primarily on quantitative data drawn from different administrative sources, such as data from PD A1 forms issued for individuals posted to Austria, data from the Austrian national prior notification tool (ZKO3, ZKO3T, and ZKO4 forms), and data from the Competence Centre Wage and Social Dumping, the Austrian Financial Police and the Construction Workers' Annual Leave and Severance Pay Fund (BUAK).

The analysis of the scope and characteristics of posting in Austria showed that there are different ways to estimate the extent of postings to Austria as well as different data sources to use for this process. It is important to note that existing data collection tools do not count postings as such but allow only for estimates. The most comprehensive estimates can be drawn from the PD A1 forms issued by social security organisations in the sending countries and the prior notification forms collected by the Austrian Financial Police. Both data sources indicate an increase in the posting of workers to Austria between 2011 to 2019. By relying on the number of PD A1 forms issued as a lower boundary estimate, we estimated the number of postings to Austria in 2019 to have been at least 320,480. The number of unique posted workers in the same period was estimated to be between 85,697 and 320,480. We estimate the volume of work provided by the number of workers posted to Austria in 2019 in full-time equivalents to be 41,462, which represents about 1.7% of the work carried out by individuals living in Austria during the same period. The number of postings from Austria has also increased significantly between 2017 and 2019 to 197,627 but remains below the number of incoming postings. Hence, Austria remains a predominantly receiving country.

The available data allowed us to discern certain characteristics. Firstly, the data show seasonal effects. The number of active postings changes throughout the year peaking between July and October and reaching its lowest during the winter months. Secondly, although the available data do not allow differentiating postings between economic sectors in detail, we are able to draw some estimates for construction and transport. Postings in construction accounted for 28% of postings to Austria in 2019 (excluding transport) but represented 44.5% of posted work in full-time equivalents. Posting notifications in the transport sector accounted for three fourths of all postings to Austria. Prior notifications for the transport sector are likely to overestimate the true number of postings to Austria, because posting undertakings tend to notify postings *en bulk*. As far as outgoing postings are concerned, industry and construction were the dominant sectors. Postings from Austria in the transport sector, in contrast, play only a marginal role. Thirdly, most individuals posted to Austria are EU-citizens, and about one fifth are citizens of non-EU countries, mostly of countries in Eastern Europe (Ukraine, Bosnia and Herzegovina, Serbia, Belarus).

The analysis of the legal violations related to postings to Austria was based on data provided by Austrian enforcement agencies as well as secondary literature. The evidence showed that posting practices to Austria are subject to different kinds of legal violations, namely underpayment, social dumping and fake postings; exposure to dangerous working conditions; failure to notify posting and postings not correctly notified; and other forms of fraud and legal violations. Data collected by Austrian authorities suggest that while the true extent of underpayment is unknown, we estimate between 0.9% and 10% of all individuals posted to Austria

were underpaid in 2019. A comparison across sectors shows that the underpayment of posted workers is most prevalent in the construction sector. Most importantly, the data show that posting companies are much more likely to underpay their workers than domestic companies. Again, this is especially the case in the construction sector where only 0.9% of inspected Austrian companies were suspected of underpayment compared to 38% of inspected posting undertakings.

Numerical estimates of the extent of fake posting and social dumping are missing due to lack of quantitative data; however, previous qualitative research suggests this form of fraud occurs in Austria as well and is more prevalent in the construction sector. In addition, other studies have found that posted workers have a higher risk of being exposed to dangerous working conditions than domestic workers. Other forms of fraud and legal violations include bogus self-employment. More data is required to explore these issues in more detail and to estimate their true extent.

The share of postings not notified in advance and the share of posted workers not carrying the required documentation (proof of prior notification, PD A1 form) cannot be determined with certainty. However, among the companies inspected by the Austrian Financial Police, both violations appear to be widespread. On average, the Financial Police issued 0.56 complaints for non-notification of postings and 0.46 complaints for failure to provide the required documents per inspected company. The most complaints against companies for not notifying postings in advance or for not providing the right kind of documents (ZKO and PD A1 forms) upon inspections were filed against companies in the transport sector.

The analysis of the impact of COVID-19 pandemic on postings to Austria reveal interesting results. Monthly data on postings notified since 2019 show a steep drop at the onset of the pandemic in early 2020, but also a fast recovery after March of the same year. For the remainder of 2020 and during 2021, the number of postings in sectors other than transport and construction remained under the level of 2019. In 2021, postings notified for the transport sector were 42% above the 2019 level, whereas postings in construction were 7% higher than in 2019. The results must be considered with caution, because not all postings notified did occur. However, even a careful analysis allows for two interesting conclusions. Firstly, the number of postings to Austria in most sectors, apart from transport and construction, seems to be plateauing, which signifies a change in the trend of strong growth for most of the last decade. Secondly, the high number of postings notified even in the unprecedented context of a global pandemic, shutdowns and travel restrictions suggests posted workers are an important element of the Austrian economy. This is also evidenced by the fact that the social partners in the construction sector took rapid measures to facilitate the continued access of posted workers to Austrian construction sites.

The transposition of the Directive (EU) 2018/957 was completed in September 2021, which means we cannot assess its impact for Austria, in this study. However, Austria had already applied the equal pay principle on foreign companies providing services in the country – a key component of the Directive – before the new Directive was passed. The Austrian experience shows that the application of the equal pay principle did not seem to prevent a steady increase in postings to Austria. And that despite the existence of such legislation, certain posting undertakings might circumvent their obligations. Furthermore, the recently passed Law Against Wage and Social Dumping (into which the transposition of Directive (EU) 2018/957 was incorporated) also reflected the ECJ's recommendation on the joined cases of *Maksimovic and others vs Austrian public authorities* to put a cap on administrative fines. Critical voices have underlined the concern that this measure might make social dumping easier in Austria, an issue that needs to be further explored in the future.

While the report provides quite detailed estimates on posting to and from Austria and its characteristics, additional data are necessary to estimate the scope of posting more accurately and comprehensively and to better measure its impact on the Austrian economy. Specifically, data on whether postings notified indeed

occur would be helpful as would be information on the value of services provided by posted workers (e.g., their hourly wage). Current data allow for a partial sectoral analysis, mostly in construction and transport, but we do not know enough about other sectors of activity. Therefore, the first recommendation drawn from this study is the need for more detailed and accurate administrative data.

Better data would also help better trace issues of legal violations related to the posting of workers, which would inform enforcement agencies on where to concentrate their efforts. The online system could be improved, for example, by introducing a dropdown menu for the selection of the appropriate sector of activity, rather than the manual entering of information as it currently stands. The incidence of other forms of violations suggests that more frequent inspections are necessary to monitor the conditions of posted workers, because even when the equal pay is mandatory by national law, certain posting undertakings are going to violate this rule.

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