



# The social protection challenges of transnationally mobile construction workers: insights on posted work in Austria\*

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## Introduction

Austria is among the European Union (EU) countries with the highest (fifth) number of incoming posted workers (Kahlert and Danaj, 2021) with a total number of 85,697 unique posted workers in 2019 comprising 2.0% of the total share of employment (Geyer et al., 2022). However, according to the existing legal framework, posted workers remain in the social insurance regime of the sending country, which clearly differentiates them from the intra-EU mobility framework where EU workers working in other Member States become part of the host country's social protection regime. Because of this special status, the issue of how social protection legislation and the access rules for posted workers are coordinated and applied are relevant for the national and the EU context.

In this policy brief, we discuss the social protection of transnationally mobile construction workers in terms of rules, structures, and practices. We focus primarily on the challenges faced by posted construction workers as a result of their cross-border work experiences in accessing social protection during posting and the potential implications of a transnationally mobile work trajectory on workers' lives. The policy brief draws on insights gathered through biographical interviews with eight posted workers in 2021 and a stakeholders focus group with representatives of enforcement agencies and social partners conducted in Austria on March 2, 2022.

*Keywords:*  
**posted work, social protection, third country posted workers, construction sector, Austria**

## The social security of posted workers in the EU

The posting of workers is regulated by the [Directive 96/71/EC on posting of workers in the framework of the provision of services](#), which was amended by [Directive 2018/957/EC](#), as well as the [Directive 2014/67/EU](#) on the enforcement of Directive 96/71/EC. A posted worker is a worker, which is sent by an EU

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undertaking from one EU country to another to provide a service temporarily, upon completion of which the worker should return to their sending country. The Directive clearly states that the social security regulation of posted workers falls into the purview of the European Union's social security regulations, which currently comprise [Regulation \(EC\) No 883/2004 on the coordination of social security systems and its Implementing Regulation \(EC\) No 987/2009](#). Regulation (EC) No 883/2004 stipulates that any person or self-employed person that is sent by their employer to pursue an activity in a Member State other than their country of residence, remains covered by the social security legislation of the sending country. This activity should not exceed the period of 24 months (Article 12). The same applies to persons who pursue an employed or self-employed economic activity in two or more Member States (Article 13).

The posting employer is understood as any undertaking, including temporary work agencies, that sends the worker to provide the service. For the duration of posting, the undertaking in question holds several employer obligations, including payments of social contributions. In order to be covered by the system of the sending country, the employer that posts workers must have at least 25% of its substantial activity in that country. To ensure that the workers continue to be covered by the sending country's social security regime, the employer must inform the competent authority of their intention to post workers. The competent authorities issue a certificate, the so-called portable document A1 (PD A1) form, which confirms that the worker is covered by the social security system of the sending country for the duration of the posting. In a recent case ([C-17/19 Bouygues travaux publics and Others](#)), the European Court of Justice ruled that the PD A1 has a binding effect in the area of social protection, thus confirming that during posting, a worker continues to be covered by the social protection regime of the country that has issued the A1 form.

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The Enforcement Directive 2014/67/EU clearly states that authorities should verify whether a worker is posted and whether social contributions for posted workers are paid in the sending country, and that workers have the right to back-payments for unduly withheld social contributions (Article 4 and 11). In order to verify that posted workers are indeed covered by the social security system of the sending country, inspecting authorities can require posting undertakings to provide PDs A1 that attest to workers' social protection entitlement. Verifications, however, are done in collaboration with their counterparts in the sending countries. National authorities have been using the Internal Market Information (IMI) System to inquire about the validity of PDs A1. More recently the Electronic Exchange of Social Security Information (EESSI) has been in the process of implementation, although with some delays from various Member States. A fully functioning EESSI system for all 32 participating



countries<sup>1</sup> is expected in June 2022 (European Commission, 2021), and will allow competent authorities in the Member States to exchange information on all branches of social protection such as healthcare, occupational diseases and accidents at work, pensions, unemployment and family benefits. The system can also be used to make immediate verifications about the PDs A1. Additionally, a European Social Security (ESS) Pass that should further facilitate coordination is being developed. In the SMUG focus group, we were informed that a pilot project is going to start soon with the PDs A1 (SMUG Focus Group, 2 March 2022).

The right to information about posted workers' entitlements is included in the Enforcement Directive (Article 5), as well as in the Directive 2019/1152/EC on transparent and predictable working conditions (Article 7) and should be provided in a free and accessible manner and in multiple languages other than the national language of the receiving country. This is done through national platforms on posting with links to relevant national institutions and social partners, as well as through the relevant institutional websites. Finally, the provision of information to mobile EU workers and the facilitation of information exchange between EU Member States are also part of [the mission of the European Labour Authority](#).

## The Austrian social protection system

**The Austrian public social protection covers a broad range of workforce risks such as sickness, invalidity, maternity, unemployment, old age, and social need**

The Austrian public social protection covers a broad range of workforce risks such as sickness, invalidity, maternity, unemployment, old age, and social need. In principle, all employees, foreign or native, with a legal and valid employment contract and a statement of terms and conditions (*Dienstzettel*) are automatically covered by the Austrian social protection regime (Riedel and Chmielowski, 2020). Employers are responsible for registering the workers and obtaining a social security number. The system was reformed in December 2018 through the adoption of the new Social Insurance Organisational Act (SV-OG), which merged the existing social insurance institutions under an umbrella organisation (*Dachverband*) (see Figure 1).

The insurance contributions are automatically deducted from each employer every month from the salaries. Likewise, insurance contributions are also compulsory for all self-employed persons, giving them access to the same public social protection regime. However, certain employment types, such as minimally employed workers (*Geringfügig Beschäftigte*) and posted workers, are specifically regulated and do fall out of this umbrella of the comprehensive coverage of the [Austrian social protection system](#).

<sup>1</sup> Social security institutions across the EU plus Iceland, Liechtenstein, Norway, Switzerland and the United Kingdom are able to exchange information digitally through EESSI.

**Figure 1: Reformed system of the Austrian Social Protection Institutions (applicable from 2020 onwards)**

<b>The Umbrella Organisation of Austrian Social Security Institutions (Dachverband)</b>	
The Austrian Health Insurance Institution (ÖGK)	
Insurance Institution for the Public Sector and Railway Companies (BVAEB)	
Social Security Institution for the Self-Employed (SVS)	
Pension Insurance Institution (PVA)	
Accident Insurance Institution (AUVA)	

Source: [The Federal Ministry Republic of Austria, Social Affairs, Health, Care and Consumer Protection](#) (2020)

### The position of posted workers in the Austrian social protection system

**Posted workers from Austria can benefit from the Austrian social benefits and services based on their employment duration and payments**

Within the Austrian social protection regime, posted workers have a special status. As outlined in the EU legal framework posted workers remain within their sending country's social protection system. Posted workers from Austria can benefit from the Austrian social benefits and services based on their employment duration and payments. In addition, EU nationals and Third Country nationals (TCNs) with valid work and residence permits posted from Austria have access to the public healthcare system in Austria. Despite this, the conducted SMUG interviews showed that posted workers face hurdles, both in Austria and abroad, during their posting employment in accessing social services for immediate needs, such as access to healthcare and accident insurance. Based on our interviews in Austria, we find that posted workers also face complications regarding their contributory entitlements, covering longer-term risks such as pensions and unemployment benefits.

For workers posted to Austria, to be considered a “posted worker”, the workers need to be employed by the posting company at least one month beforehand. Yet, the temporary nature of the posting projects poses a crucial problem for access and adaptation to the receiving country's social protection. This is primarily because many construction jobs are project-based and a considerable share of the posting assignments are quite short<sup>2</sup> making it difficult to accumulate adequate income-based contributions for entitlement. In addition, a high number of employment relations may be formed in a posted worker's employment cycle in different countries (SMUG interviews), complicating the coordination of contributions and the country in which each type of social benefit can be accessed (SMUG focus group). This creates a system of complex regulations for workers posted from and to the Austrian labour market.

<sup>2</sup> In a recent study, Geyer et al. (2022) found that while, 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.



**The short-term nature of many posting assignments poses a crucial problem for entitlement to social protection**

Based on the SMUG fieldwork with posted workers in the construction sector in Austria, we find that in terms of work safety measures, there are routine controls and monitoring in place regarding equipment, safety outfits, and, more broadly, occupational safety and health (OSH) issues. The interviews have confirmed that workers consider safety measures to be adequate in Austrian construction sites sustained by regular OSH monitoring by the Austrian authorities. However, in terms of healthcare in cases of occupational accidents and access to sickness insurance, our findings showed mixed results. The interviewed workers in Austria reported that while some have received immediate support in cases of work accidents and access to healthcare, other times accidents were not notified either by workers or employers, which is in line with earlier research findings on the OSH of posted workers (see Danaj et al., 2020). All workers in the construction industry have reported that they had healthcare coverage in Austria, but many have not used the social system in the host country. Instead some workers seem to be using vacation time when they get ill to get healthcare in their home/sending country rather than in the host country.

**Specific measures for the inclusion of posted workers in the Austrian social protection system**

The SMUG focus group discussion revealed that the Austrian social protection framework has been taking several measures in alleviating the situation of posted workers. One such regulation is the introduction and implementation of the EU-wide Electronic Exchange of Social Security Information (EESSI) mentioned above. The SMUG focus group participants confirmed that the host state is digitally storing the information on the PD A1 records both for workers posted from and to Austria. This database has been active in Austria since January 2019 and has been monitored by the Financial Police and BUAK (*Bauarbeiter-Urlaubs- und Abfertigungskasse* - the Construction Workers' Holiday and Severance Pay Fund). In this way, the goal is to alleviate the responsibility of "proof" of contributions from the posted workers and to have a more accessible record for coordinating social benefit entitlements, including pensions and unemployment benefits.

The issue of coordination between national authorities of different Member States was raised several times during the focus group. While Regulation (EC) 883/2004 sets up the social security coordination among EU Member States, for TCNs additional rules at the national level need to be in place when they have a working (and hence social contribution) history in their country of origin and are active in the EU labour market. In that frame, Austria has signed bilateral agreements with several third countries to facilitate the social protection management of third country nationals.<sup>3</sup>

3 For a detailed list of the international social security agreements between Austria and other (non-EU) countries see the Federal Ministry for Social Affairs, Health, Care and Consumer Protection of Austria (2022). Austria's intergovernmental relations in the field of social security at a glance. Available at: <https://www.sozialministerium.at/Themen/Soziales/Sozialversicherung/Sozialversicherung-International.html>



Austria has a legal framework of anti-dumping regulations in place, aimed at preventing potential abusive cost-cutting strategies by companies through posting

Moreover, the Austrian Law Against Wage and Social Dumping (LSD-BG) aims to prevent potential 'regime shopping' strategies by posting companies. According to the law, workers posted to Austria must be paid equal wages to what local workers are paid for the same job. The equal pay principle was applied prior to its introduction in the revised Posting of Workers Directive 2018/957/EC. However, given that the social contribution rates of posted workers to Austria are based on their sending countries regulations, cost differences persist in many countries (Kahlert and Danaj, 2021). These differences impact workers' unemployment, healthcare, pension, family, and sickness insurance entitlements and might lead to social dumping (De Wispelaere, 2019). The LSD-BG includes control mechanisms so that posted workers to Austria continue to be covered by the social security system of the sending country through the verification of PDs A1; however, Austrian authorities do not have the authority to review the level of coverage workers posted to Austria receive. Such authority remains with the relevant sending country institutions.

Lastly, one specific measure within the Austrian social policy system concerns the protection of posted workers in the case of company insolvency. Our stakeholders reported that posted workers have access to legal assistance and can get their wages from the insolvency protection fund as part of the insolvency fee insurance if the companies fail to provide salaries to the workers. Such insurance against non-payment in case of insolvency is coordinated by the Chamber of Labour in Austria and controlled and monitored by the Construction Workers' Annual Leave and Severance Pay Fund.

## Social protection challenges posted workers face

We identify six social protection challenges posted workers face based on the Austrian fieldwork within the SMUG project.

The *first* challenge refers to the **existence of hierarchies in the ability of posted workers to negotiate their social rights**. Our findings suggest that there are three sources of vulnerability: age, skills, and country of origin. Highly qualified and experienced posted workers are more comfortable when managing their social contributions and accessing social benefits. Outside of this privileged group, however, many workers fall short of the ability to pay adequate attention and have a weak negotiation power in pushing companies to reliably and fairly pay for their insurance contributions during their posting assignments.

For TCNs, multiple postings in different countries and the mix of migration and posting regimes, put workers into vulnerable situations

Regarding country of origin, the most crucial challenge concerns the differences between EU nationals and TCNs posted from one EU Member State to another. While EU freedom of movement guarantees residence rights to EU nationals even as posted workers, the situation of TCNs is more complex. The overlap between the migration and posting regimes that link the residence status to the employment status put TCN workers into a vulnerable situation of dependence on the employer. Furthermore, TCN workers often lack language





skills, and hence face barriers in understanding the social protection framework of their sending countries. Thus, although they might be confronted with neglect from the side of the contracting companies in paying contributions and registration, TCNs often step back from demanding their social protection rights from the contracted companies, because they want to keep a stable employment relationship that guarantees their right to remain in the EU labour market. Nationality is important also in terms of whether there is a bilateral agreement between the third country of origin and the country of residence of the posted worker, which would enable the portability of their benefits and, thus, allow the accrual of social security. Our findings on posted workers support previous research findings on how hierarchisation among the different categories of transnational workers based on their ethnicity, age and skills produces social inequalities that manifests in their access to social protection (Faist, 2017; Vintila and Lafleur, 2020).

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*Second*, the **complex transient and cross-border nature of jobs in construction** presents challenges in accessing the social protection system. The hyper-mobility of posted workers to and from Austria in short project-based jobs and the multiplicity of employment relations necessitates coordination to track and aggregate social contributions. For instance, in the construction sector, in which the SMUG project concentrates, we find that long term and income-based contributory benefits like pension and unemployment insurance seem to be difficult for posted workers to access in EU Member States, including Austria.

Interviewees also report cases of inability to access healthcare and accident insurance during posting given the short-term duration of their assignments. Regularly, posted workers rather attempted to get access to healthcare only in their home country, because of familiarity with the system and family support for care during recovery instead of claiming healthcare in the host country. This seems to be a major challenge in the work-life cycle of posted workers. One posted worker also reported additional bureaucracies stemming from the sending country reimbursement procedures for healthcare expenses. Likewise, our fieldwork revealed that posted workers might have trouble accessing invalidity benefits due to difficulty in the translation of documents and validation of their contributions.

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In the fieldwork conducted in Austria, all workers (TCNs and EU nationals) reported that employers paid their social contributions during posting. However, there have been inconsistencies concerning the recording and tracking of these contributions. Posted workers to and from Austria seem to be unaware of the crucial role PDs A1 play in confirming their entitlement to social benefits in the sending country while posted to other EU countries. The lack of a cohesive implementation of PDs A1 presents a challenge, particularly for benefits accrued over time. Hurdles to the implementation of this mechanism stem from employers' neglect to issue PDs A1 for each worker and the incremental digitalisation process of these documents that would facilitate intra-institutional coordination.

In contributory social protection systems, like the Austrian one, unemployment benefit entitlements are built on the length and duration of employment (Riedel and Chmielowski, 2020). Therefore, problems with tracking and inconsistent contribution payments *de facto* result in a source of exclusion. For instance, one interviewed posted worker reported that rather than trying to get access to unemployment benefits in Austria, he chose to work in irregular employment to earn wages during the Covid-19 pandemic.

Likewise, disability and old-age pension benefit access is problematic. One TCN worker, who has become a citizen of another EU Member State, has struggled in obtaining disability benefits. This was reported to be linked mainly to the complex work experiences in both EU and non-EU countries, including several postings, which made it difficult for the worker himself to trace his contribution payments across time and in different countries and therefore make a claim to entitlement to the Austrian social protection system.

Next, we also observed problems regarding the pension funds. Our findings from the fieldwork showed that workers believe that they are responsible for collecting and tracking the documentation from the various countries where they have worked in and been posted to in order to have eventual access to their old-age insurance. This creates an additional burden on posted workers when accessing social protection. Moreover, it also is a source of contradiction within the Austrian social protection regime where all foreign and national workers are automatically entitled to their income-based pension funds.

**Third, contractual chains and the multiple companies and nationalities involved in the posting** create difficulties in identifying the competent national authorities and the social protection regime. As echoed in previous research (Brzozowska et al., 2021), due to the complexity and the multitude of employment relations, as well as countries involved in posting and in a worker's life cycle, it is often very unclear which national legislation and social security system applies in each period. Stakeholders from our focus group also pointed out that one of the critical tensions arises due to chains of contractual agreements for EU workers that might not have lived long enough in Austria to be considered residents, which would give them access to the residence-based social protection system of the country (Riedel and Chmielowski, 2020). For instance, Austrian authorities have identified a large number of Polish temporary workers in Austria and Germany with intermediary companies that are registered in Austria and Germany. As recent arrivals to Austria, if they get posted from Austria immediately or soon after, i.e. before they have worked for at least one month in the country, they fall out of the protection regime available in Austria, because they cannot obtain the status of EU migrant residing in Austria, and, therefore, do not meet the criteria for entitlement according to the Regulation (EC) No 883/2004 on the coordination of social security systems.

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...fundamental problems with chains of contractual agreements in the posting of workers



*Fourth, workers' motivation for gainful employment*, i.e. wage differences and wage gains, seems to be a higher priority than social security contributions and entitlements. As posted workers prioritise wages over their long-term entitlements, they often show little interest and, therefore, accept less than desirable social conditions in their employment. A significant challenge faced by posted workers is the inconsistent use of the PDs A1, which could give them at least some basic insurance, traceability, and visibility in the EU national labour markets. Yet, our interviews showed that many of the posted workers seem to be unaware of their PD A1 registrations and potential rights attached to them. Informal arrangements with the contract companies force workers to make tough decisions not to lose their employment and wages. For instance, the interviewed workers in Austria have reported that their priorities in accepting posting jobs were mainly in ensuring income for themselves and their families rather than concentrating on the social entitlements and the long-term consequences.

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*The fifth challenge* we identify is the **difficulty in accessing information and the associated language barriers**. Almost all workers in our sample described the lack of information about their entitlements to benefits and the contributions by the company as problematic. They often do not know how to check whether the employer has paid their contributions (and to which country) and need to trust the employer that all the social registrations are taking place. The different languages in each posting country and the lack of social protection information available in translated languages in many EU Member States make it even harder for the workers to track their status themselves. Furthermore, even when entitled, workers report that one of the main issues in their access to social protection, like healthcare services, is language barriers and their uncertainty about coverage – which has also been well-documented in previous research on the topic (Zólyomi and Danaj, 2019).

*Sixth*, there seems to be **no collective action among posted workers in Austria** and posted workers do not engage with Austrian unions. While trade unions have taken over an information-giving role to all workers, including posted workers, they have limited interaction with posted workers. Insights from the SMUG fieldwork confirm previous research (Geyer et al., 2022) that workers posted to Austria often work for wages lower than collective bargaining wages in the sector despite efforts to enforce national pay standards. Our fieldwork has also revealed no other forms of collective action among posted workers. Informal personal networks of posted workers – often linked to co-nationalities – seem to be the most operational source of collective action when learning about their rights and potential entitlements to the social protection regime in Austria and elsewhere. However, while many posted workers place their trust in these personal networks for information and continued employment, it can also lead to tension when it comes to undeclared work and ensuring, for instance, that their PDs A1 are in place.

## Conclusions and Policy Recommendations

Based on our empirical research and fieldwork in Austria, we presented the current EU and Austrian legal framework with regard to the implementation of social security rights for posted workers and discussed the six main challenges posted workers encounter when accessing social security systems and the points of tension between the posted worker status and social rights. The challenges we identify were the significant vulnerability of a large majority of posted workers when negotiating their working conditions, the lack of coordination and information exchange regarding the numerous temporary employment contracts, the presence of complex posting contractual chains, workers' priority of wage security over social protection, language barriers workers face in accessing information and services in receiving countries, and the lack of involvement with national organised labour. The research and the exchange with stakeholders during the SMUG project have allowed us to draw several recommendations on how the social security inclusion of posted workers can be improved.

**PDs A1 have the potential to be a cornerstone for posted workers' contributory and non-contributors social protection access and entitlements**

First and foremost, there is a need for better implementation and control of the use of PDs A1 for both sending and receiving countries. In this respect, PDs A1 should be used to their full potential to, both, simplify the coordination, tracking, and visibility and to unify the system of social protection entitlements. PDs A1 have the potential to be a key source for facilitating the transparency and the visibility for posted workers' contributory and non-contributory social protection access and entitlements, and the exchange of such information between different national authorities. PDs A1 could remove the burden of individual attempts for contribution aggregation and can clarify which rules apply when and for whom.

Furthermore, Austria has already adhered to the EESSI and is now in the process of digitalisation of PDs A1 for posted workers to and from Austria. Such electronic documents would facilitate the checks on worker mobility between countries and allow a more accessible application and processing for PDs A1 by the employers or the workers. Likewise, storing all the information related to the social benefit contributions aggregated for each worker through a European Social Security (ESS) pass could result in further improvements. Our results point out that this would be a welcome development in remedying many of the challenges we identified here.

**ELA should take a leading role in making these information packages available in multiple languages**

Second, language barriers and lack of awareness about social rights have been identified as key challenges in accessing social protection. There needs to be more widely available information about the benefits that posted workers are entitled to both during and after the posting period in each country. Such information should also inform workers regarding the PDs A1 and potential national contact points they can get in touch with if their employers do not register these documents for them. For instance, as part of its information

campaign and mandate to better implement the social policy coordination regulation, ELA could and should take a leading role in making these information packages available in multiple languages, focusing on both EU and non-EU languages that are well represented among posted workers.

Third, there are certain intersectional social security risks faced by posted workers. Most importantly, TCNs deserve specific attention when addressing their social protection access challenges. One crucial challenge TCNs face is the entanglement of their status with their employment, which is very short-term, and their need for a resident permit, which needs to be longer-term, to remain in the EU labour markets. Therefore, employers who post TCN workers to other destinations have disproportionate power over them. Thus, both at the EU level and the national level, there needs to be strict regulations and controls over the social rights, employment rights, and contract conditions made available to TCN workers to reduce the social vulnerability and precarity these groups face.

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