



# **The posting of third country nationals via EU Member States**

Training module 3 - EU labour mobility regulatory framework (FMW, PoW)  
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## Introducing the Presenter



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**Sonila Danaj** has for sixteen years of experience as a researcher and been involved in projects related to labour mobility and labour migrants working life for eight years. I have been managing and acting as researcher for four projects on labour mobility and posted work with two new projects starting in January 2021. Her thematic expertise includes labour mobility, including posted work and temporary agency work; migrant workers' labour and social rights, working conditions, occupational health and safety; third country nationals labour mobility and posting; monitoring and enforcement of labour standards for mobile workers; social partners engagement with labour mobility policy and migrant workers; national and transnational stakeholder cooperation practices and enforcement challenges.

## Question 1

Have you come across posted workers from third countries in your work?

Yes

No

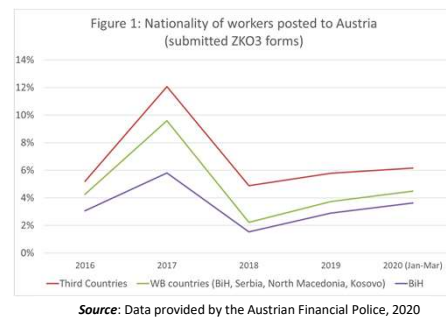
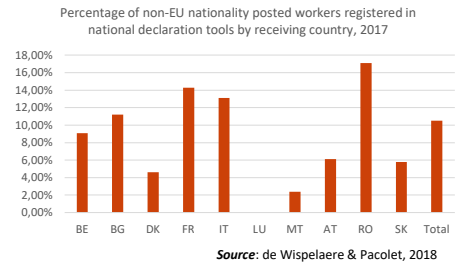


## Mapping TCN Posting 1

- The posting of third country nationals (TCN) through different flows is **developing**:
  - directly from EU candidate countries (Serbia and North Macedonia)
  - but mostly from one EU country where they are formally residing to another EU country (e.g. Slovenia, Poland, Italy)
    - the development of the '**posting industry**'

### Incomplete data on TCN posting

- Data still **not systematically collected**: some MSs do, though indicating that TCN posting is approximately 10.5% of total posting (2017).
- More recent figures reported by AT 15,296 (receiving) and Slovenia (sending) 25.172 in 2019
- **More systematic data collection is necessary!**



## Mapping TCN Posting 2

- The main flows for TCN posting are via EU countries that are **bordering or close** with the countries of origin,
- countries among which there are **consolidated historical migration pathways**,
- and **bilateral agreements** for facilitated migration procedures have been set in place.
- It is therefore relatively common to find TCN posted workers from the Western Balkans being posted from Slovenia, or Ukrainian workers being posted from Poland, or non-EU Eastern European, Western Balkan and Northern African workers being posted from Italy.

## Why do TCN workers move to the EU sending countries?

### Push factors

- existing conflict/post-conflict
- politico-economic instability
  - Wage differences and availability of jobs
  - informal and/or irregular employment practices
  - unpaid and/or irregular contributions and health insurance
  - poor social dialogue mechanisms/weak worker organizations
  - Dysfunctional juridical system

### Pull factors

- consolidated historical migration pathways
- geographical proximity
- relatively simpler migration procedures
- informal and formal recruiters of TCN workers (incl. gangmasters)

### **Why do TCN workers agree to be posted?**

- Direct migration to the receiving countries is long, bureaucratic and with an uncertain outcome.
- Earnings increase compared to home and sending country, even if paid less than local workers.
- Posting presents a more certain and hassle-free option than regular migration as employers take care of everything from finding the job to paperwork to travel and lodging, also because
- There is a growing numbers of consultants, law firms and letterbox companies which specialise in facilitating the posting of workers – so-called 'posting industry'.



## Question 2

What is the most common employment/contractual irregularity you have encountered when inspecting companies that employ TCN posted workers?

1. Irregular posting (e.g. fake posting/Letterbox companies/no A1)
2. Misreport of job/profession or skills-level
3. Un/under-reported worked hours
4. Sending-country pay rates



## **Employment Vulnerabilities of TCN posted workers**

- Recruitment channels
  - informal/gangmasters
  - posting industry, esp. when facilitating fake posting or letterbox companies
- Contractual irregularities
  - job/profession, skills-level, sector
- Remuneration and social protection irregularities
  - un/under-reported hours,
  - sending-country rates,
  - unpaid social contributions,
  - no (proper) health insurance

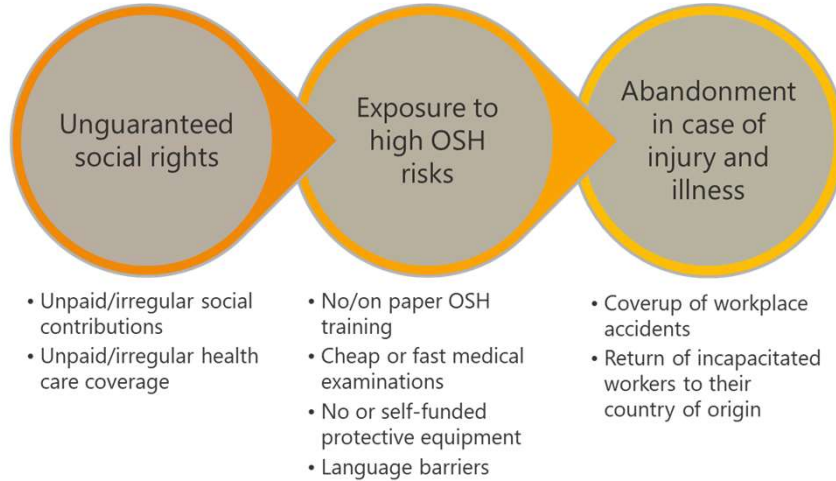
## Question 3

What is the most problematic OSH irregularity you have encountered when inspecting workplaces where there were TCN posted workers?

1. No OSH training
2. No proper protective equipment
3. Language barriers (e.g. no signs in workers' languages)
4. Unreported work accidents



## Social Welfare and OSH Vulnerabilities of TCN posted workers



## Challenges to the protection of TCN posted workers

- Lack of systematic information on rights and worker protection mechanisms
- Hesitation/distrust/fear of public authorities and/or worker organizations due to
  - Home/sending country system of reference (e.g. antagonizing enforcement agencies or weak/corrupt unions in the home country)
  - The double dependence on the direct posting employer for work permits and employment
  - Lack of information
- Caveats to national worker organizations' support
  - e.g. in AT to become union member you need to work in the country for six months, Chamber of Labour can provide support in legal matters, but only when workers make a formal claim
- Language barriers

## Challenges of Enforcement Agencies dealing with TCN posted workers

- Challenges deriving from the combination of migration status as third country nationals and their employment via posting
  - confusion on the applicable rules: posting or migration regulation
  - complex work permit systems for TCNs that sometimes allow for these workers to be posted, e.g. Poland or Slovakia.
  - ambiguities of posting from candidate countries to EU member states.
- Human resources challenges
  - insufficient personnel
  - TCN language barriers
- Cross-border collaboration challenges
  - In different countries enforcement authorities have different structures, mandates and legal frameworks
  - No joint databases or access to national databases between EU and non-EU countries
  - Online tools sometimes rigid in their categorizations, i.e. they do not help distinguish ambiguous cases or cases that involve more than two countries
  - No consolidated channels of information exchange and collaboration between EU and non-EU authorities

## Conclusions

- ✓ The posting of third country nationals (TCN) through different flows is **growing**.
- ✓ The combination of the TCN migration status and their employment via posting results in TCN posted workers **not** being properly **protected**.
- ✓ Irregular and exploitative employment relations practices are transferred from the country of origin to the sending and the receiving EU countries despite the mechanisms for control and enforcement of national/EU standards,
- ✓ which is also **destabilizing** the fragile stability reached via the partially successful re-regulation of posted work.
- ✓ The solution could be to find a way to **re-regulate** or **restrict** TCN posting.

## Project pages

- Occupational safety and health of posted workers (POOSH): [www.poosh.eu](http://www.poosh.eu)
- Posting of workers in Eastern Europe (EEPOW): <https://www.euro.centre.org/projects/detail/1673>
- Posting of third country nationals: Mapping the trend in the construction sector (Con3Post): <https://www.euro.centre.org/projects/detail/3346>
- Bridging the gap between legislation and practice in the posting of workers (POW-BRIDGE): <https://www.euro.centre.org/projects/detail/3633>

## Research reports

- Cillo, R. (2020). [Regional Case Study: From Morocco and Tunisia to Belgium via Italy: migration and posting of third country nationals](#). Venice: Ca' Foscari University of Venice.
- Danaj, S. & Geyer, L. (2020). [Here, not to stay – The posting of third-country nationals between Bosnia and Herzegovina, Slovenia, and Austria](#). Policy Brief 2020/6. Vienna: European Centre.
- Danaj, S., Geyer, L., Cukut Krilić, S., Toplak, K. & Vah Jevšnik, M. (2020). [From Bosnia and Herzegovina to Austria via Slovenia: Migration and Posting of Third Country Nationals in the EU. A Regional Case Study](#). European Centre Report. Vienna: European Centre.
- Danaj, S., Zólyomi, E., Vah Jevšnik, M., & Cukut Krilić, S. (2019). [Implementing the Posting of Workers Directive in the Western Balkans: An Institutional Analysis](#). EEPOW Comparative Working Paper. Vienna: European Centre for Social Welfare Policy and Research.
- Danaj, S. & Zólyomi, E. (2018). [Occupational Health and Safety of Posted Workers in the EU: A Comparative Report](#). POOSH – Occupational Safety and Health of Posted Workers: Depicting the existing and future challenges in assuring decent working conditions and wellbeing of workers in hazardous sectors. Vienna: European Centre.
- De Wispelaere, F. and Pacolet, J. (2018). [Posting of workers Collection of data from national declaration tools Reference year 2017](#). HIVA-KU Leuven.
- Kall, K., Brzozowska, A., Lillie, N., Matuszczyk, K. & Salamoriska, J. (2020). [Regional Case Study: From Ukraine to Finland and Estonia via Poland: Migration and posting of third country nationals](#). Jyväskylä/Warsaw: University of Jyväskylä and University of Warsaw.