



POW-BRIDGE NEWSLETTER No. 2

At the end of the first year of **the POW-BRIDGE** project implementation, we report on the main research and cooperation deliverables, namely the country reports and the first Mutual Learning Lab.

COUNTRY REPORTS

POW-BRIDGE partners produced **eight country reports**, focusing on Austria, Hungary, Italy, North Macedonia, Poland, Serbia, Slovakia, and Slovenia. The case studies investigate how the Posting of Workers Directive (PWD) and other EU regulations interplay with regulations at the national level and identify gaps between the legal basis and practices, based on analysis of documents and statistical and expert interview data. All publications are available [online](#).

- The [Austrian case study](#) was conducted by Rahel Kahlert and Sonila Danaj (European Centre). Results showed: 1) The Austrian regulatory framework (especially the Anti-Wage and Social Dumping Act) seemed comprehensive and sometimes stricter than the European regulations. 2) Regulatory enforcement, especially on social insurance, across borders, was identified as deficient by public stakeholders and social partners. 3) Posting employers found that following Austrian regulations would add more bureaucracy and costs compared to domestic companies. 4) Worker protection continues to improve towards "equal work, equal pay, equal conditions." Language difficulties and limited access to information remain challenges for posted workers and therefore deserve policy attention and the introduction of new tools. Recommendations at the Austrian level include: Extend competency of investigation to all relevant agencies; adjust Austrian law to reflect the amended PWD and court rulings; provide a platform to upload posting documents electronically; support posting companies in finding the correct collective agreements; find ways to reduce bureaucracy; and reduce incentives for wage and social dumping.
- In the [Hungarian case study](#) conducted by Eszter Zólyomi (European Centre), we found EU regulations pertaining to cross-border labour mobility had been transposed into national legislation with provisions in the Labour Code, the law on social security, labour inspection, labour safety, service provision, and equal treatment. The analysis showed important differences between the transposed EU rules on posting, social security coordination and taxation rules as to which Member State's law applies in the case of posting. The main enforcement challenges are compliance with labour and working standards, particularly the effectiveness of labour and OSH inspections, and insufficient labour inspection personnel. Typical reported problems are unpaid wages, unlawful wage deductions and non-compliance with host country minimum wage requirements. Workers posted to Hungary often do not report labour and OSH violations. Reasons include workers' general fear of authorities, lack of information or incentives due to comparatively higher wages, language barriers, as well as weak worker organisations. Access to information about host country labour standards and the often-complex national rules are the main issues for employers, especially in the road transport sector. Hence, legislative convergence, clearer posting rules, effective enforcement and better protection for workers were the main recommendations.



- Rossana Cillo and Fabio Perocco (Ca' Foscari), the [Italian Country Report](#) co-authors, indicate that implementation and enforcement of national rules pose many challenges. Public authorities grapple with the delay in introducing specific monitoring on posting, the overlap of various types of administrative and criminal offences not necessarily linked to posting, and the lack of collaboration of some sending countries' competent authorities. The main challenges encountered by companies posting to Italy concern the application of correct wage conditions, particularly in the construction sector, where wages are partially paid through construction funds. Further difficulties may arise in the area of OSH in the workplace due to language barriers and the need to adapt a work organisation to different work contexts. Regarding incoming posted workers, the main challenges are related to the fact that they tend to latently report irregular or exploitative situations due to language barriers and their weak contractual position vis-à-vis their employers. Language barriers also affect posted workers' occupational safety and health, increasing the risk of accidents due to poor or lack of understanding of the rules and procedures provided only in Italian.
- The [North Macedonian case study](#) was conducted by Klimentina Ilijevski and Aleksandra Iloska ("PUBLIC"). Results showed that North Macedonia is already recording inflows and outflows of posted workers, but the existing regulatory framework fails to address all related challenges. While the regulatory framework has been reformed, the by-laws and other accompanying regulation and administrative provisions are still not in place. The absence of clear protocols and procedures for posting creates uncertainty among employers. In terms of worker protection, none of the existing institutions and mechanisms that protect and fulfil employees' rights recognises and protects posted workers' rights. Recommendations at the North Macedonian level include: 1) ensure adequate institutional arrangement responsible specifically for the implementation of posting; including the establishment of an information system that will improve migration and posting data collection and availability; 2) ensure site-level cooperation, including fast and effective data sharing between social partners and state actors to improve the monitoring of the construction sites and detecting unlawful practices; 3) ensure that the by-laws and other accompanying regulation and administrative provisions are in place and 4) develop and distribute detailed guideline that clearly explains the procedure, rights and obligations of workers and employers when posting of workers to and from North Macedonia.
- The co-authors of the [Poland Country Report](#) Anita Brzozowska, Kamil Matuszczyk, Justyna Salamońska and Anna Siwierska (Centre of Migration Research, University of Warsaw) describe companies operating according to the rules and operating in the grey zone. While the former learn how to navigate the legal framework of sending and receiving countries using support from legal companies or employers' networks, the latter use ambiguities in the laws to misuse the system. Among these, the interviewees reported how the companies might misuse portable documents A1, pay social insurance contributions from understated rates of salary or try to bypass the provisions on posting by applying financially more 'beneficial' regulations on business trips and pay a part of the salary as a travel allowance. In particular, employers who operate in the grey zone pose a threat to workers' rights. Hence the workers' protection initiatives should address the persistently low levels of knowledge of the rules and issues related to the contracts, taxes, and social insurance contributions among posted workers.



- The [Serbia Country Report](#) was prepared by Katarina Stanić and Gordana Matković (Center for Social Policy). The report provides evidence that legislation within Serbia is not aligned with each other, particularly the Law on Contributions for Mandatory Social Insurance (LCMSI) with the Law on Conditions for Posting Workers Abroad and Their Protection (LCPW). As a result, a significant difference arises between the minimum gross wage in the receiving country and the minimum contribution base for Serbian posted workers. This has long-term consequences for workers in terms of future pensions and short-term implications in cases of injuries or sickness. Recommendations for the EU level include simplifying the procedure regarding visa/work permits for third-country nationals. Moreover, at the national level, discrepancies between LCMSI and LCPW needs to be addressed, and the labour inspectorate and tax administration should cooperate on the issue of posted workers. When it comes to health insurance, it is vital to sign bilateral agreements with the receiving countries. International cooperation is of the utmost importance in the enforcement of legal rights for posted workers.
- Lucia Kováčová, Ivana Studená and Lucia Mýtina Kureková (Centre of Social and Psychological Sciences) in the **Slovakia Country Report** (forthcoming April 2021, please check [here](#)) focus on the automotive and construction sectors. Although the Posting Directive 2018/957 helped to address different obstacles in the posting implementation practice in Slovakia, discrepancies in labour and migration law across EU countries continue to bring multiple challenges. Employers' most common obstacles relate to determining the remuneration for posted workers and limited access to information about regulatory frameworks in destination countries. The Slovak law enforcement agencies appear to lack capacities to handle complex cases of misconduct in posting and face deficiencies in enforcement agencies' cross-border cooperation. Posting of workers in Slovakia is characterised by long supply chains involving temporary work agencies, often resulting in dispersion of responsibilities towards posted workers and, consequently, labour law violations, especially towards third-country nationals. Inadequate monitoring and law enforcement mechanisms, underdeveloped labour rights protection while a weak representation of posted workers in collective bargaining remain an issue.
- Elizabeta Zirnstein, Suzana Sedmak and Klemen Sirok (University of Primorska), the co-authors of the [Slovenia Country Report](#), indicate that Slovene companies find the posting of workers a complex and lengthy process. Several employers' challenges have been identified: one of the most often stated is obtaining all the necessary legal information when companies post workers to other EU countries and, consequently, complying with all the relevant legislation. Along with the legislation's complexity to follow, the language barrier when posting workers to other countries has also been emphasised. The research also showed illegal practices associated with some posting employers. However, in most cases, workers consent to unlawful practices, such as overtime work, payment in cash etc., to earn as much as possible while being away from home. The Posting of Workers' Directive has been implemented with the Transnational Provision of Services Act, which is currently under revision. The proposed amendments to the law have not yet been publicly presented.



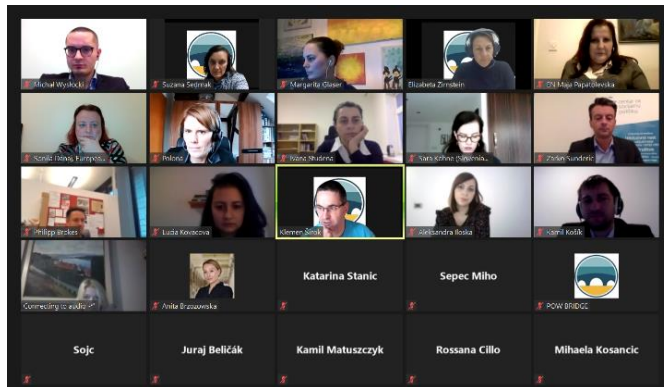
POWBRIDGE

Bridging the gap between legislation and practice in the posting of workers



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FIRST MUTUAL LEARNING LAB



The first Mutual Learning Lab (MML1) was organised by the University of Primorska in an online format on November 24th, 2020. The event gathered 27 participants from partner organisations, social partners and public authorities from eight countries participating in the project, i.e. Austria, Hungary, Italy, North Macedonia, Poland, Serbia, Slovakia and Slovenia, with the aim to exchange their knowledge and know-how. The stakeholders discussed the problems in the enactment of posting

legislation to improve understanding of the challenges that arise from the gap between procedures (legal basis) and practices (experiences) in posting of workers both at countries' and the European levels. Moreover, the discussants identified challenges related to the access to information and support for posting employers and those that refer to cross-border collaboration and occupational safety and health of posted workers.

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