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Posted workers in the EU, in normal and #Covid-19 times

In 2018, posted workers constituted close to 1 % of the total workforce in the European Union – nearly 3 million people, and the number had been increasing steadily since 2010. In this issue of CMR Spotlight, @JSalamonska and her team present the results of the Polish part of two international research projects – #POW-BRIDGE and #Con3Post. They discuss the legal and actual conditions of work of #Polish workers posted to #Germany and other EU countries, and #Ukrainian workers posted via #Poland to #Finland and #Estonia, both in normal circumstances and during the #Covid-19 pandemic, which has disrupted worker flows.

Please let us also take the opportunity of this last issue of Spotlight in 2020 to wish everybody a restful holiday season. We hope 2021 brings you all and your families lots of health!



[@bridgesward](#) via [Pixabay](#)



Posting of workers from the Polish perspective – overview and most recent trends

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Introduction

The Centre of Migration Research (CMR) has acted as a partner in two international projects examining the posting of workers from various perspectives. The [*Bridging the gap between legislation and practice in the posting of workers project \(POW-BRIDGE\)*](#) project examines how the reality of legal procedures differs from the day to day experiences, analysing perspectives of employers, social partners and public authorities in the area of posting of workers. The [*Posting of Third Country Nationals. Mapping the Trend in the Construction Sector project \(Con3Post\)*](#) explores the growing phenomenon of recruitment and posting of third-country nationals coming from the Western Balkans, Eastern Europe and North African regions, to work as posted workers in the EU construction sector. Both projects combine empirical research in several EU Member States with the promotion of multi-stakeholder transnational cooperation and exchange of information.

The CMR team has carried out desk research and fieldwork, examining the posting of workers from the Polish perspective. Below, we outline the general context for studying the posting of workers and the numbers

involved. We also describe the new findings on posting of Ukrainian workers via Poland to Finland and Estonia. Finally, we focus on how Covid-19 impacts on posting of workers.

Posting of workers – overview, issues and trends

Since 2010, there has been a steady increase in the number of posted workers in the EU. In 2018 alone, the number of posted workers was estimated at nearly 3 million people, which amounted to almost one per cent of the total working population in the EU. The posting of workers is one of the aspects of the European market integration processes, and this form of provision of cross-border services has also received much attention because of the challenges occurring in this area, related, among other things, to the coordination of social security systems and also because of the dangers related to social dumping.

While labour migration between EU countries is based on the principle of free movement of workers, the posting of workers is related to the freedom to provide cross-border services. The essence of posting of workers is the temporary provision of a predetermined (in advance) service in another Member State. The

current law regulates that the duration of work may not exceed 12 months (18 in some instances). However, the data show that the average time of posting of workers was much shorter (De Wispelaere et al., 2020). Under the new regulations in force, from the beginning of August 2020, posted workers must be guaranteed the same terms and conditions of employment as workers in the country concerned. This is in line with the call made by trade unions for “equal pay for equal work in the same place”. Previously, posted workers could count on minimum conditions in the host country as defined in Directive 96/71/EC on posting of workers and implemented by individual member states. The current regulations oblige employers, among others, to apply the provisions and collective agreements in force at the regional or branch level.

From the legal perspective, the posting of workers is regulated by the provisions of labour, social security and tax orders. In practice, this means that an employer who has won a contract to perform a service in another country has to meet several specific conditions before posting. In addition, the employer may use two different legal bases that allow posting of workers to provide services in EU countries. The first type (on the basis of Article 12 of Regulation 883/2004 on coordination on social security systems) regulates the general situation when an employer or self-employed person goes to perform a service temporarily to another country and is then subject to the

legislation of the posting country. The second type of work carried out in two or more EU countries (Article 13 of Regulation 883/2004 on coordination on social security systems), has more complex implications as for the applicable legislation. However, as POW-BRIDGE fieldwork documents, the high degree of complexity of the law governing the posting of workers makes it very difficult for employers to navigate in the legal context. Employers not only have to comply with labour, social security and tax orders but also with the provisions of EU law, the regulations in force in the country of origin and the country in which the service is provided. The most frequent violations of legal regulations in the area of posting of workers concern regulations on coordination of the social security system, mainly in the case of PD A1 forms, i.e. portable documents certifying the subjection to one social security system.

Poland is one of the key states for the analyses of the positing of workers. In 2018 alone, Poland issued more than 600,000 PD A1 forms, with the highest numbers of posted workers directed to Germany and France. Posted workers from Poland most often work in the construction sector, but also in industry and the care sector in the destinations. Numbers of workers posted to Poland are much smaller, with only 26,700 people who received PD A1 on the basis of Article 12 (Regulation 883/2004) (De Wispelaere et al., 2020). In most cases, workers posted to Poland are highly

qualified employees, members of staff of international corporations who come to the Polish branch to perform specific tasks.

Posting of workers from third countries

As a part of Con3Post project, the CMR team studied the posting flows involving Ukrainian workers posted from Poland to Finland and Estonia focusing on the construction sector (see [Kall et al., 2020](#)). Posting of third-country nationals has been a new but growing and understudied phenomenon in recent years. In Poland in 2018, among PD A1 issued under Article 12.1 there were 2,155 documents issued to Ukrainians and 138 to Belarussians. Main receiving countries for posted workers were Germany, Belgium, France and Sweden. The construction sector accounted for most postings of third-country nationals.

In the Con3Post report we describe in more detail the posting of Ukrainian workers from Poland to Finland and Estonia. Crucially from the point of view of the dangerous character of work in the construction sector, we pointed to the cases of lack of occupational safety and health training for posted workers and no accident insurance coverage. Also, some workers were not paid the statutory minimum wage according to the rules in force in the given country but were paid daily subsistence allowances instead. Others had no social insurance coverage. These issues were particularly problematic in the case of third-country workers, as these workers may be reluctant to reach authorities or trade unions for

support because of the language barriers or out of fear of being deported.

The third country postings highlight regulatory challenges, which are even more severe than in case of posting of the EU nationals. The third-country nationals remain more vulnerable to labour rights violations as they are often involved in a complex chain of companies. It might be difficult for these workers to understand who their real employer is, what kind of employment relationship they have, which country they get social security coverage from and whether it is duly paid (or paid at all), as well as what to do in case of work accidents and occupational diseases.

Workers from Ukraine posted via Poland to Finland and Estonia are just one of the three case studies studied comparatively within the Cont3post project framework. Two other posting flows studied were these of workers from Bosnia and Herzegovina posted to Austria via Slovenia ([Danaj et al., 2020](#)) and of workers from Morocco and Tunisia posted to Belgium via Italy ([Cillo, 2020](#)). The final Con3Post conference took place on December 10th, 2020, where the research team presented the findings, including comparison of the three flows.

Covid-19 and posting of workers

The mechanism of posting workers in the framework of the provision of services has been partially used to satisfy some of the identified labour shortages in the EU. This was even more evident during the Covid-19 pandemic. Many posted workers continued

providing essential services, including health care, food service, and transport, when the Covid-19 pandemic had shut down much of the European economy. Also, at least some workers of the construction sector were classified as 'essential'.

Due to the pandemic, the provision of these services became more complicated. First and foremost, mid-March 2020 chaos and lack of information emerged, with the World Health Organisation's announcement that Europe is considered to be the active centre of the Covid-19 pandemic. Employers did not know how national markets would react and whether borders would remain open. National authorities have been imposing restrictions and measures for infection reduction, but their tier systems were not coordinated at the EU level. Moreover, workers themselves were afraid to go abroad when Poland went into the lockdown, which was particularly evident in the care sector. From the other side, some caretakers could not work because of the fear of the families of infections or quarantine (which entailed the fear of losing the PD A1 if the Polish Social Insurance Office classify those cases as marginal employment).

As employers and employees became accustomed to the new situation, and governments eased lockdown restrictions in late April or early May, workers began to return to work on construction sites and in private households. However, new issues have emerged. Some of the posted workers

have been quarantined for two weeks after crossing the Polish border which raised questions about their salary and insurance. In the cases of confirmed Covid-19 disease among construction workers abroad, it was problematic to ensure quarantine and to keep a distance in collective housing. In the care sector, on the other hand, it was problematic to test workers for Covid-19 before they went abroad. Moreover, due to the extended waiting time for the issue of PDs A1, some employees leave without the European Health Insurance Card (EHIC) that can be created only based on this document. If the Polish Social Insurance Office refuses to issue PDs A1, the employer must prove in the receiving country that he cannot insure employees in Poland. This procedure can last up to several months, leaving the posted worker uninsured. It also has far-reaching consequences in terms of entitlement to a retirement pension. Furthermore, employees and their families remain without access to health services, which becomes particularly problematic in the time of the Covid-19 pandemic.

References:

Rosanna Cillo (2020) Regional Case Study Report.

From Morocco and Tunisia to Belgium via Italy: migration and posting of third country nationals. Available at

<http://www.migracje.uw.edu.pl/publikacje/regional-case-study-from-morocco-and-tunisia-to-belgium-via-italy-migration-and-posting-of-third-country-nationals-work-package-3-2/>.

Sonila Danaj, Leonard Geyer, Sanja Cukut Kričić, Kristina Toplak, Mojca Vah Jevšnik (2020) Regional Case Study Report. From Bosnia and Herzegovina to Austria via Slovenia: migration and posting of third country nationals in the EU. Available at <http://www.migracje.uw.edu.pl/publikacje/regional-case-study-from-bosnia-and-herzegovina-to-austria-via-slovenia-migration-and-posting-of-third-country-nationals-in-the-eu-work-package-5-2/>.

Frederic De Wispelaere, Lynn De Smedt, Jozef Pacolet (2020) Posting of workers. Report on A1 Portable Documents issued in 2018. Luxembourg: Publications Office of the European Union.

Kairit Kall, Anita Brzozowska, Nathan Lillie, Kamil Matuszczyk, Justyna Salamońska (2020) Regional Case Study Report. From Ukraine to Finland and Estonia via Poland: Migration and posting of third country nationals. Available at <http://www.migracje.uw.edu.pl/publikacje/regional-case-study-from-ukraine-to-finland-and-estonia-via-poland-migration-and-posting-of-third-country-nationals-work-package-4/>.

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For further information please consult:

<http://ec.europa.eu/social/easi>.

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