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ACCESS TO INFORMATION ON THE POSTING OF THIRD-COUNTRY NATIONALS: THE CASE OF SLOVENIA

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ABSTRACT

Access to Information on the Posting of Third-Country Nationals: The Case of Slovenia

In recent years, it has been observed that workers who are being posted to provide services in the EU Member States are not only EU nationals but also third-country nationals (TCNs). The overlap of migration, employment regimes, and cross-border mobility has been particularly notable in specific labor-intensive sectors in Slovenia, such as construction, where the overall share of posted TCNs has reached over 43%. The challenges and needs of the posting companies in accessing and using relevant information regarding the posting of TCNs that may be subject to additional country-specific conditions and regulations are manifold. The problem is exacerbated further when company owners are TCNs themselves. The article gives an overview of the challenges of the employers and TCN-posted workers in terms of their access and use of information on the posting of workers, focusing mainly on the impediments due to language barriers.

KEYWORDS: posting of workers, third-country nationals, access to information, Slovenia

IZVLEČEK

Dostop do informacij o napotitvah državljanov tretjih držav: Primer Slovenije

Delavci, ki jih delodajalci napotijo v države članice Evropske unije (EU) z namenom izvajanja storitev, niso zgolj državljani EU, temveč tudi državljani tretjih držav. Tovrstno prepletanje migracij, trga delovne sile in čezmejne mobilnosti je v Sloveniji pogosto predvsem v delovno intenzivnih sektorjih, kot je gradbeništvo, kjer je delež napotenih državljanov tretjih držav več kot 43-odstoten. Podjetja se pri dostopanju do relevantnih in specifičnih informacij o pogojih napotovanja državljanov tretjih držav v posamezne države članice EU soočajo s številnimi izzivi. Tovrstne težave so še večje, če so lastniki podjetij tudi sami državljani tretjih držav. Avtorica v prispevku predstavi izzive delodajalcev in državljanov tretjih držav pri dostopu in uporabi informacij o napotitvah delavcev, pri čemer se osredotoča predvsem na težave, do katerih prihaja zaradi jezikovnih ovir.

KLJUČNE BESEDE: napotitve delavcev, državljani tretjih držav, dostop do informacij, Slovenija

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INTRODUCTION

The posting of workers is a cross-border form of service provision introduced to respond to the demands for labor supply among European Union (EU) Member States.¹ In situations where workers are sent abroad to provide services, the legislation of the Member State where the economic activity is carried out applies, which in practice means that the rules and regulations vary significantly. The complexity of national regimes regulating the posting of workers has often caused confusion among the posting companies about the rules by which they must abide (Danaj, 2024). The available channels of information do not necessarily meet all the needs that posting companies might have. Companies have difficulty accessing relevant and reliable information either because it is not sufficiently available, not available in a language they speak, or because of difficulties in navigating, processing, and interpreting the available information in a useful manner (Danaj, 2024; Vah Jevšnik & Toplak, 2024). These challenges are exacerbated in cases of the posting of third-country nationals, where posting and migration rules overlap (Cukut Krilić et al., 2020).

The European Court of Justice (ECJ) in the Vander Elst case of 1994 enabled the possibility for TCNs to be mobile across the EU as posted workers (Mussche & Lens, 2019). The Court decided that TCNs with a valid work and residence permit in one Member State are free to be posted in any other Member State across the EU. The rates of posting TCNs vary across different countries, but the upward trend on the level of the EU is highly evident. An increasing number of TCNs from a large variety of citizenships is mobile across the EU as posted workers, most of them low and medium-skilled, who would have difficulties obtaining a work and residence permit in a traditional labor migration setting – especially in the countries that favor highly skilled labor migration (Lens et al., 2022).

Slovenia is one of the EU countries where the recruitment, employment, and posting of third-country nationals has been on a continuous rise, particularly in specific labor-intensive sectors such as construction (Vah Jevšnik & Toplak, 2023). A high number of the posted workers from Slovenia are TCNs, almost exclusively the citizens of the Western Balkan countries, mainly Bosnia and Herzegovina (BiH), but also Serbia, Kosovo, North Macedonia, and Montenegro. These countries share a strong historical link, as they were once part of the same federation and are in relatively close geographical proximity to Slovenia. In 2021, 62 percent of the workers posted by Slovenian undertakings were TCNs, 99% coming from the Western Balkans. The share of all employed TCNs in total employment was 10.3 percent, which shows that TCNs are overrepresented in the group of outgoing posted workers from Slovenia. The share of employed TCNs that were posted was 43.6 percent. Only one out of three workers posted from Slovenia had Slovenian nationality (Danaj et al., 2023a).

1 Posting of workers is regulated by Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services as amended by Directive (EU) 2018/957.

The challenges and needs of the posting companies in accessing and using relevant information regarding the posting of TCNs, who may be subject to significant additional conditions, are manifold. The regulations vary considerably across the EU and are accompanied by country-specific administrative procedures with which employers are obliged to comply. Finding reliable and comprehensive country-specific and sector-specific information on the posting rules can be very challenging and time-consuming for companies, as such information may not be easily accessible and readily available.² Moreover, information might only be offered in national languages, and many companies must, therefore, outsource foreign advisory firms to provide translations and interpretations of the applicable laws. This is especially troublesome for smaller companies with limited financial resources, many of which are founded by TCNs themselves (Vah Jevšnik & Toplak, 2024).

This article gives an overview of the challenges of employers and TCN-posted workers in terms of their access to and use of information on the posting of workers, with an emphasis on the language barriers. The specific focus is on the posting *from* Slovenia. The discussion is based on the review of the existing literature on the recruitment, employment, and posting of TCNs from Slovenia, statistical data collected from the Slovenian national competent authorities on the extent and dynamics of the posting trends in general, and posting of TCNs in particular, and mapping of 36 information channels providing information about the posting of workers. The discussion is also shaped by the findings from focus groups and semi-structured interviews conducted with posted workers, employers, and information providers on the challenges of obtaining information collected in the past five years as part of the extensive fieldwork for the Con3Post,³ SMUG,⁴ and INFO-POW⁵ projects, as well as on the online survey for the employers conducted within

- 2 The European Labour Authority (ELA), for instance, notes in its report concerning information provision, enforcement, social security coordination and cooperation between Member States in relation to the posting of workers in the EU construction sector that there are major deficiencies in the communication tools and methods when it comes to posting workers abroad, “leading to confusion and difficulty in accessing relevant information, for instance use of complex legal language, lack of translations, and scattered sources of information” (ELA, 2023).
- 3 Posting of Third Country Nationals. Mapping the trend in the construction sector, VP/2018/011/0019 (2019–2020), DG Employment, Social Affairs & Inclusion, EaSI-Progress. Three focus groups were organized in Ljubljana and Vienna in 2019. The number of participants was 22 and included representatives of employment agencies, relevant government bodies, trade unions, and NGOs.
- 4 Secure Mobility: Uncovering gaps in the social protection of posted workers, VP/2020/007/0020 (2020–2021), DG Employment, Social Affairs & Inclusion, EaSI-Progress. Ten biographical interviews were conducted in 2021 with workers posted from Slovenia (6 were TCNs from Bosnia and Herzegovina, Kosovo, and North Macedonia), one focus group was conducted in 2021 with representatives of trade unions and NGOs.
- 5 Assessment of the channels of information and their use in the posting of workers (2022–2024), DG Employment, Social Affairs & Inclusion, ESF+. Six qualitative interviews were conducted in 2023 with representatives of public authorities, posting undertakings and private consultants; 36 channels of information were identified and analyzed; 29 Slovenian posting undertakings participated in a web survey provided to them in the Slovenian language.

the framework of the INFO-POW project. The article contributes to filling the gap in the literature on the information provision on the posting of workers in Slovenia. It builds on quantitative and qualitative data to provide an empirical base for developing evidence-based argumentation about the lack and importance of information provision in a transnational setting.

The article first explores the overlaps of the migration and posting regimes observed in Slovenia and provides an outline of the trend of posting TCNs. Next, it moves on to present the challenges in accessing information about the posting of workers in general and TCNs in particular. It focuses on the language barrier as one of the most challenging obstacles to overcome when seeking information about the national regulatory mechanisms concerning the posting of workers. Finally, the author argues that access to comprehensive, relevant, trusted, and updated information on the applicable laws is of paramount importance to ensure companies' compliance with the relevant national legislation. That is why efforts must be made to guarantee effective information sharing that reaches the posting companies as well as the posted workers themselves.

RECRUITMENT, EMPLOYMENT, AND POSTING OF WORKERS FROM THE WESTERN BALKANS

In 2021, most labor migrants employed in Slovenia, around 75 percent (80,320), arrived in Slovenia from Bosnia and Herzegovina (BiH), Serbia, Kosovo, North Macedonia, and Montenegro. The highest percentage of labor migrants who are continuously issued work permits in Slovenia are by far the nationals of BiH. In 2021, they were the holders of over 91 percent (41,668) of all valid work permits issued to TCNs (ESS, 2024). The number of employed BiH nationals has increased by almost 55 percent since 2018.⁶ The overall share of TCNs in total employment of Slovenia in 2021 was above 10 percent, while the breakdown by sector shows that their share was the highest in the construction sector (40.4%), transport and storage (28%), and manufacturing (10.9%).

In 2021, 62 percent of the workers posted by Slovenian undertakings were TCNs. The share of all employed TCNs in total employment was 10.3 percent, which shows that TCNs are overrepresented in the group of outgoing posted workers from Slovenia. The share of employed TCNs that were posted was 43.6 percent.⁷ One out of three workers posted from Slovenia had Slovenian nationality. The share of employed Slovenian nationals who were posted was less than 3 percent. Compared to 2018, the percentage of posted workers who are Slovenian nationals and EU nationals in

6 Statistical office of the Republic of Slovenia, E-mail correspondence, March 14, 2021; own calculations.

7 Own calculations based on data from Health Insurance Institute of Slovenia and Statistical Office of the Republic of Slovenia.

2021 has decreased by nearly 10 percent, while the share of TCNs increased by over 70 percent.

The share of workers from BiH, Serbia, Kosovo, North Macedonia, and Montenegro in the total group of posted TCNs from Slovenia in 2020 was 99 percent, and in 2021 it was 98.9 percent.⁸ Among them, the highest number and share of TCNs posted from Slovenia in 2021 were BiH nationals (62.9%), followed by Serbian nationals (20%), Kosovar nationals (12.2%), and North Macedonian nationals (3.4%) (Table 1). Compared to 2018, the number of posted workers who are nationals of BiH increased by 72.5 percent in 2021. In contrast, the number of Slovenian posted workers has decreased by nearly 10 percent from 2018 to 2021. As a result, fewer Slovenian than BiH nationals were posted from Slovenia in 2021. The share of Bosnian and Slovenian nationals posted abroad was 39 percent and 31.8 percent, respectively.⁹

Nationality	2018		2019		2020		2021		Change 2021 vs. 2018
	Number	% in total posted workers	Number	%	Number	%	Number	%	
Total	49,559	100%	57,086	100%	60,500	100%	63,887	100%	28.9%
Slovenian	22,525	45.5%	22,479	39.4%	20,627	34.1%	20,302	31.8%	- 9.9%
Total TCN	22,681	45.7%	30,269	53%	35,713	59%	39,638	62%	74.8%
Other	4,353	8.8%	4,338	7.6%	4,160	6.9%	3,947	6.2%	- 9.3%
		% in total posted TCNs							
BiH	14,446	63.7%	18,921	62.5%	23,042	64.5%	24,914	62.9%	72.5%
Serbia	5,915	26.1%	7,668	25.3%	7,703	21.6%	7,910	20%	33.7%
Kosovo	1,343	5.9%	2,404	7.9%	3,369	9.4%	4,855	12.2%	261.5%
North Macedonia	699	3.1%	925	3.1%	1,169	3.3%	1,365	3.4%	95.3%
Ukraine	138	0.6%	173	0.6%	163	0.5%	168	0.4%	21.7%
Montenegro	53	0.2%	70	0.2%	113	0.3%	158	0.4%	198.1%
Other TCNs	87	0.4%	108	0.4%	154	0.4%	268	0.7%	208%

Table 1: The number and share of Slovenian nationals and TCNs in the total group of posted workers from Slovenia, breakdown by nationality, 2018–2021 (source: own calculations based on data from Health Insurance Institute of Slovenia).

8 Own calculations based on data from Health Insurance Institute of Slovenia and Statistical Office of the Republic of Slovenia.

9 Own calculations based on data from Health Insurance Institute of Slovenia and Statistical Office of the Republic of Slovenia.

The figures on the posting of persons by sector of activity are not available for the persons posted, only for the number of PDs A1 issued. In 2021, most PDs A1 for TCNs were issued in international freight transport, installation/assembly and servicing, construction, and industry. The percentage was highest in the construction sector, where over 74.5 percent of PDs A1 were issued for TCNs. In all four sectors, the highest share of PDs A1 was issued to the nationals of BiH.

In addition to the push factor of the unfavorable economic and political conditions in BiH, the pull factor for migration is the high labor demand in Slovenia. Slovenia is an appealing option for Bosnian workers due to significantly higher wages, better labor market prospects, familiarity with the language, historical ties, geographical proximity, and, importantly, facilitated immigration procedures. Slovenia has a bilateral agreement on the employment of workers with BiH,¹⁰ which allows citizens unrestricted access to the Slovenian labor market if a set of conditions are fulfilled: they are registered with the public employment agency in their home country; there is a justifiable demand for labor in Slovenia; and they are offered a work contract for at least one year by a Slovenian employer.¹¹ Many Bosnian workers also prefer Slovenia as their country of destination over other high-paying EU countries because of less demanding and less uncertain procedures for granting work permits.

Data shows that a high percentage of the recruited and employed workers in Slovenia end up being posted to other Member States. Moreover, the analysis of the regulatory frameworks suggests that posting workers who are TCNs has become an established form of labor supply primarily due to socioeconomic factors that have driven workers in these countries to accept posting assignments (Danaj et al., 2023a).¹² The involvement of the public employment services in the active recruitment of workers from BiH and Serbia to fill shortages in the Slovenian labor market, as stipulated in the bilateral agreement, seems also to be a contributing factor (Danaj et al., 2023a). There are, on the other hand, several restrictive country-specific regulations in place regarding the posting of TCNs to other Member States that employers need to be aware of and comply with, regardless of whether or not they are controversial in terms of posing an obstacle to the free movement of services across the EU. For example, the continued application of the so-called Vander Elst visa requirement by Germany for the posting of TCNs has been in force despite the CJEU's 2006 judgment on the case C-244/04 *Commission v Germany* that the issue

10 Slovenia also has a bilateral agreement on the employment of workers from Serbia, but it is not as extensively utilized as the one concluded with BiH. Bilateral agreements on the employment of Bosnian nationals (Official Gazette 92/2012, Implementation Protocol 29/2017) and Serbian nationals (Official Gazette 38/2019) distinguish nationals of Bosnia and Herzegovina and Serbia from the rest of the TCNs who would like to work in Slovenia.

11 Most work contracts for BiH nationals are issued for jobs in construction, manufacturing, and transport sectors (Employment Service of Slovenia).

12 For a detailed analysis of the drivers of migration from BiH to Slovenia and the scope and impact of posting of TCNs by Slovenian undertakings see Vah Jevšnik et al., 2022 and Danaj et al., 2020.

of an administrative visa of this sort constitutes a restriction on the freedom to provide services (Danaj et al., 2023a). The procedure requires TCN workers to apply for a permit at the German embassy in Slovenia, which can be a lengthy procedure that takes several months. Waiting times for an appointment vary according to the number of applications submitted at a certain period, which creates uncertainty as to when the processing will start. Once the application is accepted, the processing time can be up to two months. This administrative requirement bears additional costs and bureaucratic burdens for posting undertakings and is reportedly considered to have had a slowing down effect on the posting of TCNs (Danaj et al., 2023a). Posting undertakings must also comply with specific rules concerning the posting of TCNs when posting workers to Ireland (Vander Elst visa) or Italy (work permit authorization).

The challenges and needs of the posting companies in accessing and using relevant information regarding the posting of workers, especially those who are TCNs and may be subject to additional conditions, are manifold. Namely, all workers who are posted to temporarily provide services in different EU Member States are subject to the employment regulations that are in place in the receiving countries. The regulations vary significantly across the EU and are accompanied by country-specific administrative procedures that employers are obliged to comply with when posting or receiving them. Since access to comprehensive, relevant, trusted, and updated information on the applicable laws is of paramount importance to ensure companies' compliance with the relevant national legislation and protect workers' rights, efforts should be made to guarantee effective information sharing that reaches all stakeholders involved in the process of posting. The European Commission has recognized the importance of this issue and has addressed it in the Directives on the posting of workers.

ACCESS TO AND USE OF INFORMATION ON THE POSTING OF WORKERS

Slovenia has transposed all the directives on the posting of workers (Directive 96/71/EC, Directive 2014/67/EU, Directive 2018/957/EU, Directive (EU) 2020/1057), which all aim to strengthen the protection of posted workers and ensure their rights are protected when posted abroad to provide services. The Enforcement Directive (Directive 2014/67/EU), in particular, notes the paramount importance of information sharing on terms and conditions of employment in different Member States to achieve these goals. The Directive states that Member States should "ensure that such information is made generally available, free of charge and that effective access to it is provided, not only to service providers from other Member States, but also to the posted workers concerned" (Paragraph 18). It stipulates that Member States should establish a single official national website in the most relevant languages, providing up-to-date information on the posting of workers in a transparent and accessible manner. The amended Directive 2018/957/EU further stresses the importance

of information sharing and explicitly emphasizes the connection between access to information and compliance with the regulations. Furthermore, the Directive requires Member States to include all mandatory elements constituting pay and the additional terms and obligations of employment related to postings on the single official national website, ensuring that the information provided is accurate and up to date.

The findings from the desk research show that several public and private channels of information in Slovenia, such as public authorities, employers' associations, trade unions, NGOs, consultants, etc., offer some information on the posting of workers. Our sample included websites, online training/webinars, online manuals and guidelines, and other online forms of information, such as videos, online leaflets/brochures for print-out, and written educational material that can be purchased and accessed for a certain period. Eleven predetermined categories were selected as a measure of the content and scope coverage of our sample: working time/work hours; occupational safety and health; minimum wage/collective agreements; registration for social insurance/contribution; work permits; overtime and other additional supplements including bonuses and wage supplements such as night and weekend shifts; leave and holiday; facilitating information targeted to companies; sanctions and enforcement; redress and appeal; and taxation. All categories were coded according to whether they addressed posting *to* Slovenia or posting *from* Slovenia. Topics covering posting *from* Slovenia are significantly more widely covered than posting *to* Slovenia. We found that most information channels in our sample provide the definition of posting, information on the rules and regulations concerning the issuing of PDs A1, and generic information on the regulations of the posting of workers as stipulated in the Posting Directive 2014/67/EU. Specific information relevant to individual sectors and applicable to different national contexts is much more difficult to find. Among the eleven categories analyzed, most online channels address issues such as minimum wage/collective agreements, working time/hours, overtime and additional supplements, facilitation of information targeted to companies, and taxation, but in a generic manner and without any detailed information. Even less attention is given to occupational safety and health and the enforcement of rules and regulations, sanctions, and appeals. In fact, redress and appeal are not covered by any of the sources in our dataset.

The Slovenian single official national website on the posting of workers (Government of the Republic of Slovenia, 2024) is functional and provides basic information on the posting from and to Slovenia, including links to external websites. However, our findings show that the users rather tend to frequently consult other information channels. As De Wispelaere & De Smedt (2023) note, this can be problematic because the official website guarantees the accuracy of the information, whereas some other information sources might not provide accurate and updated information. This "increases the likelihood of (unintentional) noncompliance with the applicable terms and conditions of employment" (De Smedt & De Wispelaere, 2023, p. 1). The problem

is exacerbated further because the information is scattered over multiple Slovenian and foreign websites and institutions and is, therefore, heavily fragmented. In addition, the content is usually too general and/or too complex to understand for users without legal knowledge.

Smaller company owners or the self-employed, therefore, often tend to collect information and advice from their colleagues who have previous experience with the posting of workers. The most problematic is the use of social media platforms as channels of information. One of our survey respondents noted that due to a lack of readily available comprehensive information, they may, in some cases, resort to finding information on social media, especially Facebook groups, where company owners or the self-employed post their experience with the posting of workers and offer advice on the posting of workers. This practice raises the issue of credibility and lack of accountability of the source, as information may not be correct or updated, and the source cannot be held accountable for any violations of the law of the information users. Some construction company owners, including those whose first language is not Slovenian, tend to contact their colleagues and/or fellow nationals for advice based on their personal experience. This tendency is because they are often not familiar with the information infrastructure in Slovenia, might not know how to navigate the system, and are not proficient in the Slovenian language. Especially business owners whose first language is Bosnian have noted that it is easier to ask their fellow nationals for advice and instructions regarding the posting than to attempt to find the information on official websites or by contacting the competent authorities.

There is also the issue of not being aware that specific regulations are in place when posting workers abroad. De Smedt & De Wispelaere (2023) note that the lack of knowledge about the fact that specific terms and conditions of employment should be respected when sending workers to another Member State might be a prior reason for noncompliance. They note that if posting undertakings are unaware of this, service providers will not seek out information about it either. In that regard, they argue that it is important that as many posting and receiving companies as possible know there are specific employment and social security rules when workers are posted to another Member State. On the other hand, some companies may be aware that there are specific rules in place and decide either that it is too difficult to obtain information on how to proceed with the posting and carry on without fully informing themselves or that they will not comply with the rules for various reasons. The workers may disregard the regulations as well. For workers coming from countries with lower wages, the cost of losing their jobs is higher than for those who can return home to comparable jobs, which can inhibit workers' willingness to exercise their rights. For these reasons, workers may also seek to maximize their income in the short term by agreeing to work long hours, thereby increasing their risk of injury, illness, or disablement (Richardson et al., as cited in Sargeant & Tucker, 2009, p. 3). Due to significant wage disparities in the European Union Member States, workers

from lower-income countries sometimes tend to intentionally ignore or downplay irregularities despite being sufficiently informed about their rights. They are reluctant to report violations for fear of losing their jobs. The problem is exacerbated further when workers are recruited to the EU from third countries with lower salaries and poorer working conditions (Cukut Krilić & Vah Jevšnik, 2023). For instance, construction workers from BiH are often exposed to several vulnerabilities and labor rights violations in their country of origin, which continues to have high levels of informal and semi-formal salary schemes, considerable levels of unpaid contributions and health insurance, poor mechanisms for social dialogue, and low trust in unions, as well as a dysfunctional juridical system. These generally provide low levels of protection to the workforce (Danaj et al., 2020). Therefore, although the expectations of higher labor standards and salaries in Slovenia are a strong pull factor for migration, they may also experience irregular and exploitative employment relations in the receiving European Union countries (Danaj et al., 2020). However, workers often intentionally overlook such irregularities for fear of losing their jobs and being denied a residence permit (Vah Jevšnik & Toplak, 2022).

LANGUAGE BARRIER AS AN IMPEDIMENT TO THE ACCESS TO AND USE OF INFORMATION

The single official national websites on the posting of workers tend to provide information in the languages spoken in the EU member States. The Slovenian website, for example, offers content only in Slovenian and English. The Austrian website, which our respondents have evaluated as very informative and user-friendly, provides information in the languages of the main sending countries, i.e., Czech, Hungarian, Polish, Slovak, and Slovenian, in addition to German and English.¹³ Content in languages spoken by workers or company owners from third countries, however, is in most cases not provided. The Enforcement Directive (2014/67/EU) states that the countries shall make the information available to workers and service providers free of charge in the official language(s) of the host Member State and the *most relevant languages* (Article 5, 2c). In the case of Slovenia, where more TCNs are posted than Slovenian nationals, the most relevant languages include those spoken in the Western Balkans. Thus, information should also be provided in those languages. Although the statistical data on the number of companies owned by foreign nationals that post workers abroad is unavailable, the officials report that the number of company owners who are citizens of Serbia and BiH keeps increasing. Our respondents noted that many of them also post their employees to other Member States.

13 For an in-depth analysis of Austrian information channels, including the single official national website on the posting of workers, see Danaj et al., 2023b.

For these stakeholders to comply with the rules and regulations, access to comprehensive information is a prerequisite of paramount importance.

Zólyomi & Danaj (2019) note that posted workers are likely to experience linguistic barriers because the temporary, mobile, and transnational character of posting implies that they spend too limited time in the host country to be able to acquire the local language or improve their language skills. They are also generally unable to access language instructions or training programs provided in the country to which they are posted. In the case of TCNs, the problem is exacerbated further as their native language is spoken neither in the country of employment nor in the country in which they provide services as posted workers.

Our respondents noted that language barriers encountered by TCN employers have been linked to difficulties in accessing and understanding information on the issuing of PDs A1, prior notification tools, additional requirements for the entry of TCNs, and the calculation of social security contributions. The interpretation of applicable legislation on the transnational provision of services has also been an issue of concern and frustration.¹⁴

TCN-posted workers, on the other hand, are often not properly informed about their rights and obligations, applicable wages, access to healthcare, grievance procedures, and visa policies affecting their stay and work in the EU. Previous research has shown that, due to language barriers, workers from BiH often sign employment contracts they do not fully understand, even when these contracts might not comply with Slovenian labor legislation (Rogelja & Mlekuž, 2018, p. 114). The lack of language knowledge is among the key factors for the lack of formal complaints in cases of mobbing and other violations in the workplace. Instead, the workers tend to rely more on informal networks than seek institutional support (Cukut Krilić & Vah Jevšnik, 2023).

Another identified challenge is the language barrier for smaller companies trying to access relevant information when directly inquiring with the public authorities (Danaj, 2024). Namely, our research shows that the challenges of posting undertakings seem to vary according to the size of the company, their resources, and their experience with the posting of workers. Larger companies with their own HR, legal, and accounting services are more informed and need less information from the competent national authorities and social partners than smaller companies or the self-employed. Companies with more financial resources also fare better when in need of country-specific information, as they are able to purchase foreign advising services that provide relevant information in order to ensure compliance

14 On the other hand, the companies receiving posted workers have problems with the language barriers, too. De Smedt & De Wispelaere (2023, p. 6) note that Belgian companies point out: "Most of the foreign service providers don't speak a foreign language, so even if the single official website is available in English, it's still a barrier for them." This language barrier also affects the information that the companies will look up. As one of the information providers puts it, "First of all, people will enter a search term in their own language. And perhaps secondarily in English if insufficient information is available." (De Smedt & De Wispelaere, 2023, p. 28)

with various national legislations. This finding refers to the posting undertakings in general. However, navigating a system that operates in a foreign language and lacking the financial means to outsource assistance is an especially pressing challenge for TCNs.

Finally, as De Smedt & De Wispelaere (2023) note, the language barrier also potentially affects the information that will be found and its quality. They argue that the importance of language in transferring information cannot be underestimated.

Addressing language barriers should be prioritized across all EU countries. Danaj (2024) notes that this could entail providing translations of information materials into relevant languages, including English and languages commonly spoken by posting companies and workers. Additionally, efforts should focus on ensuring consistency in terminology and clarity of language across different language versions to enhance understanding (Danaj, 2024).

CONCLUDING REMARKS

Access to reliable information—that is, comprehensive, relevant, trusted, and updated information—and the capacity to correctly process the supplied information is crucial for making informed decisions. That is why it is essential that posting companies receive clear, unambiguous instructions in a language in which they are proficient on how to proceed when posting workers to provide services abroad. Language barriers pose a significant challenge, especially for smaller companies, which may find it more difficult to access information provided in languages other than their own and are financially less capable of outsourcing services that provide assistance in the language in which they are proficient. Third-country nationals who are either employers who post workers abroad or posted workers themselves are especially vulnerable in this respect. Lack of awareness of their rights and obligations often stems from language barriers in accessing the relevant information. The inability to use channels of information in languages used in either their country of immigration and employment or posting makes it difficult to navigate the complex legal and bureaucratic systems of different Member States.

Our findings show that the challenges and needs of the companies often vary according to the size of the company and their resources and experience with the posting of workers. However, the main challenge for all is finding detailed, credible, sector-specific, and country-specific information regarding the applicable rules and regulations in a language they understand. One survey respondent noted that going through the complex rules and regulations in place in different countries requires significant effort. In addition, if the rules are only available in a language in which one is not proficient, this task is nearly impossible and can deter companies from posting altogether.

With TCNs being increasingly involved in the posting of workers, and figures showing an upward trend in many countries, including Slovenia, it is crucial that information channels in both sending and receiving countries adapt to these dynamics. They must ensure that relevant information is delivered transparently and accessibly, particularly in the most commonly spoken languages. The task of translation into languages spoken by TCNs would need to be taken on especially by the sending countries and posting undertakings that are extensively posting TCNs to other Member States. On the EU level, an example of good practice that is not to be overlooked is the provision of a translation facility by the European Labor Authority, available to the Member States' institutions and social partners, that can be used to provide information about the posting. Finally, it might also be useful, in cooperation with the social partners, to strengthen in-person channels that offer verbal or written translation of the applicable rules for Slovenian and TCN business owners and posted workers. Our research shows that the provision of information via phone is considered to be especially useful and efficient, as many users prefer to rely on verbal assistance instead of reading the often complex website content.

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POVZETEK

DOSTOP DO INFORMACIJ O NAPOTITVAH DRŽAVLJANOV TRETJIH DRŽAV: PRIMER SLOVENIJE

Mojca Vah Jevšnik

Avtorica v prispevku predstavi izzive delodajalcev, ki napotujejo državljane tretjih držav v države članice EU z namenom izvajanja storitev, na področju dostopa do informacij o pogojih in pravilih napotovanja delavcev. Tovrstno prepletanje migracij, trga delovne sile in čezmejne mobilnosti je v Sloveniji pogosto predvsem v delovno intenzivnih sektorjih, kot je gradbeništvo, kjer je delež napotenih delavcev skoraj 50-odstoten, zato je ta tematika izjemno relevantna in aktualna. Analiza izzivov temelji na obstoječi literaturi o rekrutaciji, zaposlovanju in napotitvah državljanov tretjih držav iz Slovenije, statističnih podatkih o obsegu in dinamiki trenda napotovanja ter identifikaciji 36 informacijskih kanalov z navodili za napotitve. K diskusiji prispevajo tudi izsledki, pridobljeni s polstrukturiranimi intervjuji z napotenimi delavci, delodajalci in ponudniki informacij, ki so bili izvedeni v zadnjih petih letih v sklopu treh mednarodnih projektov o napotitvah delavcev, ter rezultati spletne ankete za delodajalce, izvedene v sklopu projekta INFO-POW. Avtorica ugotavlja, da sta ključnega pomena za delovanje delodajalcev v skladu z obstoječimi kompleksnimi pravili in zakonodajami držav članic dostop do zanesljivih informacij ter zmožnost njihove pravilne interpretacije. Podjetja, ki napotujejo, morajo zato imeti jasna navodila o postopku napotitve v jeziku, ki ga razumejo. Tovrstni izzivi so še večji v primerih manjših podjetij in samozaposlenih, ki morajo za številne storitve (računovodske, pravniške, prevajalske) najeti zunanje izvajalce. Pri delodajalcih, ki so državljani tretjih držav, pa je lahko poleg slabšega znanja jezika države napotovanja dodatna ovira tudi slabše poznavanje slovenskega jezika. Zato vzbuja skrb dejstvo, da so delodajalci kot težavo izpostavili omejen dostop do podrobnih, razumljivih in verodostojnih informacij – specifičnih za različne sektorje in države članice – v jeziku, ki ga razumejo. Avtorica v zaključku poda nekaj predlogov delodajalcev za izboljšanje dostopa do informacij o napotitvah delavcev. Med njimi je tudi vzpostavitev osebnega stika z uradno osebo, ki bi bila usposobljena posredovati vse potrebne informacije in odgovarjati na vprašanja. Zaradi specifičnosti vsake posamezne napotitve in hitro spreminjajočih se pravil na tem področju je namreč po mnenju delodajalcev posredovanje informacij zgolj preko spletnih strani premalo podrobno, premalo zanesljivo in zato manj učinkovito.

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NAPOTITVE DELAVCEV: PROFILI PODJETIJ, DOSTOP DO INFORMACIJ IN SPOŠTOVANJE PRAVIL / POSTING OF WORKERS: COMPANY PROFILES, ACCESS TO INFORMATION, AND RULE COMPLIANCE

Sonila Danaj

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