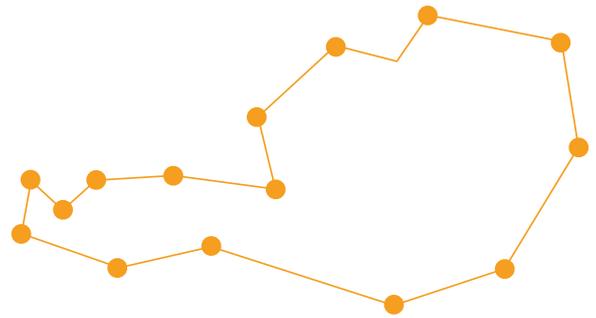




COUNTRY STUDY



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Enhancing Economic Democracy for Posted Workers: The Case of Austria

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The research for this national report was conducted between February and May 2018. Information was drawn from desk-top research, research by the author from previous projects, and interviews with five representatives from trade unions (TU1, TU2, TU3), an active and one former works councilor (WC1, WC2), the Chamber of Labour (CoL) and from information provided by the BUAK¹, the Austrian construction workers' holiday and severance payment fund.

The report presents union and social partners' initiatives, discourses and efforts to uncover and fight the violation of posted workers' labour and social rights mainly in construction. In addition, two union initiatives approaching explicitly migrant workers complete the picture of Austrian unions' efforts for migrant workers

1. Bauarbeiter-Urlaubs- und Abfertigungskasse, referred to as BUAK throughout the report



1. Posting of workers to Austria – context and framework

Posting of workers – legislation

The posting of workers to Austria is an intensely discussed topic in the political landscape. It is entirely interwoven with a discourse of wage and social dumping “imported” from abroad, with foreign companies and foreign workers promoting unfair competition. In 2011, and revised in 2017, the Anti-Wage and Social Dumping Act (LSD-BG)² has come into force explicitly addressing the sanctioning of underpayment in the case of posted work to Austria.

In Austria, regulations stipulated in the Anti-Wage and Social Dumping Act (LSD-BG) intend to combat wage and social dumping, especially in cross-border constellations. It entered into effect as of 1 May 2011. It covers all workers who have an employment based on a contract under private law with an Austrian employer as well as workers who have their habitual place of work in Austria or are posted or hired out to Austria but are employed by a foreign employer. In January 2017, a revision of the LSD-BG became effective, stipulating claims that can be made for entitlements based on labour law and measures to protect them specifically in case of posting and hiring-out of workers.

Posting of workers to Austria - numbers and sectoral distribution

Austria is one of the countries mostly affected by the posting of workers in relative terms. In construction, the share of incoming postings to national employment is at nearly 20% in 2016. Next to construction, most affected other sectors are industry, and temporary agency work (De Wispelaere & Pacolet, 2017, pp. 29, 35; Schmatz & Wetzels, 2014).

In 2016, according to the Austrian ministry of

finance³, 67.279 posting notifications have been submitted, encompassing 169.775 workers. In 2017, this number has been exploding due to updated notifications from companies providing cross-border transport services to more than 500.000 posting notifications. Up until recently (2016/2017) road haulage cross-border services, including cabotage operations, were seldom regarded as “posted work”. Accompanying the revision of the Anti-Wage and Social Dumping Act (LSD-BG), the transport sector was explicitly mentioned as being subject to this law. An explanatory note was published by the ministry of social affairs because service providers did not consider the transport sector as being subject to the posting of workers’ regulations. Evidence from the transport union *vida* in Austria, from the European Transport Workers’ Union and from spectacular court cases in Austria suggest that regulatory loopholes or ambiguities are systematically exploited to underpay mobile workers in international road haulage: either employers, including Austrian haulage companies, do not declare them as posted workers when providing cross-border services or workers’ real habitual place of work is not announced properly. Typically, transport companies register subsidiaries abroad and send drivers all over Europe, without adhering to labour and particularly wage standards of the country where the transport service is actually performed (Haidinger, 2017).

Underpayment

Underpayment is widespread among posted workers. Between 2011 and 2016 charges against underpayment turned out to be successful in 1.106 cases (all sectors), which ended in a final conviction of employers (551 domestic, 555 foreign employers) affecting 2.297 workers (877 domestic and 1.420 foreign workers). Financial penalties amounted to 7.318.190 Euro⁴.

2. Lohn- und Sozialdumping-Bekämpfungsgesetz, Version as of 04.07.2017, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20009555> <https://goo.gl/sx4EO8>

3. https://www.parlament.gv.at/PAKT/VHG/XXV/AB/AB_11126/imf_name_626043.pdf

4. Summary of the LSDB-statistics, https://www.wko.at/branchen/sbg/transport-verkehr/autobus/LSDB-Statistik_Zusammenfassung_20161130.pdf



In Austria, a representative of BUAK, investigating underpayment in construction, estimates that underpayment in suspected cases of the construction sector amount to 50% of the entitled remuneration. 44 out of 100 inspected cases are suspected of underpayment.

In many cases, however, the results of the investigating authorities do not hold before court because new relieving documents are brought forward by employers or posted workers withdraw their testimony.

3. Economic democracy, industrial relations and migrant work in Austria – general considerations

Austria's system of industrial relations is dominated by a strong social partnership and by 'centralized cartelization' (Brinkmann et al., 2008, pp. 48–51; Firlei, 2016, p. 394). On the sectoral level, legally binding collective agreements cover 95% of employment contracts and include minimum wages negotiated by social partner organizations (unions, and employers who obligatory members in the Chamber of Commerce). Posting companies to Austria have to adhere to these collective regulations since they are generally binding. On the company level, works councils represent workers within firms and negotiate company-based agreements. Unions' strategies build upon this dual system of representation pursuing consensus-oriented arrangements within firms as well as on sectoral level. It is a highly institutionalized system of industrial relations where unions and the chamber of labour, employees are obligatory members of (see below), command rather high (though declining) institutional power to influence labour and social standards. This standing also translates into close relations to the legislative level and to authorities.

Following Bengtsson's (Bengtsson, 2013, p. 177) differentiation between administrative and organizing strategies to take account of migrant workers, unions can typically choose from, Austria falls into the first category: „An administrative strategy refers to the union using political pressure, legal means and the extension of collective agreements to ensure that there is no social dumping or wage dumping [in its sector].“ Such a strategy is exclusionary in the sense that it does not explicitly involve migrant workers in the union. With some exceptions of novel initiatives (notably Faire Arbeit, UNDOK, and Sezonieri, see below), a counseling center run by the umbrella organization of the Austrian unions providing multi-lingual labour-law counseling⁵, and few bi- or multinational cooperation projects externally financed by the EU and run by the umbrella organization's department for international affairs⁶, migrant workers as a group are not explicitly approached and organized by Austrian trade unions (Gächter, 2000; Stern, 2012).

Employees in Austria are represented by three institutions. Besides unions and works councils, a third important – and internationally unique - institution is installed to protect workers' social and labour rights: the chamber of labour. Every worker employed by a firm based in Austria and paying social security contribution in Austria is obligatory member and pays 0,5% of his gross salary as a member fee to the chamber. It is the most important institution counseling employees about their labour and social rights. It also represents workers before labour court in case of a trial against the employer for claiming outstanding money. All over Austria the chamber of labour runs around 91 district and regional centers carrying out around 2 million contacts per year related to labour, tax, social law and consumer protection counseling. The share of migrant workers or with migrant background searching for counseling has been increasing constantly in the last ten years. It is estimated that

5. Counselling is provided in BSK (Bosnian, Croatian, Serbian), Turkish, Kurdisch, Czech and Slovakian. (Griesser & Sauer 2014, 24)

6. https://www.oegb.at/cms/S06/S06_5.3/eu-international/projekte

their share is highest in Vienna, at around 50%, since they are over-proportionally employed in industries and companies regularly undermining labour and wage standards (Griesser & Sauer, 2014). According to a survey in 2011 among migrant workers or with migrant background, the chamber of labour is the first and most frequently consulted information source and contact point for labour law related concerns (60%), followed by informal contacts (42%). This form of information procurement is particularly wide spread among migrant women, migrants with low educational attainment, young migrants and those with little German language skills. Interesting for this report: only 15% and 21 % respectively consider unions and works councils as a possible information source and contact point for labour-law related concerns (Riesenfelder et al., 2011).

Posted workers are not obligatory members of the chamber of labour since their social insurance is paid abroad. It is an ongoing discussion within the institution whether posted workers can nevertheless be counselled and in turn be represented by the chamber when they approach it for support. In Vienna, for instance, posted workers are represented in exceptional cases, namely “if a bigger number of employees is affected, and as a consequence, their representation is of general interest, namely to protect the Austrian wage level.” (CoL)

4. Economic democracy: Protection of posted workers' social and labour rights

This section will provide information about the chamber of labour and unions' attempts to inform and represent posted workers in cases of violations of labour and social rights.

• Information of posted workers about their rights

Main information to posted workers and to posting employers that summarize among other aspects Austrian minimum wage requirements and employment regulations and the steps required to ensure compliance with these laws, can be accessed at a multilingual website: http://www.entsendeplattform.at/cms/Z04/Z04_10/home. The website is well-frequented. Since beginning of 2017 until October 2017, 1.000 requests for information via email have been received (info of the Ministry of Social Affairs). However, mostly employers, to a less extent employees look for information on the website. The Anti-Wage and Social dumping Act itself (one of the “cruellest” in Europe due to its high fines and comprehensive paragraphs), the online information platform, a good networking between authorities and the legislative having prepared and revising the law if necessary, and the notification requirements for posting, are indeed important measures to prevent wage and social dumping in posting arrangements. Yet, direct contact and information of posted workers themselves is still poorly developed.

A relatively new initiative that is described in detail below, „Faire Arbeit // Fair Work“, closely cooperates with BUAK to inform posted workers about their rights. It is run by the union of construction workers in Styria (Southern part of Austria at the border to Slovenia) and explicitly addresses posted workers posted from Slovenia to Austria. Workers receive - together with the notification to be registered with the BUAK - an information letter in Slovenian about the counseling center. Unionists also out-reach to construction sites to approach workers and spread leaflets. The offer to be counseled in Slovenian and anonymously is well received. Workers have to arrange an appointment in advance for getting personal counseling. The Slovenian- speaking unionist states:

2. https://www.parlament.gv.at/PAKT/VHG/XXV/AB/AB_11126/imfname_626043.pdf
3. “Summary of the LSDB-statistics”, https://www.wko.at/branchen/sbg/transport-verkehr/autobus/LSDB-Statistik_Zusammenfassung_20161130.pdf



„They [posted workers] come to us for getting information. Many of them do not know what their entitlements are. Often, they suppose that something is wrong with their wages but it is difficult for them to find out what exactly. That's the reason why they come to our counselling center. We inform them about their rights and entitlements here in Austria. And then - depending on what they are prepared to do - we take further steps.“ (TU2)

Such provision of information does also have preventing impact according to the trade union BauHolz:

„If we inform people about their entitlements, how much they are entitled to receive for working at construction sites in Austria - often they are really surprised about the amount - this has preventive character. He [the worker] spreads the word about wage levels, working hours etc. and about the existence of our counselling center - and that's more than preventive.“ (TU1)

• Claiming posted workers' rights

Information might have preventive character; however, it is essential that workers are able to claim effectively what they are entitled to. Which institution considers itself responsible for this task? Who supports posted workers in enforcing their rights?

Due to the bi- or sometimes even multinational circumstances of cases, responsibilities become ambiguous, difficult to overtake, and costly. While offenses against occupational health and safety as well as underpayment of posted workers are subject to public law resulting in administrative penalties of the employer enforced by district administration authorities, non-paid wages have to be claimed individually in a civil law suit.

Posted workers affected by underpayment or non-payment of wages may be hesitant to contact state institutions in charge of wage inspection for clarification of their entitlements. In addition, in Austria, neither labour inspectorates nor other public authorities are those contact points who feel responsible for the enforcement of non-paid wages. They are just the investigating authorities, enforcing public law, i.e. law in place to combat wage and social dumping that penalizes employers in case of infringement.

Principally, the chamber of labour is the first and most often approached institution for claiming entitlements against the employer - informally or before court. However, as stated above, the chamber of labour actually does not have the mandate to counsel or even represent posted workers because they are not members. Some regional chambers (for instance in Vienna) step in in particular constellations, namely if at least five affected people approach the chamber in a first visit, and if in sum at least a group of 10 people is concerned:

„This is the chamber's standpoint: the wage level has to be preserved. In such cases we also represent non-members. In construction, such an amount is soon reached. However, they [posted workers] don't show up [very often].“ (CoL)

Posted workers learn about the chamber's existence from colleagues and by incidence. The chamber does not systematically approach them on construction sites. When counselling and representation is granted, translation either by counsellors themselves or via video-translation is provided: „Workers are more than thankful that finally somebody listens to and understands them.“ (CoL) It is a considerable step for posted workers to build trust to such an institution and to realize that



information and even representation is for free. The relevant union is always informed if cases of workers who are not members of the chamber are accepted for legal representation. The union is offered to take over and represent the worker. Up until now, such an offer has always been declined.

In an ongoing debate about the chamber's position towards the question of representation of posted workers two standpoints can be identified: on the one hand, a strict restriction of representation to members, i.e. workers paying social insurance contributions in Austria. Such a policy excludes posted workers. Another option would be an extension of the chamber's representative mandate also to singular posted workers, although they are not members. Such a step would considerably increase posted workers' protection. The rationale in this case: many posted workers approaching the chamber are falsely declared as posted, hence they actually should be socially insured in Austria and then they would automatically be members.

The interviewee of the chamber of labour describes one typical case involving posted workers the chamber has accepted to take over and eventually brought before court:

10-15 construction workers, posted by a firm based in Slovakia and socially insured there, worked on a construction site in Vienna. They only partly or did not receive their wages. The chamber of labour represented these workers before the labour court. First, charges have to be brought in Austria. They are translated and then delivered to the company's office abroad. This procedure takes quite a long time, in this particular case the delivery was even delayed because the firm's delivery address was one of a so-called letter-box company. Eventually, the order of payment was delivered, an objection was raised but finally a default judgement was given. At the time being (May 2018), the order for

execution is pending. The chamber was successful to claim the workers' entitlement in a court proceeding, however the collectability of the claim is difficult: collection proceedings are conducted against the Slovakian firm, but success is unlikely. How, then, are entitlements secured? An option could be the bankruptcy compensation fund in Slovakia - if such a fund exists - or in Austria if the Austrian equivalent considers itself in charge for compensation (due to the link to Austria, the construction site).

The chamber of labour, the construction union Bau-Holz, and the BUAK point out that the most considerable gap for installing law and justice is the insufficient support of posted workers for claiming their rights: BUAK is in charge for claiming employers' contributions to the construction severance and holiday payment fund, it is also in charge of assessing underpayment and liability claims. It does not have the mandate to claim wages for workers. The chamber of labour only represents posted workers in certain generally relevant circumstances. The union lacks resources and competences on the one hand and rather sees other institutions in Austria or unions abroad in charge for inspecting and claiming posted workers' wages.

A novelty, however, is in the recently installed counselling centre „Faire Arbeit//Fair Work“ at the border to Slovenia. It actively approaches posted workers and functions as a first contact point for labour-law related concerns in Austria. In close cooperation with BUAK, on behalf of the posted worker, registration, wages and employer's contribution to BUAK are examined, time sheets are checked, construction sites are checked, the regional social security institutions are involved, etc. This research process lasts approximately two to six weeks depending on the complexity of the case. In some cases, authorities initiate proceedings



against the firm; in some cases, the union passes information to the Slovenian authorities and unions for claiming entitlements. At this point, the union's involvement mostly stops due to reasons of data protection. The union is not informed about the further proceeding of authorities.

„Authorities attend to their own business: financial police gather taxes; social security institutions gather social security contributions. Nobody cares about the wages. There is no comparable authority for this endeavour. We [the union] do not have any competence and permission to inspect. We even may not inspect files. Recently, a data base on construction sites listing all new construction sites, was fixed but neither we and nor the chamber of labour are authorized to look into it. It would really be a simplification for enforcing workers' claims if we had the permission to consult this data base. (...) We as workers reps are completely excluded, we who are actually claiming the wages.“ (TU2)

Workers might receive an official information in written form that underpayment has been detected „if they are lucky in their mother tongue, if they are not, in German“. But this paper does not give any information what steps to take next, what institution to approach for support, and what the expiry dates of entitlements are.

To sum up, enforcement of posted workers' entitlements is not only difficult but seems to be subordinated to the enforcement fines in relation to social and wage dumping imposed directly on employers and the enforcement of public claims (taxes, social insurance contributions). The first hurdle to the posted worker is to learn about the basic possibility to get counselling and legal support. Second, only in particular cases are they represented by the institution (chamber of labour) as the first and foremost and best-known contact point

for workers having problems with their employers. Third, cooperation between authorities and unions/ the chamber of labour is brittle when it comes to the flux of data and information in the direction of employees' representatives. Fourth, the procedure of uncovering and pursuing a case and in various next steps to sue for one's rights is extremely time consuming, complicated and many times surpasses an individual worker's capacity.

• **Protection of posted workers' labour rights in supply chains**

In Austria, the Anti-Wage and Social Dumping Act foresees the liability of the direct contractor (and in specific cases also for the principal contractor) in construction works and related cleaning works. Posted workers can assert their claims (in case the direct employer is not paying) to the applicable minimum wage in Austria against the client commissioning the construction/cleaning works. A claim can be asserted against the principal client in specific circumstances, i.e. if prior to commissioning the works the principal client was aware that this amount would not be paid.

To assert claims, the worker has to inform the Construction Workers' Holiday and Severance Pay Fund (BUAK) of the pay claim by no later than eight weeks from when the pay was due. The BUAK investigates the details on which the pay claim is based and supports employees in calculating the amount of claimed wages and in identifying the client potentially liable for covering the claim. Finally, BUAK informs the client, the contractor and the employee of the results of the investigations. If the client does not, however, pay the amount specified by the BUAK, the employee must bring a civil action against the client.



From the perspective of BUAK and the Chamber of Labour, the period for stating the claims is unrealistically short because workers do not know about this possibility and do not come in time. Hence, the abolition of these periods is an important demand of the Chamber of Labour: *„The legislation has created a loophole for employers here. Elsewhere, expiry periods are much longer, up to 3 years. This is the only occasion such short expiry periods are in place.“* In addition, as the representative of the Chamber of labour states, *the enforcement of liability claims is „illusionary, if a posted worker does not receive intuitional support or accompaniment in this procedure. How can construction worker coming from Romania to Austria know what to do when his employer does not pay and even more that the possibility to claim the contractor exists, what steps he has to take and when.“*

Hence, liability claims from the contractor are equally difficult to claim as entitlements abroad. This is due to the short expiration period but also due to the fraudulent business practices in subcontracting chains involving bogus companies.

„The cases we are pursuing because we consider them having a chance of success are selected cases involving public procurement and being well documented. This year up until now (May 2018), I have two cases that are prosecuted before court. Impossible to accomplish more cases. It involves an incredible amount of research work. And you have to motivate workers to keep up with the proceedings. They must stay or come back when the court proceeding takes place. However they are very mobile, working one time here and next month in Germany.“ (CoL)

What helps - according to the chamber of labour - is to call in the media, and to name and shame the involved company. Contractors often are well-reputed firms and concerned about their public image. Bad media response can be a way to persuade them to pay outstanding entitlements or to exert pressure on their sub-contractors to pay.

5. Economic democracy: Representation of posted workers at the workplace

The IR system of employees' representation in Austria is a two-tier system: unions negotiate collective agreements at industry level; the instalment of works councils is a statutory right of a firm's workforce and - if it exists - the first contact point for employees in cases of work-related queries. Generally, the presence of works councils diminishes with the companies' size. Employees in small companies seldom have a works council at their disposal. In companies with more than 150 employees, works councillors are exempt from work, and can concentrate on the workforce's representation. Works councils are directly elected by the workforce, and its instalment and rights, including the conclusion of company agreements, are regulated in the labour constitution act. Unions' secretaries counsel and support works councillors in their daily work and in difficult circumstances, i.e. if a company's restructuring is on the table. Works councils in Austria are a highly important institution for economic democracy at firm level: on the one hand they monitor and in some cases influence management decisions, in this sense they have an important control function. On the other hand, they are employees' primary trusted and contact persons.

Principally, only the (at the time of the election) directly employed workforce have the right to vote and to be elected; interestingly enough, only in 2006 (!) third country nationals received passive



electoral rights. Besides the core workforce, temporary agency workers have the right to vote after six months of assignment. Consequently, the relations between works councillors and peripheral workers, such as temporary agency workers or workers in subcontracted entities are rather weak. The following sections reflect works councillors' positions towards posted workers in the construction sector.

- **„We and they“: fragmented production chains**

Works councils' representative mission ends at the demarcation of their firms. In construction, fragmentation is perceived as the dominant direction of employment and work organization: temporary agencies and sub-firms replace core labour. What has formerly been provided in-house is now outsourced to subcontracted entities and temporary agencies. Both works council members interviewed reflected that

“We have overslept the development of outsourcing and temp agency recruitment in construction. The employers told us it was just to overcome personnel shortages. But in the meantime, it is the rule to outsource everything, even core tasks. It has become essential for cost calculation to outsource whatever you can think of to sub-firms or to recruit temp workers.” (WC 1)

At the same time, workers in subcontracting chains, often posted workers, and temporary agency workers are not perceived as colleagues to be approached by works councillors.

“Works councils are elected by the employees of the core company, including temp workers when they have been employed for over 6 months. Subcontracting firms' workforce does not vote for me. It is just my firm's employees who vote for me. In the end, “our” [irrespective of national origin] people are the most

important for us.” (WC2)

Hence, only in very rare cases works councillors see themselves as counsellors or contact persons for posted workers. Far more, trade unionists than works councillors are perceived as those who could be in charge of posted workers, however they seem to have little success in approaching posted workers:

„I like to take along union secretaries to our construction sites. They look for subcontractors' people, I have to care about my own. Several times, we tried to approach colleagues from sub-firms. They listen, accept the goodies, but they will never sign to become union member or to pay the member fee. These people are not in need of you.“ (WC2)

This statement insinuates that posted workers lack solidarity, awareness and willingness to consult a trade union about their social and employment situation. Even more, posted workers are perceived either as accomplices of their employers or as victims of a mafia-style system they are not willing or capable to question and to combat.

„People [workers in subcontracted firms] do not protest. They might be afraid or they have arranged with this situation. I suppose they have arranged, otherwise we would have heard some dissent. Sometimes one or the other comes to me for advice but they do not have the power to win out. If he protests, he won't be in Austria next week anymore.“ (WC2)

Such point of views of posted workers as fundamentally “unorganizeable” or as free movers appreciating the temporariness of work is common among unionists. It has a basis in experience and cannot be neglected as an argument. On the other hand, it is not always true, and also dismisses the



likely rationality of posted workers attitudes: they are simply not asked to become members, they are not well served by existing union structures, and they know it.

• Declining control function and hypermobility

Another issue is works councils' lacking information about sub-firms' practices due to their volatility, and the permanent change of the sub-firms' workforce: „one day he [the posted worker] is installing 2500 tons of iron and next day he is brought to another site. Thereafter, other colleagues are appointed to finish the very same work. This is the system.“ (TU3) Hence, a relation to the works councillors of any kind whatsoever is hard to establish.

According to the interviewed works councillors and one secretary of Bau-Holz, the union of construction workers, neither works councillors nor supervisors on big construction sites are capable to verify workers' formal status. Hence, the union's control function to ensure decent working conditions at the site but also the capacities of inspecting authorities reach a definite limit.

„We are quite powerless and find it difficult to cope with this sub-contracting situation. We [union] already initiated a process to connect the different inspecting authorities, financial police, BUAK, labour inspectorate, regional social insurance institution. If they cooperated more efficiently, they would have more possibilities to uncover wage and social dumping“ (WC2)

Hence, from the works councillors' point of view responsibilities to uncover fraudulent practices and underpayment are seen in the competence of the authorities. Their main demand is a) an augmentation of staff of competent authorities and b) their interconnection to yield more effective results, be it on national or bi- multinational level.

A legitimate question posed by the chamber of labour and a former works councillor in this context is that works councillors should be more aware of their control function at construction sites by showing more presence and active involvement to tackle problems with subcontractors and their employees.

• Social relations between posted and local workers

Communication and social relations between posted workers and local workers are poorly developed. „Different firms put up different containers. Different containers host different workers. They hardly talk to each other. This is due to language barriers but also because they belong to different firms.“ (WC2)

According to him, next to the imposition of fragmented supply chains dividing workers and their hypermobility, posted workers are rather willing to accept long working hours or on Saturdays and holidays. Often posted workers sleep in containers on construction sites or in poor accommodation and harness every hour to earn additional money when local workers refuse to work. The willingness to refuse or not to refuse to work is interpreted on the one hand with employers' power over posted workers („they are sent home [in case of refusal], and are not allowed to work anymore in Austria“), on the other hand, it is interpreted as a tactic to earn as much as possible within a limited timeframe:

„The colleague from Hungary would receive 450 Euro a month [in Hungary], here in Austria he gets 1000; in fact, he would be entitled to 1800 or 2000 Euro but he accepts the little money because it is more that he would earn at home. This is the rationale of all of us. It's everywhere the same all over Europe: everyone wants to earn decent money, come by, save a little money ...“



6. Economic democracy: Union efforts to represent and organize posted workers

This section discusses an initiative by the union Bau-Holz, the construction workers union, explicitly targeting posted workers. The second part of the section briefly presents two examples of organizing and pro-actively approaching migrant workers. These initiatives represent new and innovative strategies of Austrian unions in cooperation with other stakeholders.

• „Faire Arbeit“ - „Fair Work“

The trade union Bau-Holz is responsible for 25 occupational groups in the field of construction and the timber industry. It is the sector mostly affected by the posting of workers. The union's website provides a link to the EU-wide website <https://www.constructionworkers.eu> and to the Austrian counterpart <http://www.entsendeplattform.at>. Both platforms provide information about rights and obligations of posted workers in several languages. The union website provides information only in German, however counselling in border regions, notably at the border to Hungary and Slovenia, is offered in Hungarian and Slovenian, respectively.

The Styrian section of the union Bau-Holz recently (April 2017) initiated and implemented a project that is explicitly targeting posted workers from Slovenia working in Austria. It is projected for May 2017 to April 2020.

The project partners, the union of construction workers and the regional administration of Styria (a region in the South-East of Austria), have installed an office in the border-region of Styria and Slovenia, in Spielfeld, to provide bilingual (German and Slovenian) counselling for workers, including posted workers, in this area. The office is open three times per week. The aim is to inform Slovenian employees who are employed in Austria in their

mother tongue about the correct remuneration according to the Austrian collective agreement in the construction sector (construction / construction industry, construction industry and related trades) and the rights of employees in Austria. They are also informed about occupational health and safety issues, about the exact working time regulations in Austria as well as about the correct classification in the BUAK (construction worker holiday and severance payment fund).

In addition, company and construction site visits are carried out in the region in order to contact employees on site. Such visits are part and parcel unions' general strategies to reach workers and to recruit new members. Information leaflets of the counseling center are distributed, however, often such visits are not welcomed by employers and workers are afraid to be seen in contact with the union.

In case of incorrect pay, support is provided to ensure equal pay at the same place for the same work across borders. For this, the service office coordinates closely with the relevant institutions such health insurance and pension insurance associations, the chamber of labour and BUAK. The goal is to minimize cases of underpayment, reduce non-registrations, and restrict social and labor-related misconduct. Moreover, cooperation between Styria and Slovenia shall be developed further and intensified to exchange experiences in meetings taking place in Vienna and Slovenia (Marburg, Ljubljana). The meetings improve the cooperation between trade unions and authorities, ensure a constant exchange of information and shall support the development of a catalogue of measures to reduce underpayment.

The described measures of the trade union Bau-Holz have different objectives: a) providing information to Slovenian and other workers from Balkan countries commuting to Styria; b)



providing information to local population and firms about the necessity of fair competition and fair working conditions in the construction sector for strengthening the regional economy; c) improving the cooperation between the construction workers union and the Styrian institutions with authorities and trade unions from Slovenia.

The proponents of the counseling center launched this idea in 2015. The influx of Slovenian workers to Styria was obvious, the fraudulent practices of employers recruiting posted workers and taking advantage of their lacking information about rights and entitlements in Austria, as well. The project started as a mobile information contact point in an improvised center (a former petrol station) directly at the border to Slovenia. The reaction and reception of Slovenian workers was very positive. Hence, the team started to raise financing for a center with regular opening hours and with strategic objectives. According to the initiators, doubts against "Faire Arbeit//Fair Work" within the union was prevalent; and it needed and still needs persuasive efforts and practical success stories to institutionalize such initiatives. Still, they are regarded as „pilots“; the bulk of financing is not provided by the union, but by the regional government of Styria.

For the initiators, such initiatives are essential for the unions' future strategic orientation:

„Company strategies are changing. They are becoming much more international, purely Austrian small and medium sized construction firms are in decline. Workers come from everywhere; borders in the EU are open. This means, we as a union have to adapt to these changes. If not we will be in danger of becoming reluctant.“ (TU1)

The initiators emphasize multilingual counseling, an active recruitment and approaching of migrant workers, bilateral agreements and cooperation

with unions and authorities (such as the pendant to BUAK) from abroad (notably Slovenia, in this particular case), as key success and promising strategies of future union policies.

• **Organizing migrant workers in precarious employment: UNDOK and the Sezonieri Campaign**

Besides „Faire Arbeit//Fair Work“, two initiatives are outstanding for the Austrian context of unionizing migrant workers and modernizing the system of workers' representation. Both are initiatives that have been successful cooperations between unions, activist groups and NGOs. Although the two initiatives are not explicitly targeting posted workers, it is essential to bring them up as promising and innovative union strategies.

UNDOK⁷- Drop-in Center for Undocumented Workers

The contact and counselling centre UNDOK is targeting migrant workers with precarious residence and employment status. It has been funded in 2014, as an initiative by several industry-level unions, NGOs and union activists. It is organized as an association, and financed by various industry-level unions, the chamber of labour and the ministry of social affairs. Its headquarter is located in the central union counselling centre. It provides information and advice on labor and social questions relating to residency status as well as labor and social rights claims.

UNDOK allows low-threshold access for undocumented or semi-compliant workers. Due to their precarious residence and social situation, undocumented workers often are afraid to turn to an organization for help. Nevertheless, 2-3 people per week turn to the UNDOK contact point - either by telephone, in person or by e-mail. Legal protection is generally granted in the Austrian umbrella organization of unions according to its legal protection regime only after six months of membership. However, all sub-unions

7. https://undok.at/wp-content/uploads/2014/06/UNDOK-Taetigkeitsbericht_2016.pdf https://undok.at/wp-content/uploads/2014/06/UNDOK-Taetigkeitsbericht_2016.pdf



that are members of the UNDOK Association have declared their willingness to grant, where appropriate, exceptional legal protection (in other words, before the entitlement is granted) in cases of labor exploitation. In addition, UNDOK also engages - in cooperation with the specialized trade unions - in outreach work, e.g. through multipliers in communities and businesses, e.g. via works councils.

Furthermore, UNDOK is an important interface between NGOs counseling migrants, victims of trafficking and asylum seekers on the one hand, and workers' advocacy groups on the other hand.

Sezonieri⁸

The Sezonieri Campaign is a joint initiative run by the union of industrial workers (PRO-GE), NGOs and activists to support harvest workers. The main goal is to raise awareness about existing collective bargaining rights, labour and social law, as well as to offer support in enforcing these rights at the individual and collective levels. Most harvest workers are migrants and their average stay in Austria only lasts a few weeks, often they have almost no knowledge about their rights. Sezonieri provides free and anonymous counselling in the native language of the workers: via posters, folders that are directly distributed in the fields, a website (sezonieri.at), and info-hotlines. The website is available in four languages (German, English, Hungarian, Romanian). Information material is additionally provided in BKS, Slovenian, Ukrainian, and Bulgarian. Social media is used for broadcasting information videos on the platform vimeo; via facebook meetings are announced.

In addition, the Sezonieri Campaign supports labour struggles and processes of self-organisation. In autumn 2013, about 70 land workers from Romania and Serbia decided to down tools. With the help of a highly visible protest, they drew public attention to their unbearable working conditions. Next, these

workers approached the trade union PRO-GE in order to fight exploitation. This was the kick-off of the Sezonieri Campaign for harvest workers in Austria. Throughout the campaign PRO-GE successfully managed to struggle for wage claims that were denied by employers. In part, the campaign achieved further, but more indirect improvements, for instance through strengthening the negotiation powers of harvesters by providing legal information; or by raising public pressure and thereby forcing employers to give in to workers' demands.

Finally, the campaign aims at improving the living and working conditions of employees in the agricultural sector in significant and sustainable ways, rather than on a temporary basis. But even so, as is discussed in a brochure published by the initiative, challenges persist: *„Our lack of competence in various languages creates occasional hurdles; we are facing the difficult tasks of building trust and continuous organisation in a sector characterized by the permanent movement of its workers; we have so far not found enough points of leverage to exercise pressure more systematically in order to move beyond successful singular case work and achieve enduring changes in work and social relations. Finally, the goal to create social spaces for, and supporting, the self-organisation of workers in trade unions is yet to be reached.“*

8. Social partner initiatives and cooperation – the fight against wage and social dumping

In construction, the Construction Workers Leave and Severance Pay Fund (BUAK) is an important institution that is presided by the social partners. It has the competence to check wages and other workers' entitlements at the construction site, including posted workers. All construction workers in Austria are eligible to special leave entitlements. This means that (also foreign) companies active in Austria with employees are being obliged to



8. http://www.sezonieri.at/servlet/ContentServer?pagename=P01/Page/P01_Index&n=P01_61.0 <https://goo.gl/tT769D>



pay wage supplements to BUAK for the posting's duration. In 2011, the law to combat wage and social dumping entered into force. BUAK has been approved to carry out checks on underpayment in case of posting or cross-border temporary agency work in the construction sector. Currently (2017), BUAK commands 27 inspectors, experiencing a significant increase from 2011 onwards when the number amounted to only 10 inspectors for Austria.

In *road haulage*, Austrian social partners, the union *vida* and the chamber of commerce have commissioned a common study on cabotage journey to Austria (Kummer et al., 2016). Cabotage has retained a lot of attention recently. Cabotage is a specific term referring to transport services performed within an EU MS by a truck not registered in that country. Its scope is defined in the EU regulation 1072/2009: every haulier is entitled to perform up to three cabotage operations with the same vehicle within a seven-day period starting the day after the unloading of an international transport. Based on calculations with dynamic data from the high-level road network the study estimates that between 18,52% and 23,68% off all domestic traffic in Austria is cabotage traffic (EU estimates: 7,9%).

Current practice of circumventing the existing cabotage rules used by companies is to "restart cabotage cycles"; hauliers engage in repetitive international haulage, to then qualify for as many cabotage 'slots' as possible. The problem with such circumvention of regulations is that it becomes a *carte blanche* for non-domestic hauliers, encouraging them to perform more transport operations abroad than actually permitted (Bocquet, 2014, p. 22).

Moreover, the issue of workers' status in performing cabotage operations, is to be considered: Are these workers 'posted workers' falling under the provisions of the posting and enforcement directive? If yes, fraudulent contracting comprises of the

non-declaration of their posting and the withholding of the host country's wages and labour rights. If they are not posted workers, what then is the worker's habitual place of work and what social and remuneration rules apply?

Recently, the initiative resulted in an amendment of the Freight Transport Act, specifying documentation requirements for cabotage journeys and penalties in case of missing documents. Social partners in Austria agree upon many issues especially those aiming to establish a level playing field for competitors from different MS.



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