



REPORT



Improving data collection about posting and information provision on conditions applicable for posted workers

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Executive summary

The PROMO project (“Protecting Mobility through Improving Labour Rights Enforcement in Europe”) is based around a series of policy workshops/conferences held in 2017 and 2018. The project aims to make recommendations to improve:

- national labour protection systems for posted workers;
- institutions, practices and channels for promoting industrial democracy for posted workers;
- the collection of data relevant to making informed posted worker policy decisions.

Our method is to take existing research knowledge and improve on it through policy workshop discussions with experts and stakeholders. From these discussions, we will produce policy reports with well-grounded recommendations. The aims for this fourth report are to show the importance of improving information provision and collection and policy-related data regarding posted work, and to elaborate what kind of quantitative data collection is needed to improve the functioning of the posting system.

Such data is scarce, mostly because appropriate systems have not been set up to collect it, but also because collecting the data is seen as a possible infringement of the free movement rights of firms. Although most European countries have established mandatory registration systems for foreign service-providers/posted workers, these do not exist everywhere, nor are they comparable across sectors and countries. There is a need to improve the reliability and compatibility of administrative data collection across the EU and increase the amount of information collected.

Data – also about which conditions are applied for posted workers in different countries - is crucial for designing good policy, finding posted workers

and enforcing their rights. Better data will give better insight into the flow of posted workers and the consequences posting has on the most affected sectors in both sending and receiving countries. Even where the number of posted workers is generally low, there might be an issue with an imbalance, notably in the construction industry, in some national labour markets. A more comprehensive system must, however, be balanced towards placing the burden of registration on companies.

We suggest the following policy reforms:

1. Obligatory online documentation of social insurance status

The current A1 forms are easily manipulated, and it is expected that the Electronic Exchange of Social Security Information (EESSI).¹ system will solve this problem. Member States should urgently implement this system.

2. Improve access to data for researchers

Portable document (PD) A1 data has been used in research in order to follow inflows and outflows of posted workers. There are some flaws related to this data, and better access to aggregated data for research purposes could improve the understanding of this data. Furthermore, access to data from other registration systems would be useful to get a better understanding of posting and its consequences. For data to be comparable, registration systems would need to be more streamlined.

3. Common EU registration system

A common EU-level framework for the registration of posted firms and workers should be established. This could then be connected to other systems, such as A1 declarations. Penalties for firms responsible for non-compliance will be necessary. Registration should be done on or before the

1. IT system to help social security institutions across the EU to exchange information.

beginning of the posting, changes should be reported, it should contain information about the provider and recipient (contact information, sphere of activity), the posted workers (including their citizenship), address of the workplace/site, type of contract, working hours and remuneration.

4. Better access to relevant information

- Follow up on the establishment of single point web sites in the different countries in order to improve quality of the information given, as well as make the information easier to find by search engines
- Make information more transparent through translation into different languages, using basic language, and through use of visual measures and take on the opportunities integrated in web technology.
- Make sure that all relevant collective agreements are sent to a responsible authority in the Member State and give the social partners the responsibility for singling out regulations that apply to posted workers.

5. Better coordination between IMI and EESSI

In order to obtain better monitoring and enforcement it is necessary to improve the coordination of the Internal Market Information system (IMI)² and EESSI. The protection of personal data is recognized as a fundamental right. It is important that the Member States create a legal framework for the sharing of information that facilitates both national and transnational cooperation without compromising citizens' right to privacy.

6. Clearer definitions of self-employment

To ensure that dependent (posted) workers are not labelled as self-employed in order to escape regulations in labour law, and to obtain more accurate data on these different groups, we recommend that the Member States work out clearer definitions of self-employment. This regulation could be consistent with ILO recommendation No 198.³

1. Introduction and background

The free movement of services, as one of the four freedoms of the European Union's internal market, includes the posting of workers. These are workers who for a limited period carry out their work in the territory of an EU Member State other than the state in which they normally work.

One of the challenges connected to posting is the lack of accurate data, both on the number of workers and on what kind of working conditions are applicable for them in the countries where they are posted. Many countries have established mandatory registration systems for foreign service-providers/posted workers, but these do not exist everywhere, nor are they comparable across sectors and countries.

The aim of this report is to point out how the systems can be improved and why it is important to have a better overview of the situation. The main questions are:

- What kind of data sources are available regarding working conditions applicable for posted workers, and what can be improved?
- What kind of registration systems are available for foreign service providers and posted workers?
 - What are the main challenges with the current systems?
 - Why is it important for governments to prioritize the collection of relevant and comparable data?

2. IMI is a computer system linking the labour inspectorates, with which they can send and receive data from other inspectorates using an interface in their own language.

3. <https://www.ilo.org/legacy/english/inwork/cb-policy-guide/employment-relationship-recommendationno198.pdf>

The partners in this project have mapped national single point websites in their countries to check information about the minimum wage, overtime pay, holiday pay, working hours, as well as in what languages the information is given. They have also checked whether different regulations apply for posted workers in different industries and if the information is easily accessible for employers and employees. In addition to this, we have gathered information on existing registration systems: what kind of data is gathered, what is the purpose of gathering this data, who can access the data and how registration can be improved. The report covers the following project countries: Austria, Czech Republic, Finland, Italy and Norway. We have also collected information from some countries that do not have partners in this project: Belgium, Denmark, Estonia and Sweden.⁴

The creation of a common market for goods, capital, labour and services is the centrepiece of European integration, and the Treaty prohibits restrictions on the free movement of services. On the other hand, regulation of the labour markets varies greatly across the EU/EEA-countries and remains the responsibility of the nation-state. According to the Maastricht Treaty of 1993, the Member State should ensure that national systems of wage setting and collective bargaining are kept intact under the Single Market's free movement regime. Over the years, there have been tensions along axes like market integration vs social regulations, free movement and non-discrimination vs national protection, low cost vs high cost Member States and subsidiarity vs harmonization (Dølvik & Evju 2014). The tensions related to posting have further been fuelled by the decisions by the Court of Justice of the European Union (CJEU). The Laval-quartet decisions assert the supremacy of treaty-based free movement rights over trade union rights and challenge national labour market models with long historical traditions (Dølvik & Visser 2009).⁵

The number of postings still only accounts for a limited share of employment in the EU. In 2016, there were about 1.5 million postings (De Wispelaere & Pacolet 2017). In the years from 2011 to 2016, there was an upward trend after a stagnation between 2007 and 2010. Even so, posted workers are still only equivalent to 0.4 percent of EU employment (ibid.). Posted workers are also usually found in certain industries, like construction, manufacturing and the service sector. Despite the relatively small numbers concentrated in a few sectors, the relationship between the free movement of services in the EU/EEA and national labour market regulations has become a highly contested issue, especially after the eastward enlargements in 2004 and 2007. This is related to the east-west gap in prices and labour costs. As different categories of migrant labour are subject to different regulation when it comes to workers' rights, wages and social protection, this has created the leeway for strategic adjustments among employers and employees. Such adjustments affect the terms of competition in both the job and product markets and provide legal and material motives for regime shopping, in the search for greater contract flexibility and lower labour costs (Dølvik & Evju 2014). This might have consequences for the national labour markets of both sending and receiving countries, like labour shortages (especially for construction in the sending countries), unfair competition for local businesses and low wage competition in the receiving countries.

4. Eurofound has been undertaking a project in the summer/autumn of 2018 about posted workers that is crucial for the outcome of the questions in this work-package. The national correspondents (from all EU Member States plus Norway) are asked to do the following:

- Present the situation in the country as regards the registration of posted workers
- Identify gaps and potential needs regarding the collection of data on posted workers
- Explore ways to systematically gather the information needed
- Estimate the costs of systematic data collection.

5. The Laval quartet refers to the cases Laval und Partneri (Case C-341/05), Viking (Case C-438/05), Rüffert (Case C-346/06) and Luxembourg (Case C-319/06).



Data is crucial for finding the answers to urgent questions about posting, in order to design good policy, find posted workers and enforce their rights. Such data is scarce, mostly because appropriate systems have not been set up to collect it, but also collecting the data is seen as a possible infringement of the free movement rights of firms (Kall & Lillie 2017). In Belgium, since 2007, all foreign undertakings have to report their activities and use of posted workers through the LIMOSA system (Cremers et al 2007). This kind of extensive information collection about posted workers was (before the implementation of the Enforcement Directive) rather unique and provides probably the most accurate data source about postings. However, Belgium had to reduce the amount of information it collected initially because, according to the CJEU, it restricted the free movement of services (Mussche et al. 2016).

The protection of posted workers, balanced against the principles of free movement and non-discrimination in the single market, has been on the agenda for almost 30 years. It was the European Court of Justice's decision in *Rush* 1990 that paved the way for the directive on posted workers in 1996 (96/71/EC). The rationale behind the Posting of Workers Directive (PWD) is to provide the principles to protect basic rights for posted workers, like the minimum wage, working time, health and safety, equal treatment and holiday pay. The revision of the posting of workers directive, finalized in 2018 (2018/957), introduced changes in three main areas: work and employment conditions, including in situations of subcontracting; regulation of temporary agency work; and rules on long-term postings (Eurofound 2018).⁶ The directive also states that coordination between the Member States' competent authorities and/or bodies and cooperation at European level on combating fraud relating to the posting of workers should be strengthened.

The Enforcement Directive (2014/67/EU) aims to improve the implementation and enforcement of PWD in practice by setting a framework for measures and control mechanisms. In addition, it establishes a framework for improving access to information relevant for posting (*ibid.*). The proposed European Labour Agency/Authority (ELA) which aims to facilitate information about workers' rights and support cooperation between Member States in cross-border enforcement of relevant Union law, including facilitating joint inspections, could be a step in the right direction.

Related to these issues are also the Service Directive (2006/123/EC) and the Directive on Temporary Agency Work (2008/104/EC). The aim of the Service Directive is to ease the free movement of services and establishment across national borders. In connection with this was the setup of the Single Point of contacts in each country to assist foreign businesses to get information about the rules and formalities that apply. This includes labour and social law. The directive on Temporary Agency Work lays down an equal treatment principle, and according to PWD article 3.9. nation states can demand equal pay etc. for posted temporary agency workers. In 2016, 15 out of 28 states had implemented the principle of equal treatment for these workers (EU Commission 2016).

One of the most problematic aspects in implementing the PWD has been securing host country wage standards for posted workers (Kall & Lillie 2017). Rules and regulations applying to the posting of workers are shaped by a complex interplay of EU, home and host country, but also industry-specific regulatory environments (Lillie & Wagner 2015). The most extensive wage regulation systems for posted work are in countries where there are generally binding industry-specific collective agreements that cover most of the economy, because in those systems foreign providers must follow the minimum provisions



6. <https://www.eurofound.europa.eu/observatories/eurwork/industrial-relations-dictionary/posted-workers>

stipulated in the agreements (Bosch and Weinkopf 2013). In 22 out of 28 EU Member States, there exists a statutory minimum wage, and in these countries posted workers are, at least formally, protected from extreme abuses (Fric 2016). However, local workers in most sectors generally receive higher wages than the statutory minimum and this still puts posted workers at a disadvantage. It seems to be difficult for posted workers to stand up for their rights through membership of trade unions. They might be labelled as “hyper-mobile” workers and are often satisfied with their own situation as this is often better than in their home country. Secondly, they often live in isolated areas, do not communicate much with domestic workers and are unaware of local rules and regulations. Language barriers are also an important factor.

For the time being, the only European-wide registration system is the portable document A1 (PD A1)⁷ that posted workers are required to obtain from their sending country to show that they pay social contributions in their home country. This registration is connected with social security legislation and the definition of posting differs from the definition in the Posting of Workers Directive. For example, self-employed persons posted according to this regulation (Regulation EC No 883/2004) are not covered by the Posting of Workers Directive (De Wispelaere & Pacolet 2017). Besides, several PD A1s may be issued to the same person during the reference year. Additionally, a PD A1 is not a mandatory requirement for posting since it is not a condition of the posting rules (ibid). Furthermore, it is almost impossible to overrule the binding character of an already-filled A1 form in the context of social insurance law (which is separate from labour law and therefore might lead to different results in terms of choice of law).

During recent years, posting from third countries has become more widespread. Third country nationals do not need a work permit in the host

country, but in the country they are posted from. Based on (Court of Justice of the European Union) case law,⁸ host Member States may not impose administrative formalities or additional conditions on lawfully employed third-country national workers posted by a service provider established in another Member State. This seems to be a growing phenomenon, but the statistics are scarce.⁹

2 Information on wages and working conditions

Single point web pages

Article 5 of the Enforcement Directive (2014/67/EU) lays down that all Member States shall ensure that the terms and conditions of employment for posted workers (Directive 96/71/EC article 3) are made generally available, free of charge in a “clear, transparent, comprehensive and easily accessible way”. Such information should be made available on the internet. Access to this kind of information, both for the service provider and its workers, is crucial in order to ensure that posted workers’ wages and working conditions are in accordance with the posting of workers directive. Public authorities in the EU/EEA countries have set up web sites with information on what conditions are applicable to posted workers. However, the way in which this information should be given is not further streamlined by the authorities. Thus, how clear, transparent and comprehensive the information is, and how easy it is to find, varies between different countries.

Easy access to comprehensive information depends also on the great variations between countries in how complex the regulations on wages and working conditions are. For instance, it is more difficult to give information about conditions applicable in a country where wages and employment conditions are laid down in collective agreements in different industries and even regions, than in a country where

7. PD A1 replaced E101-forms from 2010

8. E.g.C-113/89 Rush Portuguesa;C-43/93 Vander Elst.

9. https://ec.europa.eu/home-affairs/sites/homeaffairs/files/doc_centre/immigration/docs/studies/emn-synthesis_report_intra_eu_mobility_fi-nal_july_2013.pdf



the core elements are solely regulated by statutory law covering all industries. Except for Latvia, Poland and the UK, regulation systems in all EU/EEA states are based on a combination of legislation and collective agreements, or only the latter (Voss et al 2016).

In countries where the state plays no active role when it comes to collective bargaining, the accessibility and interpretation of collective agreements will depend on close collaboration with parties to the agreement. The transparency of this kind of information has been criticized. (Voss et al. 2016). Alsos & Ødegård (2018) looked into what kind of regulations applied to posted workers when it comes to the cost of travel, board and lodging in 11 different countries. One of the conclusions from this study was that information on such conditions was very hard to find by using internet resources. The Enforcement Directive tries to solve these issues by stressing the obligation to make information easily accessible for service providers and their workers. However, there are still many

tripwires in this area. We will illustrate this by looking at the information that is made available on the web pages of the single point of information in the countries covered by this project, i.e. Austria, Czech Republic, Estonia, Finland, Italy and Norway. We will first look into how easy it is to find the relevant webpage, and then if the information given there is easy to understand, accurate and covering relevant issues, such as wages, working time, overtime pay and holiday pay. The main findings are summed up in Table 1.

If a service provider or posted worker is to find the relevant information, the single point web page needs to be easy to find when using a search engine and searching for relevant terms as “minimum wage in [country]”. The results of such a search vary widely between countries. In Estonia, Italy and Austria this search entry does not give us any relevant official information regarding wages and working conditions for posted workers specifically, and the single point of information is not listed among the first 20 results. In Norway, the official web page turns up as number two, but with the more general working conditions for people working in Norway. Anyone searching will have

Table 1. Overview of national information on wages and working conditions for posted workers

	Austria	Estonia	Czech Rep	Finland	Italy	Norway
Access	Medium	Easy		Easy	Hard	Easy
Languages	German, English, Hungarian, Slovenian, Slovakian, Polish and Czech	Estonian, English (some in Russian)	English, French, Polish, Ukrainian, German, Bulgarian and Romanian	Finnish, Swedish, English	Italian, English (for some sectors)	Norwegian, English, Polish
Information on hard core conditions	Lacking specific information in collective agreement	Lacking sectoral information	Lacking description of different wage groups	Lacking industry collective agreements	Complete for three sectors	Complete



to click around within this web page to find the information for posted workers. In Finland, there is a direct entry at number six.

In all countries, the relevant sites (for example ministries) show up as number one or two when searching for “posting of workers + [country]” with two exceptions: The Czech Republic web page turns up as number seven and the Italian one as number six¹⁰, but with a heading that does not make it easy to understand whether the web site gives information on wages and working conditions that apply to posted workers. In other words, if service providers and workers know the vocabulary, the web pages are easy to find in the majority of the countries that we looked into, but if they do not know the right wording, finding the information proves more difficult. Companies that frequently send workers to other countries will probably be familiar with this vocabulary. For workers the situation is different. This is illustrated by the figures on who is accessing the Austrian single point web side, where most of the enquiries they have received are from employers.

Next, we look into what kind of languages the information is given in. In Estonia, the information is in Estonian and English. There is also some information in Russian, but it seems not that comprehensive. The Austrian web site is available in six languages namely German, English, Hungarian, Slovenian, Slovakian, Polish and Czech. The Norwegian website has information in Norwegian, English and Polish. However, it seems that only the English site has information aimed at posted workers. The Polish language site provides the necessary information on the minimum wage, working time and more, but it does not state that this applies to posted workers. The information on the Czech web site is translated into English, French, Polish, Ukrainian, German, Bulgarian and Romanian. On the Finnish website, information regarding general regulations is given in Finnish, Swedish and English, while sectoral information such as conditions in collective agreements can

only be found in Finnish. The Italian site gives information in Italian and English, but collective agreements are only available in Italian. Altogether, information in all countries is provided in English, while there is a big variety when it comes to other languages. This indicates that service providers and posted workers with a limited knowledge of English could have problems finding and understanding the information they need.

The next question we have looked into is whether the information is accurate and comprehensive. For this question, the situation varies from country to country when it comes to the complexity of the information that has to be given. In Estonia, there is information on statutory regulations concerning the minimum wage, overtime pay, holiday pay and working hours. As Estonia has few collective agreements that should be applied to posted workers, usually the statutory regulations are sufficient. In the road transport sector, a collective agreement is made universally applicable. Information regarding the existence of the agreement and that it is applicable, is given in both English and Estonian. However, when it comes to the wages and conditions laid down in this agreement, information is in Estonian only.

The same applies for Finland, where you have to dig into industry level collective agreements in order to find some of the relevant information. Minimum conditions can be found on the single point web page, but conditions in the collective agreements are harder to detect as most of the information is given in Finnish only. One exception is construction, where the relevant information is available on the trade union side for construction workers in several languages, but still not on the single point web site. The Italian web site includes all the most relevant information. As there is no statutory minimum wage in Italy, service providers will have to find the right collective agreement in order to determine the minimum wage. The web site provides a link to these agreements, but the agreements are in Italian only. However, the authorities provide information▶▶▶

10. The results on “hits” might differ according to which country you make the search from.



on minimum wages for the three industries most important for posted workers, on the official web sites. That includes engineering, construction and transport and logistics.

In the Czech Republic, information is on several web sites, including from the ministries, but the State Labour Inspectorate, SUIP, site seems to be the most comprehensive. The web site includes information on the guaranteed minimum wage, over time pay, and working hours, but not holiday pay. When it comes to the guaranteed minimum wage, an employee should be placed within one out of eight wage groups. The web site includes information on the different levels, but lack information on what kind of positions/ jobs that should be placed within the different wage groups. The web site does not contain information on conditions specific for different sectors.

The Austrian web site includes information on all basic elements. Wages and working conditions are laid down by collective agreements, and differ between industries. To find out the actual conditions, one has to identify which agreement applies, whether the agreement applies for the specific region, the type of profession, work experience and more. The most important information can be found in brief summaries in many of the respective collective agreements. The full text is available in German only. In general, it is quite easy to find information on the minimum wage, over time pay and working hours, but less so when it comes to holiday pay.

In Norway, minimum conditions are found both in statutory regulations and in collective agreements that are made generally applicable. The information on the web site gives accurate and comprehensive information on the minimum wage, overtime pay, working hours and holiday pay for different industries.

In addition to information on wages and working conditions, single point web sites could also be used to give information on other issues and regulations that apply when it comes to posting, for instance mandatory registration schemes.

Alternative web pages providing information on wages and working conditions

If companies mainly post workers within one industry, general information pages directed at these industries might be better suited to providing relevant information. Some cross-national organizations have already provided this kind of information source. European Construction Mobility Information Net (ECMIN) is one such an example.¹¹ The web page has been up and running since 2009. The European Federation of Building and Woodworkers (EFBWW) coordinates the project with financial support from the European Commission. The information is directed at posted construction workers (but is helpful for foreign service providers as well) and is available in all 28 EU Member States, but lacks information regarding the EEA countries Norway, Iceland and Lichtenstein. For each country, one can find information on wages and other working conditions as well as useful links to relevant institutions in the different countries. The information also includes minimum wages set in collective agreements. The way information is given make it easily accessible. A challenge with this kind of web site is that it is hard to make sure that the data is up to date, and that will depend on the commitment of the trade unions affiliated to EFBWW. When accessing the web site in October 2018 it seems that the data for most countries had been updated in 2018, while for some the last entry came in 2016 or 2017.

10. The ECOMIN 2.0 can be found at constructionworkers.eu while the old version is still up and running at ecmin.efbww.org



3. Data on posted workers

One ongoing struggle when it comes to posted workers has been how to find and count the number of workers. This is crucial in several ways. Firstly, in order for public authorities in the host countries to enforce regulations, a precondition will be to locate the companies and their posted workers within a country. A1 forms are not well suited for labour inspections. Secondly, knowledge about the number of posted workers, and which industries they are posted to, is important in order to find out whether the regulations fit the territory. This will also help to limit fraud, fake postings and undeclared work. Related to this is also the question of the nature of employment. Labelling dependent (posted) workers as self-employed is a frequently used tactic by employers seeking to avoid the application of labour law (Čaněk et al. 2018). The International Labour Organization's (ILO) recommendation No 198 concerns the determination of the existence of an employment relationship. In general, tests for the authenticity of self-employment involve work autonomy, the ability to contract with more than one client, whether the worker must perform the work personally, whether the work is performed on the client's premises and the ownership of tools. In this chapter, we look into current systems of data registration and challenges with these as well as ways to improve data collection. Eurofound¹² is currently undertaking a project to:

- Present the situation in the country as regards registration of posted workers
- Identify gaps and potential needs regarding the collection of data on posted workers
- Explore the ways to systematically gather information needed
- Estimate costs of systematic data collection.

The Eurofound study is undertaken by the use of network correspondents in all EU Member States plus Norway, and intends to give a broad

picture when it comes to how posted workers are monitored. The study will be published at the end of 2018 or beginning of 2019. As this broader study will be available shortly, this report will be limited to looking into gaps already identified when it comes to monitoring these workers.

Portable documents A1

Whether a worker is posted or not could depend on what kind of regulation is used when assessing the situation, as the definition is different in the posting of workers directive and Regulation no 883/2004 on the coordination of social security systems.

Posting of workers directive (96/71/EC), article 2 (1)

“A worker who, for a limited period, carries out his work in the territory of a Member State other than the State in which he normally works.”

Regulation no 883/2004 on the coordination of social security systems, art. 12 (1)

“A person who pursues an activity as an employed person in a Member State on behalf of an employer which normally carries out its activities there and who is posted by that employer to another Member State to perform work on that employer's behalf (...) provided that the anticipated duration of such work does not exceed twenty-four months and that he is not sent to replace another person.”

So far, the statistics regarding posting have mainly been based on the number of PD A1s (until 2010 named E101). Such forms shall be issued if a worker that is temporarily working in a country other than his or her country of residence in order to avoid paying social security contributions to the country they are posted to. Several problems have been detected when it comes to using this data as a source of estimating the numbers of postings between different countries (see Pacolet and de Wispelaere, 2016).



12. European Foundation for the Improvement of Living and Working Conditions.

Firstly, a PD A1 is issued in connection to a posting, and indicates the number of postings rather than the number of posted workers. The number of documents is therefore not equal to the number of people. According to de Wispelaere & Pacolet (2017), 20 Member States reported figures on the number of individual persons involved. For these countries in total, the number of individual posted workers is roughly 60 percent of the number of PD A1s issued, i.e. one person is posted 1.7 times during the period under review. The differences vary substantially between countries, and countries like Germany and Spain are not included in this statistic.

Secondly, having a PD A1 is not mandatory as it is not a condition for being posted and may also be issued after the posting has started. Thus, companies and employees may decide that there is more to gain by being covered by the social security system in the host country. For instance, if the person is sent from a country with high contributions to the social security system to a country with low contributions, e.g. Denmark, it would be of little interest for the company to have a PD A1 issued for their employees.

Thirdly, PD A1 documents can be received for other situations than posting, such as where workers are active in two or more Member States.

Statistics are based on the number of documents received in one country, a number that is lower than the number of forms issued (Palolet and de Wispelaere 2016). By comparing this with other registration systems Palolet and de Wispelaere (2016) found that looking at PD A1 underestimated the number of posted workers by around 50 000 in 2016 (p. 13).

Another problem related to the accuracy of PD A1 is the existence of false documents. As there is no direct exchange of these forms between countries, there have been incidents with false

PDs. The introduction of Electronic Exchange of Social Security Information (EESSI) will probably reduce this problem. This IT system is developed in order to help social security institutions across the EU to exchange information. If the purpose of the system is met, this will probably lead to better data on posting. As proposed in PROMO's second report, it could also be useful if this form included information about remuneration and working hours (see Čaněk et al. 2018). The EESSI-system is to be implemented by the Member States in July 2019, but data collected in this project indicates that many countries will not manage to meet this deadline.

It is also necessary to improve coordination between EESSI and the Internal Market Information System (IMI). IMI is the only EU-wide mechanism that gives labour rights inspection bodies a systematic way of sharing information about specific posting companies and posted workers. Connecting IMI to the new EESSI system would allow better monitoring and information sharing regarding the social security status of posted workers.

Registration of posted workers in national schemes

There are also national registration schemes for posted workers in most EU/EEA-countries. Several countries have introduced such schemes since the transposition of the Enforcement Directive into national law. In this report, we give information about the registration system in Austria, Belgium, Denmark, Estonia, Finland, Sweden and Norway. The systems are designed based on national needs, and mainly to make it easier to choose companies for inspection (see an overview for some of the systems in tables 2 and 3). Most countries request information not only relating to the posting company, but also on the number of posted workers and individual data regarding these workers. Depending on the quality of entries, combining this data with information on the duration of posting could be used as a source for statistics on posted workers.¹³



So far, there is however little information on the accuracy of registration in these systems. Furthermore, it is not known whether it is possible to compare numbers across these countries, as this will depend on how the registration is done. Such registration systems have also been seen to breach EU law, as in the case against Belgium on the LIMOSA registration for self-employed.

Table 2 Data collected in selected registration systems for cross border services

	Austria	Belgium	Denmark	Estonia	Finland	Sweden	Norway	Italy
Company	X	X	X	X	X	X	X	x
Contact information	X	X	X	X	X	X	X	x
Tax ID /business ID	X	X	X	X	X		X	x
Representative in host country	X	?	X	X	X	X	X	x
Contractor in host country	X	X		X	X		X	x
Number of posted workers	X	X	X	X	X	X	X	x
Individual information on posted workers ¹⁴	X	X	X	X		X	X	x
Starting date	X	X	X	X	X	X	X	x
Duration	X	X	X	X	X	X	X	x
Work site	X	X	X	X	X	X	X	
Sector/tasks	X	X	X	X	X	X	X	x

Gaps identified related to registration of posted workers

As already mentioned, there are several methodical problems when it comes to using PD A1 to calculate the number of posted workers and the most common mobility routes. It is expected that the Eurofound project will give a good insight into other issues related to the monitoring of posted workers through PD A1 that is not already detected

(see above). In addition, when it comes to other registration systems, there could be problems related to the accuracy of the registration. Even though a failure to register is connected to fines in many countries, there is still a problem related to non-registration. This is for instance the case in Estonia.

Labour inspectorates and other institutions responsible for monitoring posted workers could also make use of more information than that currently collected. One example is information

on the citizenship of posted workers, especially when these are third country nationals. Collecting information on working time and remuneration could also be useful in order to have a better insight into whether correct regulations are applied. In some countries information on posted workers cannot be accessed by other authorities/ organizations or cross border than those who collect this information. One example is the declaration that service providers need to provide to tax authorities



14. For example, name, birth-date etc.

Table 3 Main characteristics of national systems

	Austria	Belgium	Denmark	Estonia	Finland	Sweden	Norway	Italy
Run by	Central coordination unit for control of illegal employment, Federal Ministry of Finance (from 2017)	The National Office for Social Security (and more)	Labour Inspectorate	Labour Inspectorate	Occupational safety and health authority	Swedish Work Environment Authority.	Norwegian Tax Administration	Ministry of Labour and Social Affairs
Purpose	Fight fraud and unfair competition check working conditions, especially wages, and infringements	Fight fraud and unfair competition, select companies for inspection, collect and analyse data on the number of permits/workers.	Select companies for inspection	Select companies for inspection, collect and analyse data on the number of posted workers/companies.	Select companies for inspection, collect and analyse data on the number of posted workers/companies.	Provide information to government agencies in other countries, employers, and employees.	Secure correct tax-payment (not obliged to pay tax if the assignment lasts less than 6 months).	Fight fraud and unfair competition, collect data and selects companies for inspection.
Timing	Beforehand	Beforehand	When work starts at the latest	When work starts at the latest	Beforehand	Beforehand	Two weeks after the work has started (at the latest)	No later than 11:59 pm on the day before the start of the posting.
Access for other enforcement bodies?	Yes, all relevant public control units-in Austria	Yes	Yes, for public authorities . Registrations are also searchable on open web sites	Yes, detailed information published on the web site of the Labour Inspectorate	No		No, only on request	Only labour inspectors. Data are not published. Unions cannot access the data
In place since	2011	2007	2008	2017	2017	2013	2004	2016

in Norway. This information would have been useful for the Labour Inspectorate, but they have no direct access to the register. In countries where trade unions play an important role when it comes to enforcement, it would be useful if data on service providers, working sites and so on were made available to them/the public. The Austrian union BauHolz (Construction Workers Union) has also asked for better access to data gathered by public authorities (see textbox below).

If cases where fraud or underpayment are suspected, the union in close cooperation with the Construction Workers' Holiday and Severance Payment Fund (BUAK), on behalf of the posted worker, examines registration, wages and employer's contribution to BUAK. Next, 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 sending country 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 any further steps taken by the authorities.

Why is it important for governments to prioritize the collection of relevant and comparable data?

There are several reasons for governments to prioritize the collection of relevant and comparable data. The lack of data hampers the ability to get a proper picture of the phenomenon, and the possible economic and social benefits of this form of mobility, which should be weighed against the regulatory challenges (Kall & Lillie 2017). As stated in a report from the DG for Internal Policies from 2016: "As highlighted in various resolutions of the European Parliament, this lack of employment data makes evidence-based political discussions and decisions extremely difficult". Data is crucial for designing good policy, effectively find posted workers and enforce their rights. A more comprehensive system must, however, be balanced towards placing the burden of registration on the companies.

There are two major 'models' of posting: One mainly driven by labour cost differentials, whilst the other is mainly driven by the shortage and demand for skilled and highly professional workers.¹⁵ Better data will give better insight in the flow of posted workers and what kind of consequences this has on the most affected sectors in both sending and receiving countries. Even if the number of posted workers is generally low, it might be an issue with imbalances in the construction industry in some national labour markets. For example, the share of postings in total employment of the construction sector exceeds 25 per cent in Belgium and Luxemburg, and in Austria, the share is close to 20 per cent. At the same time, the size and share

of posting in the financial and scientific sector is underestimated.¹⁶

One of the most pressing questions is whether some countries experience skill shortages and lack of labour, when too many are sent out of the country. For receiving countries, there might be problems when employers hire firms and workers from abroad instead of training their own youth to become skilled employees, or when local firms repeatedly lose the competition for contracts to foreign firms.

This leads us to the second important factor related to the necessity of data-collection. For most governments it is important to combat social dumping¹⁷ and secure fair competition for national employers. Without knowledge about the numbers of and conditions for posted workers, it is quite hard to enforce their rights and give them better protection. To secure the most vulnerable groups of posted workers, for example through more goal-oriented inspections, it is vital to have data that are more precise.

Thirdly, a solid and preferably common registration system across Europe can be used to more effectively avoid fraud, undeclared work and fake postings. Growth in the grey and black economy is a problem that governments are eager to combat. Another related issue is to reveal illegal employment/migration from third countries. A more comprehensive system at European level will probably make the work easier for national authorities (tax, social security, labour inspectorates).

The transnational exchange of information is also hampered by the variations in the kind of responsibility the authorities in the different countries have. Some of the labour inspectorates are in charge of ensuring taxes; others have work place safety as their main goal while some see workers' rights and the payment of wages as their first priority (Čaněk, et al. 2018).

15. Directorate-General for Internal Policies: Posting of Workers Directive – current situation and challenges.

16. Fredric de Wispalaere, presentation on the PROMO conference in Brussels 20.11.2018.

17. Social dumping can be defined as the practice, undertaken by self-interested market participants, of undermining or evading existing social regulations with the aim of gaining a competitive advantage (Bernaciak 2014).

4 Conclusions

In this report we look into two different issues. Firstly, whether Member States provide sufficient information on wages and working conditions for posted workers, as required by the Enforcement Directive. Secondly, we look into the different systems for registration of posted workers and ask whether these are sufficient to meet the needs for authorities, other actors active in enforcement, and researchers.

The mapping of single point web sites with information on wages and working conditions shows that such web sites can be hard to find through search engines. It is also a fact that information in general presupposes a knowledge of the language of the host country or of English (although some exceptions exists). Additionally, the information can be hard to find, especially if you need to consult collective agreements.

The only common form of registration of posted workers, the PD A1 documents, are not able to meet the need for the enforcement of basic standards on wages and working conditions for posted workers, or research on posting. Member States have established national registration systems, but these systems are not in all cases able to meet the needs of different actors. Different gaps are detected in different countries. This calls for a need for registration to include more information, access to this information for authorities (others than those responsible) and other actors, as well as the possibility of extracting comparable data for research.

Data on the posting of workers is crucial for designing good policy, finding posted workers and enforcing their rights. A more comprehensive system must, however, be balanced towards placing the burden of registration on companies. To reach the most vulnerable groups of posted workers, for

example through more goal-oriented inspections, it is vital to have more precise data. Furthermore, a common registration system across Europe can be used to more effectively avoid fraud, undeclared work and fake postings.

On the basis of these findings, we have identified some recommendations for new policies. These can be found in the executive summary of this report.



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