



Posting of Workers in the Western Balkans: The Case of Albania*

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Introduction

This Policy Brief aims to discuss trends in posting of workers to and from Albania, the transposition of the Posting of Workers Directive (96/71/EC, herewith PWD) into national law, and the challenges regarding institutional capacities to manage posting workers to and from Albania. The brief aims also to raise awareness and understanding on the topic of posting of workers, and as such it targets a large audience.

Albania is progressing toward approximating its national labour legislation to the *Acquis Communautaire*. The national labour legislation, amended in 2015, adopted the concept of posted workers similarly to the PWD. However, by-laws, which remain crucial to implementation of the law in compliance with EU standards, are not yet prepared, consulted with stakeholders or adopted. Nationally, the institutional structure, responsible for implementing and monitoring posting of workers, is not yet consolidated and the human resources do not yet have the capacities to implement posting regulation in compliance with the specificities of the Directive.

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What is posting?

A posted worker is an employee who is sent by the employer to carry out a service in another EU Member State on a temporary basis, in the context of a contract of services, an intra-group posting or a hiring out through a temporary agency. For example, a service provider may win a contract in another country and send his employees there to carry out the contract. Posted workers are different from EU mobile workers in that they remain in the host Member State only temporarily and do not integrate into its labour market.

Rights and rules for posted workers

The EU law defines a set of mandatory rules regarding the terms and conditions of employment to be applied to posted workers. These rules establish that, even though workers posted to a Member State are still employed by the sending company and subject to the law of that Member State, they are entitled to a set of core rights in force in the host Member State:

- minimum rates of pay;
- maximum work periods and minimum rest periods;
- minimum paid annual leave;
- the conditions of hiring out workers through temporary work agencies;
- health, safety and hygiene at work;
- equal treatment between men and women.

With the revision of the Directive ((EU) 2018/957), posted workers in all economic sectors are guaranteed equal pay to locally-hired workers based on rules set by national law or universally applicable collective agreements. However, if sending country terms and working conditions are more favourable, they become applicable to posted workers.

Relevant EU Legislation

- ❖ Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services.
- ❖ Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation').
- ❖ Directive (EU) 2018/957 of the European Parliament and of the Council of 28 June 2018 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services.
- ❖ Regulation no 883/2004 on the coordination of social security systems.

Relevant National Legislation

- ❖ Law No. 7961, 12.7.1995, "Labour Code of the Republic of Albania", as amended by Law No. 136/2015, 5.12.2015.
- ❖ Law No. 108/2013, "on Foreigners of Albania".
- ❖ Law No. 74 dated 14.07.2016 "For some amendments and additions to Law no. 108/2013 'For foreigners'".
- ❖ Decision of the Council of Ministers No. 85, dated 12.02.2014 "On the definition of criteria, documentation, and procedures for the issuance, refusal, renewal and annulment of work permits to the transferee within the enterprise, type 'A/TN'".
- ❖ Decision of the Council of Ministers No. 67, dated 12.2.2014, "On determining the criteria, documentation and the procedure for equipping, refusal, regeneration and cancelling of the work permit for contracting services, type 'C/SHK'".
- ❖ Decision of the Council of Ministers No. 286, dated 21.5.2018, "On some particular rules for temporary employees hired by the Agency of Temporary Employment".

Source: European Commission, Information on Posted Workers. Available at: <https://ec.europa.eu/social/main.jsp?catId=471#navItem-10>

Posting to and from Albania

Based on the *Law on Foreigners No. 108/2013*, as amended in 2016, citizens of an EU or Schengen state are free to work in Albania without the need for a work permit, as long as they are legally residing in the country. As a result, the posting of workers from the EU to Albania is free of barriers and of procedural burdens. Reducing the barriers to labour market access has created a flow of foreign residents living in the country for employment purposes. Data from the National Institute of Statistics (INSTAT) show that almost 50% of foreigners in Albania are residing for employment purposes. Thus in 2017, from 12,906 foreigners with a permit of stay in Albania, 6,334 were residing for employment purposes (INSTAT, 2018).

In 2018, the total number of workers posted to Albania was 75, while there is no data on workers posted from Albania

Posting is a recently adopted legal form of labour mobility in Albania, hence we count only few cases: 75 employees overall were posted to Albania in 2018 (Agolli & Deliu, 2018). Considering the total number of foreign workers employed in Albania, posted workers represent a mere 1% of the 6,334 foreigners residing in the country for employment purposes. Thus, posting does not yet represent a form of temporary employment from EU Member States to Albania.

For non-EU citizens, there is a specific type of work permit issued when posted to Albania, known as A/TN type, as stipulated by the Decision of the Council of Ministers No. 85 in 2014.

Yet, the situation is different for Albanian citizens going abroad as posted workers. As Albania is still not a member of the European Union, it cannot post workers to any of the EU Member States based on the Directive 96/71/EC alone. There are cases of Albanian citizens posted abroad, as evidenced during the interviews with business representatives (Agolli & Deliu, 2018). However, posting employees to any of the EU Member States is done by following the labour migration procedures of the host country. When out-posting, there is no obligation for the companies to inform Albanian institutions; as a consequence, there are no data on the number or the typology of Albanian posted workers. Albanian institutions do not have information, not only about the number of posted workers, but also not on their working conditions and treatment. This lack of information or of a monitoring mechanism remains a serious obstacle for national structures to offer support to individuals being posted and facing unjust situations.

Foreign companies in Albania are most likely to post their workers, if compared to national ones. The industries and sectors in which posting is more common include: construction, energy, financial auditing, the banking sector and telecommunication. Posting is assessed as a desirable practice to transfer skills

and to increase capacities of the employees. Still, for companies in Albania (whether international or national) it is difficult to arrange posting in an optimal and affordable manner.

The challenges that companies face when posting their employees to EU Member States are:

- Posted workers from Albania have to undergo the normal employment migration procedures, which remain less favourable to labour mobility than posting procedures.
- When posted, workers have the right to choose ‘the best terms and conditions’, in order to avoid social dumping. This decreases the incentives of companies to post their workers in the EU labour market as the wage gap is considerable – thus paying the difference increases the costs for companies.
- Companies do also face the fiscal implication of double taxation when out-posting workers, since Albania has not yet reached agreements with all European countries for tax exemptions or tax reimbursement (NPEI, 2018). However, even when agreements on double tax exemption exist, procedures are complicated and time-consuming to the degree that no cases of companies posting workers have been reported so far to the authorities (Agolli & Deliu, 2018).

Legal and institutional framework in the country

The major aspects of labour and employment relations in Albania are legally regulated through the Labour Code, which has been amended in 2015. Among amendments of the Labour Code, Article 3/1 introduces the concept of posted workers. Albania has also amended the Law on Foreigners in 2016, which has partially harmonized the Posting of Workers Directive. Hence, a full alignment of the labour and employment legislation with the EU acquis and with the PWD, is yet to be achieved.

a. Legal framework – transposition of PWD in Albanian legislation

The Posting of Workers Directive 96/71/EC represents an instrument of EU labour market integration, endorsed by EU Member States in 1996 with the aim of coordinating and regulating the temporary labour mobility within the Single Market and among Member States. In 2014 the Directive 2014/67/EU of the European Parliament and of the Council, on Enforcement of Posting of Workers, was adopted. The Enforcement Directive aims “to establish a common framework of a set of provisions, measures and control mechanisms necessary

The PWD is only partially transposed into the Albanian legislation through the Labour Code and the Law on Foreigners

for uniform implementation, application and enforcement in practice of Directive 96/71/EC” (Article 1).

Albania reports a partial transposition of the PWD into national labour and migration legislation. The amended Labour Code has transposed the concept of Posted Workers into labour legislation, with posting being defined, similarly to the text of the PWD, as “a service provided by a company or temporary employment agency to Albania or from Albania”, (ref. Article 3/1 of the Albanian Labour Code). Posting, however, is not limited only to EU Member States, citizens from the rest of the world can also be posted to Albania.

Article 3/7 of the Labour Code defines a list of employment conditions and activities that are not considered as posting, same as those listed in the PWD.

Other elements of the PWD adopted in the Labour Code are: (i) the right to apply, in any posting assignment, the most favourable employment conditions whether from sending or receiving country; (ii) a guarantee of the minimum wage for the foreign worker; (iii) enforcing equal treatment and fighting discrimination, etc. (Albanian Labour Code, as amended in 2015). Furthermore, Article 18/5 of the Labour Code foresees the establishment of Temporary Employment Agencies, and a Decision of the Council of Ministers for its functionality has been adopted: DCM No. 286, dated 21.5.2018, “On some particular rules for temporary employees hired by the Agency of Temporary Employment”.

There are some elements found in the PWD that are not transposed or aligned in the Labour Code, or in other laws covering employment in Albania. Noteworthy is the fact that there is yet to be established a lead institution responsible for the management of posting. Moreover, roles and responsibilities with respect to implementing and monitoring posting of workers among different national institutions overseeing the labour market and labour mobility have to be clarified and stipulated in by-laws. Intra-agency cooperation, at the national and international level, regarding posting is reported as inexistent, while there are no functional monitoring mechanisms for posting of workers. The current national laws/by-laws do not foresee the setting up of a Liaison Office/Liaison Officer as it is stipulated by Article 4 of the PWD.

b. Institutional framework

In Albania, as per the legal framework and the actual institutional structure, the roles and responsibilities in managing posting of workers are shared between different institutions.

At the central level, it is the Ministry of Finance and Economy, Directorate of Labour and Migration that bears the responsibility to develop the strategic and legal framework regarding labour and employment in Albania. This directorate monitors the developments on the labour market, including labour migration (in & out) and proposes amendments of existing laws/by-laws or drafting new ones.

The Ministry of Interior and the State Police and Directorate of Border Control and Migration are national authorities responsible for the implementation of the Law on Foreigners in Albania. They are the institutions responsible for issuing the residence permit, and to keep data and documentation on all foreigners in Albania, including posted workers.

The National Employment Service (NES) and the employment offices in all the regions of the country monitor the labour market, employment and unemployment, skills and human capital. NES is the national authority issuing the work permits for foreigners that aim to reside in Albania for work purposes, including posted workers as well. In this regard, all the data about foreign employees in Albania are collected and updated by the National Employment Service. Yet, this service and all employment offices do not have any data or information about the Albanian workers that are posted abroad.

Another relevant national authority is the State Inspectorate of Labour and Social Services (Labour Inspectorate). Its main task is inspection and monitoring of work conditions concerning health and safety, in order to be in compliance with labour legislation. While the Labour Inspectorate has the authority to monitor the workers posted to Albania, inspectors have no means to monitor out-posting.

A leading institution or authority dealing with posting is still missing in Albania

The institutional map concerning implementation of the posting of workers involves numerous institutions, each of which responsible to deal with one aspect of posting. However, there is a missing link, the lack of a lead authority, that would be explicitly responsible to monitor and coordinate posting in Albania (as required by the PWD).

For the moment, the major share of responsibility falls to the Ministry of Finance and Economy/Directorate of Labour and Migration, given the fact that it is the main authority to oversee all matters and issues on the subject of labour and employment, including posting. In this regard, drafting of by-laws or procedures to facilitate the implementation of posting of workers are also MFE's obligations.

Institutional challenges

As posting of workers is a form of labour mobility introduced only recently in the national labour legislation, the institutional awareness and preparedness remains modest, especially on different aspects of implementation and monitoring. Institutions responsible for managing posting of workers need to develop by-laws and require guidance to improve understanding and practices in implementation. By-laws would clarify different procedural aspects of posting, aspects of monitoring and reporting, roles and responsibilities of different national institutions, modalities of inter-agency cooperation and exchange of information.

Roles and responsibilities among institutions involved in posting of workers at the national and local level in Albania need to be distributed in a structural and clear manner. The PWD demands that each Member State should assign/ establish a managing authority responsible for monitoring posting. This managing authority, defined as liaison office in the PWD, is held responsible for the inter-agency coordination at national and European level. As already mentioned, the Labour Code in Albania has not foreseen the establishment of such an authority. Until now, the responsibility to exchange information, monitor the posting process and cooperate with other institutions falls to the Ministry of Finance and Economy/ Directorate of Labour and Migration. The Directorate is responsible for all matters and issues regarding labour and migration but with little focus and with restricted capacities as regards posting.

The Temporary Employment Agencies, whose role is to facilitate posting of workers, have been established only recently. The procedural aspects of reporting to national authorities are yet to be developed, including modalities of Labour Inspectorate controls and inspections. Most of posting, as a form of temporary employment, will be done/facilitated through this type of employment agencies. Therefore, mainstreaming their practices will be a focal point for posting to be implemented and monitored in Albania.

Generally, there is a lack of information and understanding of posting and of its legal framework. National institutions are currently not fully prepared for implementing and monitoring posting in and out the country. It is assessed that they do not have the means to monitor out-posting of Albanian workers, while the capacities and expertise to deal with posting in Albania are missing and staff is not trained on this matter. Representatives from related institutions and stakeholders, including employers' associations, trade unions or businesses, report not to have adequate information and awareness on posting. They also report lack of capacities to follow and complete posting procedures. This

incapability of institutions increases the risk of exploitation of workers or of irregular employment.

PWD has not been part of the major debate and discussion and only recently this topic is being put in the spotlight. As a result, among concerned stakeholders, such as public institutions, workers and business associations, little information and awareness is transferred. It is evidenced that these actors lack information and guidance on properly implementing, monitoring or coordinating the posting arrangements.

Policy recommendations

The legal amendments on labour and wage differentials between Albania and most of the EU Member States make it more preferable to post workers to Albania rather than to out-post them to any of the EU Member States. Consequently, there is an asymmetry in the access to the labour market that needs to be addressed through carefully-designed policy measures, in order to prevent any negative consequences of posting.

While there have already been amendments to the national legislation focusing on labour and migration, the transposition of Directive 96/71 is not yet completed. There is a need for further legal acts to cover completely all the institutional and procedural aspects of the Directive's implementation.

Furthermore, institutional coordination needs to be rearranged, as a coordinating/leading authority for posting is missing and yet there is not a clear division of responsibilities and roles among the currently relevant institutions.

Establishing new institutions foreseen in the PWD but not yet foreseen in the national law is another immediate step to be taken in Albania, necessary for the proper implementation of posting procedures in the country. These institutions are of great relevance to start drafting policies and measures to tackle the asymmetry and social dumping.

At the same time, public authorities and social partners need to strengthen the capacities of their human resources, that so far are little informed or trained on matters related to posting, which has direct implications for their ability to implement the PWD in the country and protect workers from potential exploitation.

A set of key policy recommendations addressing the challenges discussed above is advanced:

On the Legislative and Policy Measures:

- A complete transposition of the PWD and other relevant Directives into national legislation needs to be achieved. So far, the PWD is only partially harmonized. It is assessed that adoption of several by-laws can improve the implementation of this Directive.
- Monitoring the impact of posting on the labour market in Albania in a long-term perspective is essential, specifically with regard to the social protection system. To make this possible, identification of posted workers should be undertaken by distinguishing them from other foreign workers in Albania.

On the Institutional Framework:

- A clear distribution of roles and responsibilities among related institutions as regards posting of workers, whether current or newly established ones, is assessed as key to promote and enhance multi-stakeholder coordination and information sharing.
- The institutional framework responsible to safeguard implementation of posting of workers needs to be completed by establishing a liaison office as stipulated in the PWD, and in full alignment with the European institutional set-up with respect to posting. This liaison office would be the lead authority, responsible to coordinate institutional cooperation and information exchange. Until now, the Ministry of Economy and Finance has played this role, as the national authority responsible for labour legislation in general. However, this might not be adequate given the particularities of posting.
- Intra-agency coordination and information exchange regarding posting of workers need to be strengthened and to become operational, in order to encourage the positive impact of labour mobility, while workers' rights are respected during and after the posting.
- The posting of workers needs to be integrated by cooperation modalities of Albanian institutions with EU institutions covering sensitive areas such as employment, migration and social protection.

References

Agolli, M. & Deliu, N. (2018). *Posting of Workers in Eastern Europe (EEPOW) Country Report for Albania*. Vienna: European Centre for Social Welfare Policy and Research.

Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation').

Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services.

Institute of Statistics in Albania (2018). *Foreigners and Asylum Seekers in Albania 2017*. Source: <http://www.instat.gov.al/media/4653/te-huajt-dhe-azilkerkuesit-n%C3%AB-shqiperi-2017.pdf>

Law No. 108, 2013 "on Foreigners of Albania", as amended by Law 74, 14.07.2016.

Law No. 7961, 12.7.1995, "Labour Code of the Republic of Albania", as amended by Law No. 136/2015, 05.12.2015.

National Plan on EU Integration 2018-2020 (2018). As adopted by DCM No. 246, 9.5.2018.

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