



Posting of Workers in the Western Balkans: The Case of North Macedonia*

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Introduction

North Macedonia is going through a slow process of EU integration that has started in 2009. Freedom of movement including labour mobility as a fundamental principle of the internal European Union (EU) market functioning, is an integral part of the integration process. The Posting of Workers Directive (PWD) is among the key policy documents concerning the free movement of services to be transposed into national law.

Keywords:
Posted Workers Directive, labour mobility, European Union, North Macedonia, institutional capacities

The Policy Brief investigates the issue of posting of workers from and to North Macedonia at its pre-accession stage. At the same time, it assesses the existing institutional capacities in the country in terms of implementation of the PWD. The findings confirm that, in general, North Macedonia has established a solid regulatory framework in terms of labour mobility. On the other hand, findings support the need for a more strategic management of labour migration and advancing labour mobility higher up on the political agenda.

* The Policy Brief is based on the Country Report for North Macedonia (Ilijevski & Iloska, 2018) prepared in the frame of the project 'Posting of Workers in Eastern Europe' (EEPOW) (for reference see the project website <https://www.euro.centre.org/projects/detail/1673>). This publication has received financial support from the European Union Programme for Employment and Social Innovation "EaSI" (2014-2020). For further information please consult: <http://ec.europa.eu/social/easi>. The information contained in this publication does not necessarily reflect the official position of the European Commission. The authors wish to thank the representatives of the Ministry of Labour, Employment, Veterans and Social Affairs (MOLEVSA) for their fruitful cooperation and for providing the empirical data and information needed for the assessment of the implementation of the Directive in Serbia. The authors are also grateful for the editorial comments received from Sonila Danaj and Eszter Zólyomi and would also like to thank Willem Stamatou for language editing and layout.

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 on posting of workers from the Republic of Macedonia in other countries for carrying out construction works through project contracts and other seasonal works (Official Gazette of the Republic of North Macedonia, No. 166/2012).
- ❖ Law on foreigners (Official Gazette of the Republic of North Macedonia, No. 35/2006).
- ❖ Law on working relations (Official Gazette of the Republic of North Macedonia, No. 167/2015).
- ❖ The Law on records in the field of labour (Official Gazette of the Republic of North Macedonia, No. 31/2013).

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

Posting to and from North Macedonia

Posting of workers from and to North Macedonia is happening to a limited extent. According to the evidence of the Ministry of Labour and Social Policy, during 2017 in total 570 workers have been posted to Germany, mainly in the construction industry.

There is no official data on the number of posted workers to North Macedonia, although in general the number of foreigners with temporary stay in the country is relatively low. According to the official estimates of the State Statistical Office, during 2017 there were in total 2,322 foreigners with temporary stay and 1,760 foreigners with extended stay, while 283 foreigners with temporary stay have left the country during the same year. From a regional perspective, during 2015, 2016 and 2017 the majority of foreigners reported their stay in the Skopje region, respectively 1,043, 1,769 and 1,286 persons.

Legal and institutional framework

Legal framework

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There are three leading legal frameworks that regulate and enable posting of workers from and to the country. In terms of posting of workers from North Macedonia, there are two important pieces of legislation. One is the *Law on Working Relations of 2005* that regulates the allowances for a posted worker and the length of posting in cases when employees are assigned for the purposes of provision of services abroad. The second piece of legislation which was adopted in 2012 and explicitly targets posting, is the *Law on posting of workers from the Republic of Macedonia to other countries for carrying out construction works through project contracts and other seasonal works*. This law regulates the terms and conditions of posting to countries with which North Macedonia has concluded bilateral agreements on posting. To date, the country has concluded bilateral agreements with Germany on posting workers and with Slovenia and Qatar on seasonal workers; however, in practice only the contract with Germany is operational.

The regulatory framework that enables posting of workers to North Macedonia, is the *Law on Foreigners* which was formally adopted in February 2006. With this Act the country aligned its migration legislation with the EU Acquis and follows the Migration Resolution. The Act regulates the basic principles of

the national policy for employment and work of foreigners, issuance of the working permits, types and procedure of issuance of the working permits, the conditions for cross-border cooperation with foreign companies, seasonal work, right of foreign students to work, work performed by foreign companies or self-employed persons. The law also regulates other issues related to work of foreigners, such as supervision, data management, protection of the employment rights of foreign workers, etc.

One of the major limitations identified in the existing regulatory framework is the absence of a clear definition of posted workers. Neither the *2012 Law on posting* nor the *2005 Law on working relations* provide a definition what a posted worker is. Other missing aspects in the available regulatory framework are the absence of regulation on travel, board, and lodging; establishment of liaison offices; and a national website on posting. The available national regulatory framework does not integrate any reference to the PWD. Therefore, the national regulation does not foresee measures in the event of failure to comply with the Directive. However, the Law on working relations (Article 265) foresees a fee in the amount of 2.000-3.000 EUR in cases when the employer is posting a worker abroad under different terms and conditions than the ones stipulated by the Law.

In terms of bilateral social security agreements with EU/EU Member States, there are 22 bilateral agreements on coordinating social security systems, 15 of which are with EU Member States. In terms of bilateral health insurance agreements with EU/EU Member States, so far, the country has concluded only 9 bilateral agreements.

Institutional arrangements

In North Macedonia, there is no separate agency responsible for monitoring and controlling labour migration

In North Macedonia, there is no separate agency responsible for monitoring and controlling labour migration, including posting of workers, between the country and the EU. Labour migration is only partially monitored within the Ministry of Labour and Social Policy as an integral part of the entire spectrum of labour and employment issues, while the development and implementation of employment policies with regard to posted workers are delegated to the Department for the Labour Market which is in charge of the introduction and implementation of bilateral agreements on the coordination of social security systems.

Work permits for foreigners are issued by the National Employment Agency, while the Ministry of Interior Affairs is responsible for temporary and permanent residence permits. The National Employment Agency proposes the annual

work permit quotas to the Ministry of Labour and Social Policies and keeps the statistical overview of the issued work permits.

There are four migration service centres functioning within the Employment Agency where migrant workers can get information on the labour market in North Macedonia and in most European countries. However, posting has not been explicitly targeted by the migration service centres. It also remains unclear whether these centres are operational and in what capacity.

Additionally, the 2012 Law on posting foresees the establishment of a separate Commission with a competency to define a yearly quota of workers that will be posted for carrying out project contracts.

Institutional challenges

There is a need for clearly established structures and protocols for cooperation on questions that reflect different aspects of labour migration

Although the PWD and the Enforcement Directive envisage the establishment of liaison offices for cooperation, information sharing and exchange between national institutions and EU Member States and EU-level institutions, in North Macedonia, no such office has been established yet and they are not on the policy agenda. To date, cooperation with other countries is mostly done through electronic exchange of needed data on individual cases and each country has its own database. North Macedonia as an accession country does not have access to the Internal Market Information System (IMI), which is only available to the EU Member States.

Generally, there is a lack of available human resources involved in monitoring labour mobility, including posted workers. Very few of the stakeholders engaged in the chain of posting have been properly trained on the implementation of the PWD. Apart from the human resources at the institutional level, employment agencies, the majority of trade unions, employers' associations and other stakeholders have not been trained on the PWD.

At the national level, there is a limited stakeholder engagement in terms of managing labour mobility in the country. Tripartite and bipartite social dialogue and interagency cooperation in North Macedonia remain weak. Based on research findings, trade unions, employer associations, Chambers of Commerce and civil society so far have very limited involvement in the process of transposition of the PWD.

Policy Recommendations

The existing regulatory framework provides a solid legal basis for posting workers from and to North Macedonia. However, its enforcement has been very limited so far, while cooperation between the relevant stakeholders is insufficient and should be further improved. Policy-makers should further develop and manage labour mobility as a factor for socio-economic development. They should further investigate new mechanisms to benefit from the globalizing labour market and ensure human capital development in the country.

Along with the definition of the strategic orientation, the regulatory framework should be further strengthened and improved as a supporting mechanism:

- 1) The Law on labour inspection should provide specific obligations related to migrant workers, including posted workers.
- 2) Full transposition of the Posting of Workers Directive, including its revisions and its application to all sectors.

In the light of improving the institutional arrangements for labour migration and posting of workers, additional institutions should be established as a supporting mechanism for enforcement of the existing regulatory framework:

- 1) A regional employment agency that will improve labour mobility among neighbouring countries.
- 2) A national office for the labour force. The office should conduct a regular analysis of the occupational shortages at the national level and of the most recent developments in industry.
- 3) Establishment of an information system for the labour markets in the countries of admission regarding the possibilities for temporary / seasonal employment (including posting), as well as greater awareness of the citizens for the possibilities for temporary emigration on the basis of education, training, etc.

In terms of inter-agency cooperation, the following reforms should be undertaken:

- 1) To establish clear structures and protocols for cooperation in matters that reflect different aspects of labour migration on both national and international levels.

- 2) To explicitly define channels of cooperation, information sharing and exchange between national institutions and EU Member States and EU-level institutions.

The EU financial support that is aimed at strengthening human resources in terms of labour mobility in general and posting of workers in particular, should be better coordinated at the national level. Moreover, adequate mechanisms should be established in order to ensure that the generated knowledge will be properly institutionalized. Stakeholder participation in the entire policy cycle of labour migration should be ensured and strengthened.

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