



# Here, not to stay – The posting of third-country nationals between Bosnia and Herzegovina, Slovenia, and Austria\*

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## Introduction

The posting of workers is defined as the sending of workers by their employer in one Member State of the European Union (MS EU) to provide a service for a definite period of time up to 12 months to another Member State. Most of the individuals posted are European citizens. However, the posting of third-country nationals (TCN) – i.e. individuals who are not citizens of any EU state – has increased significantly since 2010. In particular, the number of posted workers who are citizens of the candidate countries of the Western Balkans has grown (Danaj et al., 2019).

**Keywords:**  
**Posting of workers,**  
**labour migration,**  
**social dumping,**  
**workers' rights**

This Policy Brief is based on empirical data collected through focus groups and foresight exercises organized with representatives of public authorities, social partners and other experts from Austria, Bosnia and Herzegovina, and Slovenia during 2019. It describes the trend of the posting of workers from Bosnia and Herzegovina via Slovenia to Austria and its drivers. It then discusses why workers from Bosnia and Herzegovina agree to be posted via Slovenia to work in Austria, the challenges they face and the impact it has on the host country. The Brief concludes with recommendations on how the observed problems could be addressed.

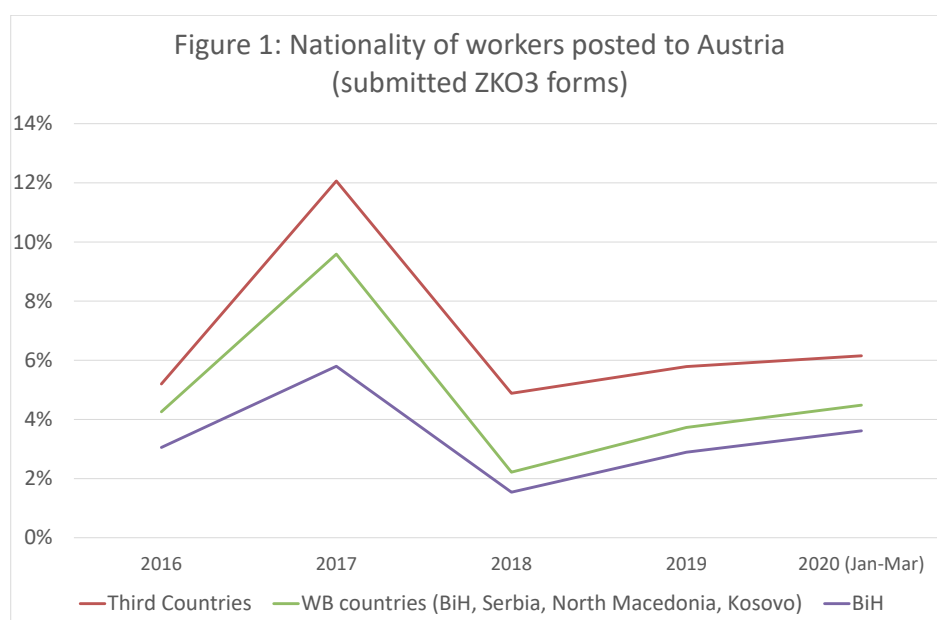
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## Bosnian workers that are posted in Austria via Slovenia

**The largest share of third country nationals posted to Austria are citizens of Bosnia and Herzegovina**

Based on the number of ZKO3 forms submitted to the Austrian Financial Police about the incoming posted workers, third-country nationals posted to Austria have accounted for between 5-12% in recent years (see Figure 1). Among those, citizens of the following Western Balkan States – Bosnia and Herzegovina, Serbia, North Macedonia, and Kosovo – made up the largest group. Bosnian posted workers accounted for between one-third and half of all third-country nationals posted to Austria during 2016-2019. In total numbers, between 3,100 and 38,000 citizens of Bosnia and Herzegovina were posted to Austria annually during this period. Most of these individuals were posted by companies located in Slovenia.



Source: Data provided by the Austrian Financial Police, 2020.

### Historical labour migration flows

Migration from Western Balkan countries to Slovenia and Austria is not a new phenomenon. From 1867 to 1918, most of the region was part of the Austro-Hungarian empire. After World War II, the newly created state of Yugoslavia covered the territories of today's Bosnia and Herzegovina, Croatia, Kosovo, Montenegro, North Macedonia, Serbia and Slovenia, which allowed for the free movement of citizens throughout the region. After World War II, Austria, like Germany, made use of the *Gastarbeiter* system, according to which guest workers (as the name of the system suggests) from the sending countries would provide

services on a temporary basis, although many of these workers eventually settled in Austria (Bauer, 2008). Later, during and after the wars following the breakup of Yugoslavia in the 1990s, large numbers of refugees from the region fled towards other European countries, including Austria. As a result, there is a large community of citizens of former Yugoslav republics in both Slovenia and Austria. From 2016 to 2018, citizens of Bosnia and Herzegovina were the largest group of recent (2018) immigrants to Slovenia followed by citizens from Croatia, Kosovo, Serbia, Bulgaria, and North Macedonia (Eurostat, 2020). The number of citizens of Bosnia and Herzegovina living in Austria has fluctuated between 89,000 and 107,000 since 2002. Next to Germans, Turks, and Serbs, they form the largest group of foreign nationals living in Austria (Statistik Austria, 2020).

**Citizens of Bosnia and Herzegovina can easily move to Slovenia for work. From there, they can be posted to work in other EU countries**

Slovenia has bilateral agreements with Bosnia and Herzegovina (since 2013) and with Serbia (since 2019) which allow citizens of both countries to work in Slovenia following simple procedures. They have unrestricted access to the Slovenian labour market, if the following conditions are fulfilled: They register with the employment office in their home country, there is a justifiable demand for labour abroad, and they are offered a work contract for at least one year by a Slovenian employer (Danaj et al., 2020: 26).

### **Current push and pull factors**

**Political instability and economic disparities drive (labour) migration from Bosnia and Herzegovina to EU countries**

Labour migration from the Western Balkans to Austria is driven by push and pull factors (Danaj et al., 2020). The Yugoslav Wars were the strongest push factor in the 1990s. Since then, continuing economic disparities between the countries of the Western Balkans and their richer EU neighbours have created strong incentives for labour migration. The labour market in Bosnia and Herzegovina has suffered from political and economic instability, the collapse of key industries and skills and demand mismatches in the labour market (ILO, 2011; Friedrich Ebert Stiftung, 2020). For most of the last decade, the country has struggled with an unemployment rate of over 25% (ILO, 2020) and with wages significantly below those of Slovenia and, even more so, Austria (Danaj et al., 2020: 16).

The principal pull factors are the relatively better employment opportunities – in terms of both pay and employment conditions – in richer European countries. Up until the outbreak of the COVID-19 crisis, the discouraging economic conditions in Bosnia and Herzegovina were contrasted by high labour demand in Slovenia and Austria, especially for construction workers (Danaj et al., 2020). In the case of Slovenia, other pull factors include the aforementioned historical ties, geographical proximity, and the relatively simpler migration procedures in place.

## Why do third-country nationals agree to be posted?

**Posting via an intermediary country can be a hassle-free opportunity for third-country nationals to work in high-paying EU countries**

Construction companies across the EU outsource parts of their work to firms using posted workers, not only to meet a demand in skills and services they cannot find locally, but also to gain access to a more flexible and often cheaper workforce (Cremers, 2011). Cost differentials are even higher between EU and third countries, such as those in the Western Balkans (Danaj et al., 2020). However, from the perspective of posted workers themselves, the existence of two different possibilities for labour migration from Western Balkan countries to high-wage EU countries – regular migration and posting through an intermediary country like Slovenia – raises the question of why third country nationals use the posting route to work in a high-paying EU country and do not apply for a work permit in the country they would like to work in.

Regular migration is an option, i.e. a person living in Bosnia and Herzegovina can apply for a work permit in Austria to directly seek employment in that country. The large migrant community in Austria can also help their countrymen with visa application and support newly-arrived workers from Bosnia and Herzegovina with finding employment. However, direct migration remains often a long and bureaucratic process with an uncertain outcome. Migrants do not know if their visa application will be successful and, if so, if they will find employment once they arrive. As a result, more expedient ways are sought. Findings from the focus groups with Slovenian and Bosnian stakeholders conducted by our colleagues at ZRC SAZU (Danaj et al., 2020: 26), thus, show that posting presents a more certain and hassle-free option than regular migration.

Slovenia as the sending country plays its part in providing posting as a favourable option. Applying for a work permit in Slovenia, as described above, is much easier because of the bilateral agreement between the two countries which has made procedures less demanding and thus allow for the permits to be granted more quickly (Danaj et al., 2020: 26).

Over the years, Slovenia has seen growing numbers of consultants, law firms and letterbox companies which specialise in facilitating the posting of workers, often third-country nationals, from Slovenia to other EU countries like Austria. A representative of an Austrian trade union and a representative of the Austrian financial police describe these companies as a whole ‘posting industry’ providing a ‘full service’ to companies looking to hire posted workers from Slovenia (Danaj et al., 2020).

The same companies actively recruit workers directly from the Western Balkans and handle the processing of their paperwork. Apart from the bureaucracies of

migration, posting companies also take care of the whole process of posting, i.e. get the service contracts the posted workers will work on, assist in finding or provide transportation between the sending country and the receiving country and between the place of accommodation and the workplace, assist in finding or provide accommodation, process the paper work for the posted workers, and so on. Therefore, posted workers do not need to take care of these aspects on their own, while they have the opportunity to earn more than in their home and sending country in a shorter time.

Overall, this means that getting posted from Slovenia to other EU countries can be an economically attractive and hassle-free opportunity for people living in Bosnia and Herzegovina.

## Challenges of TCN posting

While posting can offer some benefits to third-country nationals, desk review and our empirical evidence collected through the focus groups suggest that posting also creates significant challenges for the individuals who are posted and for the countries they are posted to. Both challenges are discussed below.

### The vulnerability of posted workers from third countries

#### Posted workers from third countries are vulnerable to exploitation

Posting creates several vulnerabilities for workers from third countries (Danaj and Zólyomi, 2018; Danaj et al., 2019; Danaj et al., 2020). According to the Austrian Anti-Wage and Social Dumping Act of 2017 and more recently also the revised Posting of Workers Directive of 2018, posted workers are entitled to the same wages and benefits and the same level of occupational health and safety protection as domestic workers. However, posted workers are more likely than domestic workers to have their rights infringed upon. Posted workers *from third countries*, moreover, are even more likely than other posted workers to not have their labour rights guaranteed. In other words, being posted creates the risk of being exploited and of suffering from dangerous working conditions and being a posted third-country national further exacerbates those risks.

#### Posted workers from third countries often work longer hours and are paid less than domestic workers

Most individuals posted from Slovenia to Austria work in the construction industry. In this industry, the most common **labour rights violations** are the non-payment of parts of the salary or underpayment of wages and non-compliance with working hours regulations. In particular:

- Non-payment of benefits like holiday pay or sick pay (Danaj et al., 2020).

- Skilled posted workers are erroneously classified as unskilled to avoid surcharges (up to 30% on top of the regular wage) guaranteed by the collective agreement governing the Austrian construction sector (Krings, 2019; Gagawczuk, 2019).
- Companies reduce the effective wage by illegally deducing high ‘expenses’, for example for accommodation (Schmatz and Wetzel, 2014).
- Declaring part-time when working full-time or declaring less hours than actually worked (Hollan and Danaj, 2018).

**Vulnerabilities are caused by language barriers, information problems and economic dependencies**

Posted workers’ vulnerability increases by limited access to **information** and **language barriers**. In many cases, workers from third countries do not speak the language of the country they are posted to and are not aware of their rights as posted workers. For example, construction workers from Bosnia and Herzegovina may not speak German and may not be aware that their skills entitle them to wage surcharge. Thus, companies can often underpay posted workers without them ever noticing.

However, even if posted workers are aware that they are entitled to higher wages, they may not complain due to their **economic dependencies** and the fear of losing their employment. The economic disparities between the home, sending, and receiving countries are often so strong that even below-minimum wages in the receiving country are preferable to employment – or unemployment for that matter – in the sending or (even more) the home country. They often also depend on their contract with the sending employer to maintain their work permits in Slovenia. For both reasons, posted workers may sometimes collude with employers to circumvent working time regulations (Danaj et al., 2020). Many posted workers are paid by the hour and see their posting as an opportunity to earn as much money as possible during a limited period. Against this background, posted workers are often willing to work very long hours and on rest days. Furthermore, they are more likely to work when ill or slightly injured. All these factors increase the risk of accidents and negative long-term health effects.

Furthermore, large differences in employment standards and **workplace safety** regulations between home, sending and receiving country mean that posted workers sometimes accept sub-standard conditions in the receiving countries because those conditions are still better than the standards in the sending or home country. In addition, the temporary nature of posting also makes posted workers less likely to confront employers over working conditions (Lillie, 2016). After all, they will soon be deployed to another job so it may seem easier to simply endure the existing conditions for the time being.

Finally, even if posted workers decide to fight for their rights, it can be very difficult to **enforce their labour rights** (Gagawczuk, 2019; Gagawczuk, 2019a). One problem is the use of letterbox companies which quickly declare bankruptcy when sued. In the case of workers posted from Slovenia to Austria, another problem is that payments from the Slovenian insolvency fund are linked to the Slovenian wage level (Gagawczuk, 2019a). Workers posted to Austria whose employer declared bankruptcy can therefore not claim from the Slovenian fund the higher wage levels they are entitled to for working in Austria.

**Posted workers can sue the contracting company in Austria for unpaid wages, but this rarely happens because the procedures are highly impracticable for workers**

In theory, chain **liability regulations** can also protect workers' claims by enabling them to sue the contracting company – i.e. the company in the receiving country they provided the service to. This legal mechanism was introduced in Austria in the construction sector with the Anti-Wage and Social Dumping Act in 2017. However, this is not an easy process either (Gagawczuk, 2019a). One issue is that workers do not know who they end up working for and, hence, whom to direct their claims to. In the simplest case, an Austrian company contracts a Slovenian company, which then posts workers from a third country like Bosnia and Herzegovina to perform agreed-upon services in Austria. In many cases, however, the use of posted workers is complicated by long subcontracting chains, which obscure the identity of the contracting company. Moreover, under the Austrian law, workers must make their claim against the contractor within eight weeks after the wages were due to be paid. This means they must realise that they can sue the contracting company, identify that company, and make their claim within a very short period.

Thus, posted workers from third countries are vulnerable to exploitation and to unhealthy work practices. However, legal recourse is limited and, where it exists, marred with practical problems preventing posted workers from claiming their rights.

### **Social dumping and fake postings**

**Social dumping describes the practice of employing posted rather than domestic workers to reduce social security contributions**

Social dumping here describes the practice of employing posted rather than domestic workers to benefit from overall lower costs that can be obtained due to the differences in pay and social security contributions between the receiving and the sending country. While the issue of equal pay has already been addressed by the revised Directive of 2018 and Austria has its own Anti-Wage and Social Dumping Act, the differences in social contribution rates persists. Social dumping is a problematic practice for both workers and the countries involved (Gagawczuk, 2019; Danaj et al., 2020).

The idea of posting is to enable the cross-border provision of services within the European Union. To this end, posted workers remain covered by the social

insurance system of their home country. In other words, they do and should not have to change, for example, their health insurance provider when moving from Slovenia to Austria to provide services. This also means that companies who post workers continue to pay into the social security system of the sending country. These contributions are usually lower than in the receiving country. For example, construction workers employed in (or posted from) Slovenia pay lower contribution rates than construction workers employed in Austria. Thus, even if posted workers do receive the same wages and benefits as individuals employed directly in the receiving country – which, as discussed above, often is not the case – their *employment costs* can still be significantly lower. Hence, companies posting workers from countries with lower contribution levels have a cost advantage over companies directly employing workers in the receiving country.

A particularly harmful form of social dumping is the use of ‘fake posting’. **Fake posting** describes the practice of ‘hiring’ local workers through an intermediary company in a country with lower social contributions and then ‘posting’ that person back to the original country (Gagawczuk, 2019; Haidinger, 2018; Krings, 2019). For example, an Austrian company can set up a letter box company in Slovenia which hires the workers so far employed by the Austrian company. Those workers are then posted to Austria to provide services to the company which formerly employed them. The workers never leave Austria and never change the task they carry out day-to-day. However, on paper, they are employed in Slovenia which allows the employer – i.e. the people controlling both the Austrian and the Slovenian company – to pay lower social insurance contributions.

**Social dumping and fake postings threaten the finances of the welfare states of receiving countries and may erode social standards**

Social dumping and fake postings threaten the finances of the welfare state of the receiving country. When companies use (fake) posted workers instead of regularly employed workers to save costs, they are not contributing to the social insurance system of the receiving country, a trend which, if it continues to grow, will have a negative impact on the welfare of the receiving country as the money available for pensions, health care and other social policies might decrease. In response, receiving countries may lower contribution rates to make regular employment cheaper and more attractive to companies. Lower contribution rates mean lower welfare state income. If both sending and receiving countries respond by further lowering their own social insurance contribution rates, this will lead to a dangerous race to the bottom in contribution rates and, eventually, welfare policies in both sending and receiving countries.

As a transnational form of service provision, posting presents a number of challenges for the workers and the countries involved. Unequal terms and conditions make posted workers vulnerable to exploitation, especially in the case



of the third-country nationals, like workers from Bosnia and Herzegovina, whose system of reference is still their home country, where conditions are poorer than both the sending country of Slovenia, and more so the receiving country of Austria. The practice of posting, while beneficial for companies in search for flexible and comparatively cheaper labour, if abused as in the case of fake postings, could contribute to maintaining unequal terms and conditions among the workforce, with repercussions not only for their own working conditions, but the wider social standards in both sending and receiving countries.

## Policy recommendations

Various measures can be undertaken by employers, public authorities, and social partners in the sending, posting and receiving countries as well as at the EU level to reduce the negative effects of posting third country nationals on the posted workers themselves and on the welfare states of the receiving countries. Some of these include:

- **Provide posted workers with systematic and easily accessible information on their rights as posted workers.** For example, workers should be informed about minimum wage levels, applicable allowances or possible legal recourse against their employers and the contracting companies. The Enforcement Directive of the Posting of Workers Directive 96/71/EC (2014/67/EU) requires EU countries to set up multi-language websites with information on posting procedures and posted workers' rights. However, posted workers do not necessarily consult these websites or use other publicly available information (such as the EFBWW's website [constructionworkers.eu](http://constructionworkers.eu) with information on the construction sector rates and other entitlements for 36 EU and candidate countries). Therefore, more outreach work is needed. In particular, actively informing workers on their rights already in their country of origin before they migrate and are posted can prevent them from entering exploitative work arrangements in the first place. More can be done in the sending and receiving countries, as well, where public authorities and social partners already aware of the presence of TCN posted workers could provide more systematic information and support in these workers' languages.
- **Improve cooperation among the enforcement agencies and between enforcement agencies and the social insurance providers** among and between home, sending and receiving countries of Bosnia and Herzegovina, Slovenia, and Austria to prevent fake posting and help exploited workers enforce their rights.

- **Improve regular migration pathways for third-country nationals.** Reviewing work permit criteria in sending countries such as Slovenia would help workers from third countries like Bosnia and Herzegovina become less dependent on their posting employers and be able to resist efforts for exploitation. In addition, simpler labour migration procedures in receiving countries like Austria could also help alleviate some of the challenges third-country national workers face while posted. Direct employment in the country where they intend to work means they will be unequivocally covered by the labour law and the national social security system of the host country. Direct employment will remove some vulnerabilities created by posting and long subcontracting chains. Creating alternative pathways for legal (temporary) migration or reducing the bureaucratic hurdles preventing third-country nationals from using the existing pathways, could allow them ‘to cut out the middle-men’ and thereby remove some layers of vulnerability. Finally, as regularly employed migrants they would pay social insurance contributions in their country of employment, preventing unfair competition and financial pressures on welfare policies.

The posting of third country nationals from neighbouring countries such as Bosnia and Herzegovina to the EU has revealed new layers of vulnerability for transnational workers. The complex interplay of national migration, labour market, welfare regimes and EU regulations such as that of the posting of workers leaves this subcategory of posted workers exposed to further inequalities that call for the strengthening of preventative and enforcement measures across countries and at the EU level.

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