

DIGITAL LABOUR MARKETS IN CENTRAL AND EASTERN EUROPEAN COUNTRIES

COVID-19 and the Future of Work

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Introduction

The free movement of services, one of the four fundamental freedoms of the European Union's (EU) internal market, allows companies to post their employees to other EU Member States. In Slovenia, the concept of cross-border posting became relevant after the country joined the EU in 2004. The number of posted workers in Slovenia has been growing steadily since then and is among the highest in the EU. An increase in postings has also been observed in the EU as well. One of the main reasons for the rapid increase in the number of workers posted to wealthier EU countries is the accession of ten new Member States in 2004, with significant differences in living standards between the 'new' and 'old' Member States. Focusing on Slovenia, an important reason for Slovenia's high numbers of posted workers is also its proximity to the countries of the former Yugoslavia and the strong migrant flows from these countries to the EU via Slovenian companies. As a result, the number of workers posted from Slovenia to other EU Member States has been one of the highest in the EU over the past decade.

In mid-March 2020, the World Health Organisation announced that Europe was considered an active centre of the COVID-19 pandemic. Consequently, national authorities began to impose restrictions and measures to contain infections. In the context of the fundamental freedoms of the EU, measures aimed at containing the spread of COVID-19 infections mainly concerned the free movement of workers and the freedom to provide services. The two freedoms suddenly became an exemption, approved only under strict conditions. In the context of the latter (freedom to provide services), the phenomenon of posting workers, as a form of cross-border service provision, was not left untouched by the health crisis.

The changes in business operations brought about by the pandemic depended largely on the type of business (sector) and the type of work performed by employees.

In some sectors, companies restructured and switched to telework shortly after the pandemic began. For them, the measures against the spread of COVID-19 did not present an important obstacle in carrying out their businesses. In others, however, telework was not an option, as jobs in some sectors cannot be performed remotely. Companies that fall into this category operate in sectors such as construction, international road transportation, agriculture, and installations. These are also the sectors in which the posting of workers is particularly widespread. On the other hand, some of these economic activities were (and are) considered essential and were not subject to pandemic restriction measures. Therefore, some workers (e.g., in health care, food industry, and drivers in international transport) were still able to move freely because they performed ‘essential jobs.’

Studies have been published on the impact of the pandemic on migrant and/or posted workers in Europe (e.g., Stefanova-Behler & Menghi, 2021; Fasani & Mazza, 2020; Anderson et al., 2021; Geyer et al., 2020; Rasnača, 2020), but no study has been conducted for Slovenia and the impact of the pandemic on Slovenian posting companies and workers. Our research seeks to fill this gap by focusing on the following questions:

- What were the consequences of the COVID-19 pandemic and containment measures for Slovenian posting companies?
- How did the COVID-19 pandemic and related containment measures affect the Slovenian posted workers?

The empirical research involved the collection of primary data through 18 semi-structured interviews with key stakeholders (posting employers, employer representatives, trade unions, and public authorities) and secondary (official and public authorities) data on the numbers of posted workers from Slovenia. Qualitative research was conducted in the second half of 2020 and at the beginning of 2022 (to obtain additional data two years after the pandemic outbreak); interviews were transcribed to facilitate content analysis. Secondary data were collected to determine the trends of posting workers from Slovenia in the first two years of the pandemic (2020 and 2021) and to compare it with the period before COVID-19.

Our findings provide new insights into how the COVID-19 pandemic affected posting processes in the EU and, in particular, the posting of workers from Slovenia. The obstacles faced by Slovenian posting employers and posted workers during the pandemic were numerous. Employers reported various barriers posed by protective measures to contain the spread of infections (more bureaucracy, higher financial burden due to quarantines and testing, constant changes in containment measures, and uncoordinated measures between the EU countries). At the same time, these measures had no impact on the absolute number of posted Slovenian workers at the EU level. On the contrary, the extent of posting increased during the first two years of the pandemic. On the other hand, the pandemic deepened and exposed the vulnerability of posted workers (the pandemic resulted in numerous lay-offs, high infection risk, limited access to medical treatment, undeclared work, and lack of wage compensation in case of illness).

This chapter is organised as follows: The next section provides a brief overview of the concept of posting of workers and an outline of posting legislation. The next subsection deals with the main features of posting workers from Slovenia to other EU countries. We continue by presenting the posting of workers in terms of COVID-19 containment measures, focusing on the obstacles faced by posting employers and posted workers during the COVID-19 pandemic. Later on, we present and discuss the research findings. Finally, we conclude with a discussion on future challenges that the pandemic may pose in the context of posting.

Posting of workers – a short regulative overview

The freedom to provide services is one of the fundamental economic freedoms in the EU. Companies providing services may temporarily send (post) their employees to another EU Member State. Such cross-border provision of services, where employees are sent to work in another Member State, gives rise to a special category of workers, known as ‘posted workers’. The posting of workers is a form of labour migration. However, in comparison to labour mobility, which is based on the free movement of people, the posting of workers is based on the freedom to provide services. Unlike migrant workers, posted workers remain in the host country only temporarily and do not integrate into the labour market of that country. Keeping this in mind, research and studies on migrant workers apply, at least in a part, also to posted workers.

The legislation on posting of workers is very complex. It consists of EU directives and regulations, national implementing laws, collective agreements, and case law in various areas of law, such as labour law, social security law, company law, and tax law.

All the above-mentioned legislation can be divided (systematised) into two sets of content. The first set of regulations aims to ensure minimum rights for workers posted abroad. The main EU legislative act in this area is the Directive 96/71/EC (hereinafter referred to as the Posting of Workers Directive or the PWD)¹ and its implementing Directive 2014/67/EU.² One of the key requirements of PWD is that for posted workers, the host country legislation and collective agreements apply, at least those relating to working conditions such as minimum wage rates, maximum working hours and minimum rest periods, minimum paid annual leave, and health and safety regulations at the workplace.

As of 30 July 2020, the revised PWD is in force (Directive (EU) 2018/957),³ which sets additional conditions that companies have to comply with. The most important of these is the equal pay condition.⁴ This means that the remuneration of a posted worker must comply with the remuneration conditions set out in national law or in the generally applicable collective agreements of the host country. Not only must the minimum wage be complied with, but also the total remuneration, which consists of the basic salary plus performance bonuses, supplements for overtime work, for work under hazardous conditions, etc. The employee is also entitled to reimbursement of travel and accommodation expenses in the host country

during the posting. The aim of these ‘new rules’ is to narrow the gap between the remuneration of posted workers compared to local workers.

The second set of regulations concerning the posting of workers deals with the coordination of the social security systems of the EU Member States. The main legal act in this area is Regulation (EC) No 883/2004⁵ and its implementing Regulation (EC) No 987/2009.⁶ The coordination of social security systems with non-EU countries (third countries) is regulated in bilateral social security agreements.

The main principle of the coordination of social security systems in the EU is that a worker pays social security contributions only in one country – usually, the country where he or she works. However, there is an exception that applies to posted workers – they remain insured in the country of employment (i.e., in the country from which they were posted). This special rule is intended to prevent employees working within the EU from having to switch frequently between social security systems. Before posting, the employer must apply for the portable document A1 (hereinafter, the PD A1), for each posted worker. With this certificate, the competent institution of the sending country declares that its social security system continues to apply to these workers.

The duration of the posting can be 12 months; in some cases, it can be extended to 18 months⁷ (i.e., a one-time extension possibility of six months).

The posting of workers in Slovenia is regulated by several laws. The most important are the Employment Relationship Act⁸ and the Transnational Provision of Services Act.⁹ The latter was revised in July 2021, to implement the revised PWD directive. Employment and work of third-country nationals are regulated by the Employment, Self-employment, and Work of Foreigners Act.¹⁰ The latter is important in the context of this chapter because it forms the basis for the employment of workers from the former Yugoslav countries (Bosnia and Herzegovina, Serbia, and North Macedonia) in Slovenia, who are later posted from Slovenia to other EU countries. The posting of workers can also take place through temporary employment agencies that provide workers to other companies based on The Labour Market Regulation Act.¹¹

Posting of workers from Slovenia to the EU – characteristics

The number of posted workers from Slovenia in the last decade has been among the highest in the EU. Between 2010 and 2020 the increase in the issued PDs A1 was more than sixfold (23,944 and 146,157, respectively) (De Wispelaere et al., 2021; ZZZS, 2022). Since the same person can be posted several times in the same year, the number of posted workers is lower (compared to the number of the PDs A1). It is estimated that it represents approximately 60% of the total number of PDs A1 issued (De Wispelaere et al., 2021). Similarly, the growth of postings can be observed in the EU as well – there have been 1,058,314 PDs A1 issued in the EU in 2010, whereas in 2019 a fourfold increase has been registered (to 4,570,675 PDs A1) (ibid.).

Putting these numbers in another context, posted workers represent 1% of all the workers in the EU labour market. However, for Slovenia, this percentage is much higher, namely 3.1% (2019 data). More than 40% of all postings in the EU were in the construction sector, and this number is even higher for Slovenia – 54%. In 2019, more than 29% of Slovenian employees in the construction sector were posted to other EU countries (De Wispelaere et al., 2021). As will be shown later, these numbers continue to rise.

How can these relatively high numbers for Slovenia be explained? The concept of cross-border posting became relevant in Slovenia after the country joined the EU. In fact, the volume of postings in the EU increased significantly after the 2004 enlargement. One of the key reasons for the rapid increase in the number of workers posted to wealthier countries was a *significant difference in living standards and average incomes between the ‘new’ and ‘old’ Member States* (cf. Širok et al., 2021; Danaj & Geyer, 2020).

Focusing on Slovenia, another reason for Slovenia’s high numbers of posted workers is crucial – namely, *a substantial share of posted workers from Slovenia are third-country nationals* (Danaj et al., 2020; EFBWW, 2019). They come mainly from the Western Balkans, more precisely from the countries that formed Yugoslavia in the past (together with Slovenia). Comparing the Western Balkan countries with the EU Member States, the differences in living standards and average income are even more striking. Expected income is several times higher in Slovenia than in Bosnia and Herzegovina (where most of the third-country nationals, employed in Slovenia, come from), Serbia, or North Macedonia (Eurostat, 2021). High unemployment rates and the general political and social situation in these countries, alongside the financial aspects, are strong push factors leading to migration flows to more prosperous parts of Europe. Due to the common history, geographical proximity, economic, and political ties, as well as family ties and friendships, Slovenia remains the destination country for many workers from the Western Balkans (as it used to be in the former Yugoslavia). Nowadays, however, Slovenia often serves as an ‘intermediary’ between the poorer countries of the Western Balkan and the wealthier EU Member States (cf. Tanasić & Jerkič, 2017; Danaj & Geyer, 2020). Indeed, many third-country nationals are very often hired by Slovenian companies only to be posted to other EU countries once the paperwork is done.

Bilateral agreements signed with Bosnia and Herzegovina and later with Serbia (2013 and 2019, respectively), which set the conditions for employment of citizens of these two countries and the procedures for issuing work permits, facilitate the process of employing their citizens. As of October 2019, 11% of the employed workers in Slovenia were foreigners (approximately 101,200). Most of them were citizens of Bosnia and Herzegovina (49%), Serbia (13%), and Kosovo (9%). The number of foreign workers increased by 81.4% (or approximately 45,400 people) between 2014 and 2019.¹² As mentioned earlier, a significant part of the foreign workforce is hired by Slovenian companies only to be posted abroad. This ‘business model’ has been heavily criticised nationally and internationally (cf. Krilić et al.,

2020; Danaj & Geyer, 2020). It has been associated with letter-box companies, exploitation of posted workers, violations of the law, abuse of workers' rights, etc.

As the Slovenian market is relatively small, many companies and business owners look for business opportunities beyond the borders, and in this way increase the *company's prospects for sustainable financial business performance* in the long run (cf. Furåker & Larsson, 2020).

It should be noted, however, that the profits of many Slovenian companies, providing services in foreign markets, can to a significant extent be attributed to the *regulation of social security contributions*. Slovenian employers deduct mandatory social security contributions from the income that the worker would have received for the same work in Slovenia – regardless of the minimum hourly rate (or the actual income the worker receives) in the host country. In practice, this often means that the mandatory social contributions are deducted from the Slovenian minimum wage. This practice, or more precisely, the underlying legislation, has been criticised by Slovene and foreign trade unions, foreign employer associations, and ministries and has been a reason for filing appeals against Slovenia in different institutions (cf. EFBWW, 2019; ETUC, 2019). The export of cheaper labour (due to generally lower wages, lower social contributions, posted third-country nationals with even lower wage expectations, and in some cases exploitative practices) has earned Slovenia accusations of *social dumping*.

Lack of control of posting employers has also been associated with high numbers of posted workers from Slovenia (Danaj et al., 2020). For example, if a company is accused of violating regulations, it cannot post its workers abroad.¹³ However, as confirmed in our research, employers seeking to exploit the system in the ways described earlier, often establish or purchase another company to continue their illicit practices.

In addition, the Slovene Transnational Provision of Services Act,¹⁴ which entered into force in January 2018, significantly tightened the conditions for obtaining PDs A1 under Article 12 of Regulation (EC) 883/2004. As a result, employers applied for PDs A1 under Article 13 of the Regulation (EC) 883/2004 and in this way tried to circumvent the stricter regulation, even though they were not entitled to obtain a PD A1 on this basis (Article 13), given the nature of the work performed abroad by their posted workers.

Pandemic and the posting of workers

The COVID-19 pandemic has significantly changed our lives. Work patterns have changed – some trends, such as remote working, automation, digitalisation, have been accelerated by the pandemic. Many employers have successfully adapted to the new conditions and integrated teleworking into their businesses. On the other hand, not all work can be done remotely, and, in some sectors, the pandemic posed a major challenge. This is the case in the construction sector, which accounts for most of the Slovenian workers posted abroad. Neither can international transport

drivers nor assembly and maintenance workers, who represent another two substantially large groups of posted workers from Slovenia, perform their work remotely.

The pandemic reached Europe in early 2020, and measures to contain the spread of COVID-19 infections were introduced in most EU countries in mid-March. These measures (very often in the form of strict lockdowns, travel bans, and closures of internal EU borders) remained in place until April, and in May the measures were lifted in most EU countries.¹⁵ In early fall 2020, the number of COVID-19 infections rose again, prompting several countries to reintroduce some of the measures in September and October, and to tighten them further in November 2020. Some EU countries (partially) lifted COVID-19 containment measures for the Christmas and New Year period, after which Europe generally saw a resurgence in infection rates. As a result, measures were reintroduced or strengthened in many countries in January and February 2021. In late December 2020, the COVID-19 vaccine deliveries began, but it took months for most of the EU population to have access to vaccines. Throughout Europe, the early 2021 lockdown remained in force until spring and was lifted in most countries in April/May. As the number of the vaccinated or recovered European population kept rising, it became easier to move between countries – complying with the ‘vaccinated, recovered, or tested’ requirement. In the fall and later in the winter of 2021, we experienced another COVID-19 wave, but given the relatively high immunity of the population and the less severe COVID-19 virus variant, borders were generally not closed as tightly, and lockdowns did not last as long as before (Figure 4.2 provides a rough sketch of the COVID-19 waves).

As mentioned earlier, during the first wave of the pandemic, European countries implemented controls at internal EU borders to limit the spread of COVID-19 disease. This restricted, and in some cases made impossible, the free movement of people, as well as the free movement of services. The posting companies faced unprecedented difficulties while trying to comply with the signed contracts. The difficulties faced by posted workers due to restrictions on free movement within the EU were addressed in a March 2020 communication from the European Commission (European Commission, 2020b), which called on EU countries to address the problem of border crossings in a coordinated manner. In a May 2020 communication, the European Commission reiterated the importance of the free movement of persons and called for the lifting of restrictions, which, it wrote, was *key for the economic recovery. Restricting free movement and reintroducing internal borders harm the Single Market and the smooth operation of supply chains* (European Commission, 2020a).

While the pandemic containment measures did not directly aim to restrain the posting processes (Stefanova-Behlert & Menghi, 2021), they did cause disruptions in labour markets. To mitigate these and facilitate the functioning of essential industries/sectors (indeed, a substantial share of posted workers falls into the category of ‘key workers’), exemptions from travel bans were introduced. As a result, some workers (e.g., in health care, food industry, and drivers in international transport) have continued to be granted free movement on the grounds of performing ‘essential’ jobs (Anderson et al., 2021; Robin-Olivier, 2020; Salamónska et al., 2020).

What obstacles did posting employers and posted workers face during the COVID-19 pandemic? Migration flows in general were disrupted in the first months of the pandemic (cf. OECD, 2020b; Lange et al., 2020; Vladisavljevic et al., 2020). Focusing on posting of workers, recent EU data show a sharp decrease in PDs A1 issued in 2020 compared to 2019 (3,675,687 and 4,512,401, respectively, or -18.5%) (De Wispelaere et al., 2022).¹⁶ This decrease could be attributed to pandemic containment measures. At this stage, exact numbers for EU postings in 2021 cannot be provided, but Slovenian trends in posting during the pandemic (years 2020 and 2021) will be presented later.

As mentioned earlier, due to travel bans and border closures imposed by many countries, the free movement of people and the freedom to provide services were hindered, which created major challenges for both the posting employers and their employees in reaching their destination and meeting contractual obligations. Another obstacle for the posting companies was the introduction of mandatory quarantine for the workers sent abroad, which was imposed by many European countries and could last up to 14 days. Consequently, short postings did not make (financial) sense anymore. Questions were raised regarding costs, salary, and insurance for the quarantined workers (Stefanova-Behlert & Menghi, 2021; Salamońska et al., 2020). The reluctance of some workers to be posted has been evidenced – fear that travelling and working abroad would increase the risk of infection (cf. Salamońska et al., 2020). In general, the cost of posting workers increased due to containment measures.

With regard to workers, there have been testimonies about the specific, vulnerable position of workers providing cross-border services during the pandemic period (cf. ETUC, 2020; Geyer et al., 2020; Rasnača, 2020). As Lange and co-authors (while referring to migration in general) put it: ‘The COVID-19 pandemic is, among other crises, also a migration crisis: we have seen huge movements of migrant workers forced to return home, laid-off, or employed at workplaces that pose a high risk of infection’ (Lange et al., 2020, p. 336). In the event that posted workers contracted COVID-19, isolating those with the disease in common housings proved to be very challenging (Salamońska et al., 2020). In some countries, the pandemic further complicated the paperwork that needed to be completed before posting workers, for example, some Polish workers were posted without obtaining the European Health Insurance Card due to the lengthy process for issuing A1 PDs in Poland (Salamońska et al., 2020). This could deny posted workers access to medical treatment and other health services in case of injury or illness.

Posting of workers from Slovenia during the pandemic

Methodology

The results of the qualitative research conducted in the second half of 2020 and in February and March 2022 are presented in this chapter. The research conducted in

2020 was carried out within the framework of the project ‘POW-Bridge – Bridging the gap between legislation and practice in the Posting of Workers.’ Although the POW-Bridge project aimed to examine the interplay between EU and national regulations on various aspects of the posting of workers, the results presented here focus only on the pandemic-related issues in posting. *More precisely, we are interested in how the COVID-19 pandemic and containment measures affected the posting process for Slovenian employers and what consequences they had for the posted workers.* The first part of the qualitative research was conducted when the pandemic had not yet subsided. In order to obtain more data, it was decided to continue the research in early 2022, two years after the beginning of the pandemic.

A total of 18 semi-structured interviews were conducted to collect primary data. The interviewees were public authorities’ representatives (5 interviews), employee representatives (4 interviews), employer associations’ representatives (4 interviews), and posting employers (5 interviews). This allowed us to get a comprehensive picture of the various aspects of posting and the challenges associated with posting workers. Due to pandemic constraints, most interviews took place online. With the consent of the interviewees, the interviews were recorded and later transcribed, which allowed for a more efficient content analysis of the primary data.

Secondary data on the extent of postings from Slovenia were provided by the Health Insurance Institute of Slovenia (ZZZZ). These are regular quarterly statistics of PDs A1 issued for the 2019–2021 period. The data obtained allowed us to *identify the posting trend during the pandemic.*

In the first part of this subchapter, the results of the secondary data analysis are given and the posting trends from Slovenia are presented in numbers and discussed. Subsequently, the findings of the qualitative research are presented, and the consequences of the pandemic are discussed from the perspective of posting employers and posted workers.

Posting of workers during the COVID-19 pandemic in numbers

As EU data on postings in 2020 show,¹⁷ the posting of workers decreased by 18.5% in the first year of the pandemic (De Wispelaere et al., 2022). Available data for Slovenia show a different trend. As it can be seen from Figure 4.1, the number of postings from Slovenia continued to increase throughout the pandemic period (2020 and 2021).

According to the available data (Figure 4.1), the volume of posted workers in Slovenia has increased, except for 2018, when (as explained earlier) the Transnational Provision of Services Act (ZČmIS) was introduced, which brought stricter conditions for posting. The increase can be seen in both the number of PDs A1 issued and the number of posted persons (data available only from 2018 onwards). From 2012 until the adoption of the ZČmIS, the average annual growth in the volume of issued PDs A1 in Slovenia was 24%. The adoption of the ZČmIS in 2018 resulted in an annual decline of 33%, while in the first year after

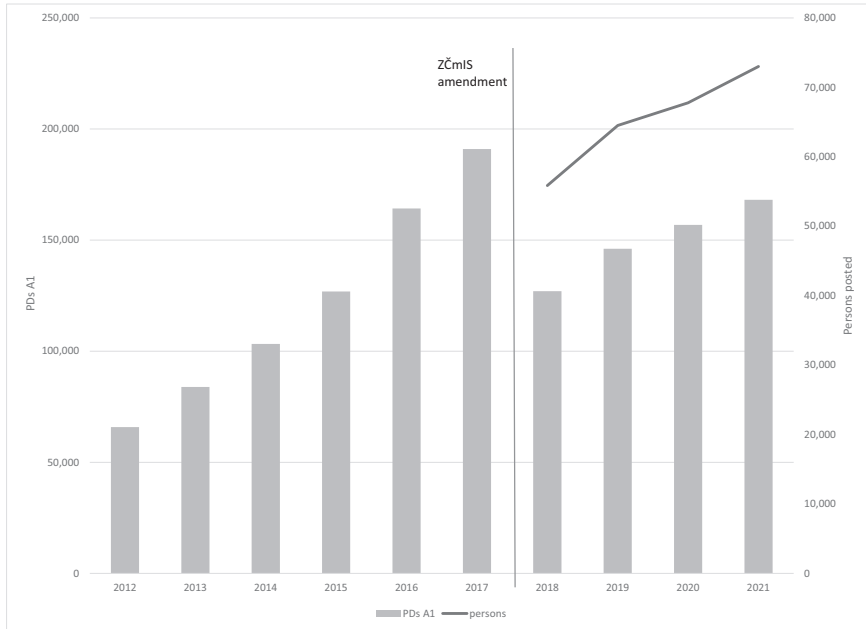


FIGURE 4.1 The volume of postings from Slovenia during 2012–2021 period

Source: Health Insurance Institute of Slovenia administrative data (ZZZS, 2022) and De Wispelaere et al., 2021; own calculation.

the introduction of the ZčmIS (until the outbreak of COVID-19), the annual growth in volume was 15%, which continued in the COVID-19 period with a 7% annual increase.

Analysis of data from the Health Insurance Institute of Slovenia (ZZZS, 2022) shows that – unexpectedly – during the pandemic, despite numerous COVID-19 containment measures, the number of posted workers from Slovenia increased steadily with minor fluctuation (Figure 4.2). This fluctuation could be attributed to the seasonal nature of the work. During the pandemic in Slovenia, we observed an increase in the number of postings abroad as well as an increase in the number of people who worked abroad. At the annual level, the number of postings in 2020 increased by 7.3% (number of PDs A1 issued) and 5.8% (number of workers posted) compared to 2019, despite the two waves of the pandemic that restricted free movement in the EU. In the first wave of the pandemic (March to April 2020) and in the second wave (September to December 2020), containment measures and lockdowns had a direct impact, while this was not the case in the third wave (January and February 2021). The period of the first wave of the pandemic coincides with a decrease in postings of 11.4% (number of PDs A1 issued) and 7.8% (number of workers posted). The second (fall) wave of the pandemic coincides with a decrease of 8.9% (number of PDs A1 issued) and 6.1% (number of workers

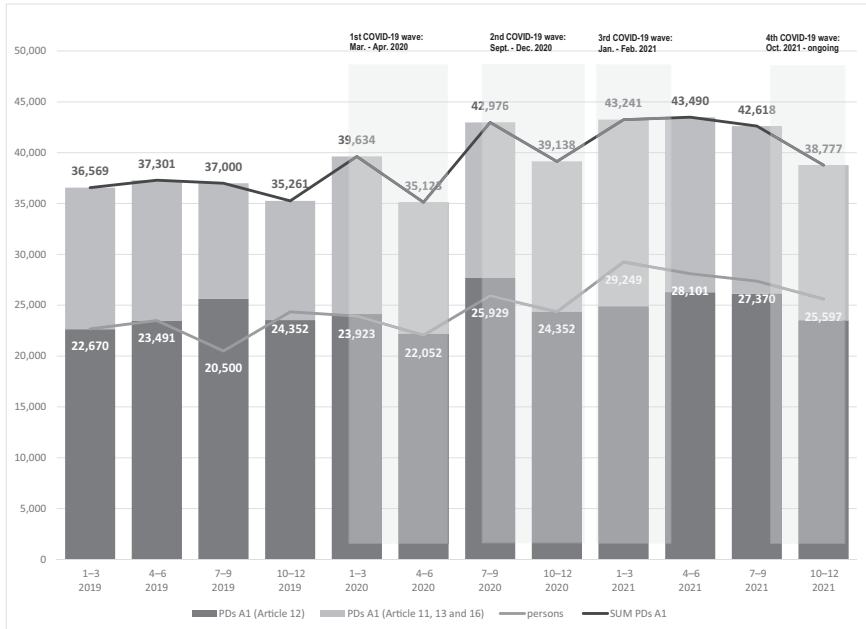


FIGURE 4.2 The volume of postings from Slovenia in the period 2019–2021 with marked waves of the pandemic

Source: Health Insurance Institute of Slovenia (ZZZZ, 2022), own calculation.

posted). In contrast, the third wave of the pandemic brought an increase in worker mobility, both in absolute and relative terms. During the third wave of the pandemic in January and February 2021, the three-month volume of posted workers reached its highest level since 2017, with a 10.5% increase in the number of PDs A1 issued and a 20.1% increase in posted workers compared to the previous quarter; that coincided with the second wave of the pandemic. The impact of the fourth wave, which was by far the most severe in terms of detected cases and deaths and was not accompanied by lockdown measures, was comparable to the impact of the second wave.

What are the reasons that postings from Slovenia continues to increase despite the pandemic and related measures to contain it? One explanation could lie in the specifics of demand in the sectors where a significant share of posting from Slovenia occurs. The sectors with the largest share of posted workers are construction and transport. Data from the Slovenian Health Insurance Institute for 2018–2021 (ZZZZ, 2022) show that more than 70% of postings, whether we look at the number of PDs A1 issued, or the number of persons posted, come from the construction, industry, installation/maintenance, and international road transport sectors. Construction and installation/maintenance together account for 42% of postings (in terms of both PDs A1 issued and persons posted). Industry and international road transport, on the other

hand, vary according to the size of the indicator observed. The industry sector contributes 20% to PDs A1 and 9% to posted persons, while the transport sector contributes 10% to PDs A1 and 19% to posted persons. Over the 2018–2021 period, an increasing trend in postings (both PDs A1 issued and persons posted) is observed in the installation/maintenance sector. International road transport also shows an increasing trend (Figure 4.3).

The dynamics of posted workers described above indicate the demand-driven nature of the construction and transport sector. The reason for the lower number of posted workers could be (to some extent) ascribed to the stagnation of economic activity in the destination countries. However, since construction is not the activity essential to the functioning of society during the pandemic, the question arises as to what led to the increase in the number of posted construction workers and installers during the pandemic. The analysis of the situation of the construction sector in the target countries shows that Slovenian construction workers and installers performed their work while posted mainly to countries where the construction sector was least affected. The growth rates in the construction sector between April 2020 and February 2021 indicate an increase in production in the countries where most Slovenian workers are posted, that is, Austria (+ 27%) and Belgium (+ 8.6%), or a slight decrease in Germany (−3.2%).¹⁸

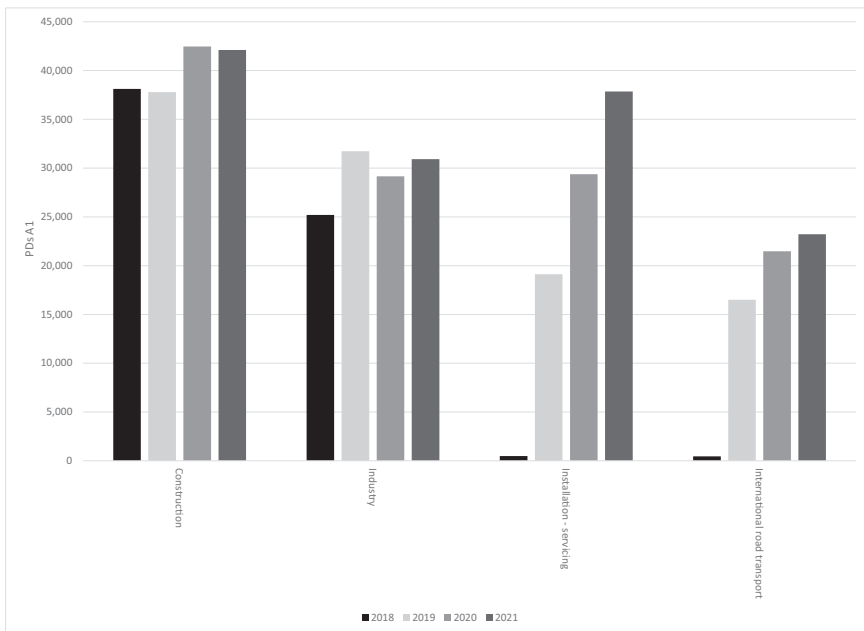


FIGURE 4.3 The volume of postings during the period 2018–2021 according to the sector (of employer)

Source: Health Insurance Institute of Slovenia (ZZSZ, 2022).

A partial answer to the increasing number of postings in international road transport would be the categorisation of drivers as key workers, which is why demand in the transport sector did not decrease with the outbreak of the pandemic. The transport of goods and freight was necessary to avoid a general shortage in the event of stagnation of social life. Therefore, enormous (political) efforts were made to efficiently maintain the free movement of goods throughout the EU. The European Commission (European Commission, 2020a) issued recommendations on 23 March 2020, to implement ‘green belts’ aimed at lifting travel restrictions and mandatory quarantine of transport workers and at avoiding disruption of emergency travel. Thus, the pandemic did not seriously disrupt international freight traffic. However, regular passenger services, especially related to the tourism sector, were seriously affected.

Thus, the increase in the number of postings of Slovenian workers during the pandemic can be explained by a combination of factors. First, the need for movement of goods and capital, and hence labour, resisted the pandemic containment measures, which made cross-border travel to provide services much more difficult. Second, the characteristics of individual sectors also play an important role. It seems that, despite the impossibility of performing work at a distance, certain sectors experienced a decrease in demand to a lesser extent, which – based on the Slovenian case presented – is especially true for the construction sector and international road transport. Third, the segments of the Slovenian labour market that are most oriented towards posting abroad are among the sectors that were less affected by the pandemic. Moreover, the postings of Slovenian companies have traditionally been directed towards the countries where the construction sector was least affected.

Posting of workers during the COVID-19 pandemic – research results

In this subsection, we present results of the qualitative research related to the consequences of the pandemic; first we focus on Slovenian posting employers and then on posted workers from Slovenia.

What were the consequences of the COVID-19 pandemic and containment measures for Slovenian posting employers? Employers reported different experiences when posting workers during the COVID-19 pandemic. Some of the posting employers reported that the measures posed major obstacles to the posting of workers, while others reported that the posting process was running smoothly.

In our research, we identified several factors that affected the posting during the pandemic. One of the most important was the sector of the posting employer. Namely, if a posting involved key workers, it was more likely to run smoothly. In fact, during the first lockdown (Spring 2020) it was nearly impossible to post workers from non-essential sectors, whereas key workers resumed their work abroad relatively quickly. Another critical factor proved to be the size of the company. In the posting process – regardless of the pandemic – bigger employers reported fewer barriers in administrative procedures compared to medium or small-size

companies. Medium- and, especially, small-size employers did not have their own resources and knowledge and therefore often found the posting process more complicated and lengthier. In addition, they often had to hire an agency or a representative to sort out bureaucratic requirements and comply with domestic and foreign regulations, which added to the costs of the posting. On the other hand, bigger companies had more resources (be it human and/or financial) to address these issues. Although bigger employers have reported lengthier and more scrupulous posting paperwork in the pandemic period, they did not perceive this as a major obstacle (given the resources available to them).

A representative of an employer association reported that its members (posting employers) most often needed their help with the following: information on relevant containment measures, posting documents, information on the ‘vaccinated, recovered, tested’ requirement, testing sites in destination countries, the validity of negative tests in different countries, the maximum length of stay in the host country without being subject to quarantine, etc. In the early months of the pandemic, there was a tremendous workload at the employer associations as employers sought their advice. The employer associations also acted as intermediaries between the employers and the state authorities, expressing the employers’ requests and forwarding the employers’ proposals to the authorities. Support was offered to the posting employers also by the Slovenian and foreign consulates.

The pandemic containment measures and their constant changes were the biggest obstacles in the posting process. For employers, the frequent (weekly, sometimes even daily) changes in regulations were confusing and time consuming, as they had to constantly keep track of and monitor the containment rules introduced in different EU countries. Sometimes changes occurred during a posting, which could make it difficult for posted workers to re-enter their home country. Employers complained about the uncoordinated measures taken by different countries, which also contributed to making the posting process even more complex than it already was.

Mandatory quarantines were a major obstacle for posting employers in 2020. According to the employer association representative, there were very few exemptions to the mandatory quarantines in the first pandemic wave.

All these measures resulted in higher costs for the employers. Mandatory quarantine measures were accompanied by accommodation costs, loss of income for the 10- or 14-day quarantine period, testing expenses, etc. Sometimes workers had to be quarantined upon their return to Slovenia – this also resulted in loss of income for a certain period. In some cases, the quarantine period could amount to one month per worker per posting (two weeks abroad immediately after entering the host country, followed by two weeks upon return to Slovenia). As one of the employers mentioned, this was especially difficult for smaller businesses, consequently some of them provided services abroad without reporting it to the local authorities, that is, they performed undeclared work. In addition to the financial burden, the pandemic has also caused more documentation work for the posting companies, so the ‘bureaucratic’ workload increased as well.

Sometimes workers (especially at the beginning of the pandemic in 2020) expressed reluctance towards being posted, stating concerns about their own health, or uncertainty about how the posting would proceed. After the vaccines introduction, some workers refused to be posted because they did not want to be vaccinated. Indeed, some European countries introduced the ‘vaccinated or recovered’ requirement (including Austria and Germany, the first two destination countries in terms of the number of posted workers from Slovenia). In some cases, there was a problem with a particular vaccine. Although workers were vaccinated, some vaccines were not accepted (e.g., Serbian workers vaccinated with the Sputnik vaccine did not meet requirements in many EU countries).

In some cases, containment measures conflicted with other regulations. The respondent from the transport sector reported the problem his drivers faced – the accommodation facilities remained closed in many European countries throughout different pandemic waves, so truck drivers could not comply with EU regulations (e.g., 45 hours of weekly rest outside the trucks).

As reported by a representative of the employer association, at the beginning of the pandemic there was ‘panic’ among posting employers, because of too many uncertainties. However, from a time distance, the representative cannot confirm a long-term detrimental effect of the pandemic containment measures on posting to other countries. After the initial shock and the first two waves of the pandemic, employers seemed to adjust to the change in business conditions. A significant difference could be noted after the vaccination started. After the 2021 introduction of the ‘vaccinated, recovered, tested’ requirement, it became easier for employers to post workers. Although no research has been done, terminations of contracts due to the pandemic measures have not been seen as a trend, according to the employer association representative (due to the government measures and reimbursements); however, in some cases, there were delays in meeting the contractual deadlines.

How did the COVID-19 pandemic and related containment measures affect the Slovenian posted workers? As noted earlier, the COVID-19 pandemic has deepened the vulnerability of posted workers. Many of the findings on the worsening situation for posted workers during the pandemic can also be confirmed in the case of Slovenia. As in other EU countries, the pandemic was a very common and ‘easily justifiable reason’ for dismissing workers.

As has been reported, due to many unknowns and uncertainties at the beginning of the pandemic, workers at first felt reluctant towards being posted abroad. In fact, in March 2020, most of the posted workers left the sites abroad to return to Slovenia. In a few months, many services resumed and workers were re-posted. The testing of workers prior to the departure (and in host countries, if needed) was covered by employers in most cases. There were reports of tighter controls on documentation, which included proof of compliance with pandemic containment measures and other travel and work documentation when crossing borders. In some countries (e.g., Austria and Germany, according to interviewees), workers were even required to provide the employer’s and contractor’s declaration of compliance with containment measures. However, it has been reported this was

just a ‘dead letter on paper’, since in practice the measures were very often ignored. Compliance with the containment measures, for example, on construction sites (where most of the Slovenian posted workers worked) and in common housings (where they lived) was often difficult and was therefore frequently disregarded.

One of the problems reported was the common housing of the posted workers. If someone caught the COVID-19 disease, it was almost impossible to isolate a person in a place where several workers shared the same sleeping room, bathroom, kitchen, etc. Even if an employer attempted to rent another accommodation, it was often impossible to get one, for fear of lending property to infected persons, while on the other hand, many accommodation facilities stayed closed during the pandemic period. These constraints led to more infections among posted workers.

If a company failed to monitor changes in containment measures, its workers could face fines for not complying with host country requirements. There have even been cases of entire groups of workers being fined at border crossings, because their employers were unaware that the duration of the ‘vaccinated, recovered, tested’ requirement had been shortened.

As mentioned above, a substantial share of posted workers from Slovenia are third-country nationals. According to our respondents, those workers often do not exercise their right to wage compensation for temporary absence from work in case of COVID-19 infection or other illness. Several reasons were given for this. First, many workers did not know their rights and how to exercise them. Second, many of the third-country nationals do not live in Slovenia and have not a Slovenian general practice physician/family doctor, which makes the exercise of workers’ rights more complicated, in some cases even impossible. Third, many workers who were sent abroad did not have the social insurance arranged in Slovenia (and neither in any other country), meaning they were performing undeclared work and were not entitled to wage compensation in case of illness.

Another fraud was found in connection with undeclared work. In some cases, workers were given falsified PDs A1 by their employers, often presented as issued by a Slovak authority. PDs A1 issued by Slovenian authorities can be easily verified via the QR code, which is not the case with Slovak PDs A1, making them easier to falsify (and subsequently more difficult to verify at border controls). Such a worker – having no social insurance – would have to pay for his or her medical treatment by himself. Our interviewee reported a case of a Bosnian worker posted by a Slovenian company illegally (with a falsified PD A1) to Germany, where he contracted infection, got treated in a hospital, and later died. The bill for the hospital treatment was sent to his family (and was later paid by the employer). However, employers’ ignorance of workers’ rights and of unexpected situations that can occur, threatens workers’ health and lives. Although this problem was known before the pandemic, additional issues arose in the event that a worker become ill and hospitalised due to coronavirus illness.

The Slovenian government introduced numerous measures and temporary legislative changes/adjustments to mitigate the negative impact of the pandemic on the economy. Many employers took advantage of this – including in relation to

the posting of workers. There were documented violations of the ‘crisis allowance’ payments to workers for the March–May 2020 period, as well as for the last quarter of 2020. As it was reported, some employers withheld this allowance and workers did not receive the higher payments to which they were entitled. The amount they received was the same as before the allowance, that is, as in the pre-pandemic period. It must be noted that this amount was retained by employers, who – in order to pay the crisis allowance to their workers – were exempt from paying certain social security contributions during the epidemic.

Another typical abuse involved falsely declaring employees to be on furlough. During the epidemic in Slovenia (this period does not coincide with the globally declared pandemic), the government reimbursed employers for the wage costs of those employees who could not perform their jobs due to the epidemic, amounting to 80% of their wages. According to our respondents, many employers took advantage of this – they reported their workers on furlough, subsequently received the compensation for their salaries, however, the workers performed their jobs all that time. Needless to say, workers have not received higher wages because of this, in fact, there were cases reported they have received only 80% of their usual wage (the amount, subsidised by the government).

Conclusion

At first glance, the posting of workers seems to be a marginal issue. However, we maintain that it is a topical issue which will become even more important in the future. After all, there is a huge labour shortage in the EU, with structural disparities in the labour market. Adding to this the fact that the European population is ageing rapidly, labour mobility (and thus the posting of workers) is undoubtedly crucial for the European economy and will remain as such in the future. This is already evident from the trends in posting. In Slovenia, the concept of cross-border posting became relevant after the country joined the EU in 2004. The number of posted workers in Slovenia has been growing steadily ever since and is among the highest in the EU. This growth was not halted by the COVID-19 pandemic.

We assumed that the impact of the pandemic on the numbers and trends of posting in Slovenia would be negative. The analysis of secondary data did not confirm this. On the contrary, despite numerous COVID-19 containment measures, the number of posted workers from Slovenia increased steadily. This is due to a combination of factors. First, posting from Slovenia is mainly present in sectors where Slovenian companies are traditionally oriented towards countries where the COVID-19 containment measures did not have a significant negative impact on the economy and business. Second, the Slovenian sectors with the highest share of posted workers are construction and transport. Due to labour shortages in these sectors at the EU level, the posting of workers during the pandemic remained at a similar level as before. In addition, after the initial shock in March 2020, the borders of EU Member States were no longer hermetically sealed, and there were

some exceptions to border crossings, which included posted workers. The need for free movement of goods and the demand for labour were obviously stronger than government measures to contain the pandemic.

The issues surrounding the posting of workers in Europe are numerous and have a long history. Although the EU has partially responded to some of them with the amended PWD, some remain unanswered. The COVID-19 pandemic has revealed many of them.

The pandemic has exposed the vulnerable position of posted workers. To mention just a few: many workers lost their jobs shortly after the outbreak of the pandemic. They were at a higher risk of getting infected due to living conditions abroad, which made it difficult for infected workers to isolate and not expose other workers to infection. Illegal posting, that is, without valid health insurance, could have had unforeseen financial consequences (for the worker or his/her employer) in the case a worker needed medical treatment.

The pandemic also put posting companies in a difficult position. Measures to contain the spread of infection made posting more difficult due to border restrictions, more paperwork, higher expenses due to quarantines, testing, etc. Containment measures changed frequently and there were significant differences between countries in this regard. For all these reasons, the posting process became even more complex than it has already been.

Although the pandemic is no longer at its peak at the time of writing, we are far from the end of it. It is not unlikely that we will see new waves in the near future. What have we learned from the first two years of the pandemic?

In the event of a pandemic or similar crisis, solutions must be found that lead to closer cooperation and joint action at the EU level. Due to the lack of experience with such crises, measures to contain the spread of the coronavirus varied significantly from country to country, but most importantly, they changed constantly, weekly, sometimes even daily. In the event of future health crises, EU Member States will need to find a way to better respond to similar situations, with uniform measures. The establishment of the so-called EU green belts can be mentioned as a good recent practice.

In terms of labour market changes, the pandemic altered work patterns, accelerating the shift to remote working in many sectors. In other sectors, such as transport, construction, or installation, telework was not an option, because the work in these sectors could not be performed remotely. These are also the sectors/jobs where the posting of workers is particularly widespread, due to the huge labour shortages. If we want these sectors to continue to function normally in the future, we need to pay more attention to the legal and practical challenges of posting in these sectors.

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Notes

- 1 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. OJ L 18, 21 January 1997, pp. 1–6.
- 2 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). OJ L 159, 28 May 2014, pp. 11–31.
- 3 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. OJ L 173, 9 July 2018, pp. 16–24.
- 4 Article 3, para 3 of the Directive (EU) 2018/957.
- 5 Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems. OJ L 166, 30 April 2004, pp. 1–123.
- 6 Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems. OJ L 284, 30 October 2009, pp. 1–42.
- 7 Article 3, paragraph 1 (a) of the revised PWD.
- 8 Official Journal of Republic of Slovenia, no 21/2013 and following.
- 9 Official Journal of Republic of Slovenia, no 10/2017. English translation is available here www.pisrs.si/Pis.web/cm?idStrani=prevodi.
- 10 Official Journal of Republic of Slovenia, no 47/2015 and following.
- 11 Official Journal of Republic of Slovenia, no 80/2010 and following.
- 12 All data were obtained from the Statistical Office of the Republic of Slovenia (<https://www.stat.si/StatWeb/en>).
- 13 Article 4 of the Transnational Provision of Services Act.
- 14 Official Journal of Republic of Slovenia, no 10/2017.
- 15 This rough and generalised timeline of the COVID-19 waves and containment measures in the EU is given for the reader to easier navigate through the consequences of the lockdowns described later.
- 16 It should be noted that the 2020 PDs A1 numbers are still higher than those of 2018 (3,675,687 and 2,884,994, respectively).
- 17 No data for postings in 2021 were available at the time of concluding this paper.
- 18 Eurostat data, 2021.

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