



POWBRIDGE

Bridging the gap between legislation
and practice in the posting of workers



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**Bridging the gap between legislation and practice in the posting of
workers**

POW-BRIDGE

(Agreement No. VS/2019/0396)

Work Package 3: RESEARCH

**Bridging the gap between legislation and practice in the posting of
workers:
North Macedonia Country Report**

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PUBLIC- Association for research, communications and development

February, 2021



This publication has received financial support from the European Union Programme for Employment and Social Innovation "EaSI" (2014- 2020), Agreement No. VS/2019/0396. 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.

February, 2021

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Executive Summary

In this report we investigate how the Posting of Workers Directive and other EU regulations interplay with national rules and regulations on social security, health insurance, temporary agency work, and company law in posting rule enactments in North Macedonia. Moreover, we address the main characteristics of the trend of posting of citizens of North Macedonia, as third country nationals to work in the EU, with main focus on the construction sector. We also assess the practice of posting workers to North Macedonia. The report is based on review of the existing academic and grey literature on migration and labour mobility, the review of existing legislative and institutional framework, as well as on 10 semi-structured interviews with representatives of policymakers, implementing and enforcement state agencies, social partners and employers.

The main findings of this report indicate that North Macedonia is already recording inflows and outflows of posted workers. While the regulatory framework has been reformed, the by-laws and other accompanying regulation and administrative provisions are still not in place. The issue-relevant matters, such as the coordination of the social security systems and health care, are regulated through bilateral agreements that are properly integrated with the existing regulatory framework on social security and health care. The practice showcases that the existing regulatory framework regulates different patterns of posting. The Law on Labour Relations ensures that companies are entitled with the right to provide services abroad and this right has been exercised by various companies from different sectors (construction, consultancy, telecommunications, IT etc.). Next, to this the existing Law on Posting has more administrative character and is mostly designed to answer the identified labour shortages in the German labour market in the construction industry and is based on quota (on average 570 workers annually). On the other hand, posting of workers to North Macedonia is also developing as a practice, mostly linked to foreign direct investment and is enabled by the Law on Employment of Foreigners. Beside the existing regulatory framework, the existing assessment of the institutional arrangement in North Macedonia indicates that state agencies responsible for inflows and outflows of posted workers only partially exist and have no clear mandate and training on the specificities of posting. In terms of employer practice in posting, the research provides evidence that is largely dependent on the size of the company, the sector, the number of posted workers and experience in posting. Companies from the construction sector that post workers abroad have different posting practices in different countries that largely depend on the regulatory framework in the host country. It seems that national authorities from the host country do provide support and access to information when foreign company is providing services in large capital projects. Interviewed employers do not report to national authorities in North Macedonia when posting workers abroad, except the employers that post workers through the Law on Posting.

The research confirms that companies are not trying to bypass national legislation, but face challenges in accessing information in order to comply with the regulations. The absence of clear protocols and procedures for posting creates uncertainty among employers.

In terms of worker protection, none of the existing institutions and mechanisms that protect and fulfil employees' rights recognizes and protects the rights of posted workers. None of the interviewed stakeholders had an understanding on what does remuneration in the context of posting means, awareness to consult national guidelines on working hours, existing collective bargaining agreement and health and safety in the host country, prior the posting. Moreover, there are no mechanisms for control and monitoring of payment and taxation of employers when posting their workers abroad. On one hand there is an increasing interest among Macedonian workers to temporary work abroad due to higher salary and income, while on the other hand various manipulations and abuses among employers are reported by interviewed social partners. Additional challenge is the majority of workers in North Macedonia are not well informed on their rights nor have information how and where to report abuse of their rights, which is a result of the insufficient engagement of trade unions who should follow posting more proactively, inform workers and favour the protection of their rights.

With regard to the policy recommendations, they are divided in five levels: 1) EU level – Create the necessary conditions for participatory transposition of EU Directives in the national legislation; Ensure access to finance to further strengthen existing human resources; Integrate Western Balkans in the IMI system; and Ensure close monitoring on the working condition of third-country nationals; 2) National level – Ensure adequate institutional arrangement responsible specifically for the implementation of posting; establishment an information system that will improve migration and posting data collection and its availability; 3) Industry level – Ensure site-level cooperation, including fast and effective data sharing between social partners and state actors to improve the monitoring of the construction sites and detecting unlawful practices; 4) Enforcement agencies – Ensure that the by-laws and other accompanying regulation and administrative provisions are in place; and 5) Social partners – Develop and distribute detailed guideline that clearly explains the procedure, rights and obligations of workers and employers when posting of workers to and from North Macedonia; Strengthen capacities of social partners on the PWD and its Enforcement Directive; Ensure sufficient engagement of trade unions who should follow posting more proactively, inform workers and favour the protection of their rights.

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List of abbreviations

EU- European Union

ILO- International Labour Organization

IOM- International Organization of Migration

MLSP- Ministry of Labour and Social Policies

NPAA- National Program for the Adoption of the Acquis

PWD- Posting of Workers Directive

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1 Introduction

The posting of workers is defined as the sending of workers by their employer in one Member State of the European Union to provide a service for a definite period of time up to 12 months to another Member State. This service provision is generally regulated by the Posting of Workers Directive (96/71/EC) (hereinafter PWD). Most of the individuals posted are European citizens, However, recent research suggests that the posting of workers is developing new forms of recruitment that include the posting of third country nationals i.e., persons who are not citizens of a European Union (EU) member state (and thus not persons with the right to free movement within the Union) (Bogoevski, 2016; Cimerman, 2017; Danaj and Zólyomi, 2018; Danaj et al., 2020; Kall et al., 2020). In particular, the number of posted workers who are citizens of the candidate countries of the Western Balkans has grown (Danaj et al., 2019; Danaj et al., 2020).

The transposition of the regulation on posting in North Macedonia is part of the EU integration process the country is undergoing through the approximation of their national legislation to the *Acquis Communautaire*. So far, the PWD has been partially transposed, whereas its Enforcement Directive has not. North Macedonia is already recording inflows and outflows of posted workers (Ilijevski and Iloska, 2018). However, the available research identifies weak institutional capacities for implementing the PWD in all domains such as legal framework, inter-agency cooperation, and human resources that are directly linked and dependent on the available legal framework as well as the overall level of public governance (Danaj, S. & Zólyomi, E; 2019; Danaj et al., 2019).

Traditionally, North Macedonia has been recognized as an emigratory country which is highly related to the long transition process and the slow socio-economic development. In this study we focus on short-term labour mobility, especially through posting. The current country report presents the labour mobility patterns in North Macedonia as both sending and receiving country.

The research question for this study is: 1) How does the implementation of the Posting of Workers Directive interact with other EU regulation, such as social security, health insurance, temporary agency work and company law?; 2) How does the implementation of the Posting of Workers Directive interact with national regulations related to posting such as the rules on social security, health insurance, temporary agency work and company law?; 3) How does the interplay of EU and national rules on posting and the related areas influence employers' practices and their deliberations to engage in posting? And 4) What are the differences across national frameworks among EU member states and between EU member states and candidate countries?

The study aims to investigate how the Posting of Workers Directive and other EU regulations interplay with national rules and regulations on social security, health insurance, temporary agency work, and company law. The country case study identifies the gaps between procedures (legal basis) and practices (experiences) in posting rule enactments in North Macedonia.

The methodology combines secondary and empirical data:

- a) Secondary data are based on a literature review and national statistics. The analytical framework identifies national legislation, policy measures, government instructions and

related regulations in various domains pertaining to posting and cross-border labour mobility. Documents under study include rights and obligations of posted workers, cross-border mobile workers, posting companies, etc.;

- b) Empirical data are gathered from the view point of both employers as well as public authorities and social partners. Semi-structured interviews use a vignette design to elicit insights from both view points on posting practices. The empirical data analysis follows qualitative thematic analysis that thematically organizes and compares different interview responses to create a comprehensive picture of the situation and perceived challenges.

Main findings in the report indicate that North Macedonia is already recording inflows and outflows of posted workers. While the regulatory framework has been reformed, the by-laws and other accompanying regulation and administrative provisions are still not in place. The issue-relevant matters, such as the coordination of the social security systems and health care, are regulated through bilateral agreements that are properly integrated with the existing regulatory framework on social security and health care. Beside the existing regulatory framework, the existing assessment of the institutional arrangement in North Macedonia indicates that state agencies responsible for inflows and outflows of posted workers only partially exist and have no clear mandate and training on the specificities of posting. In terms of employer practice in posting, the research provides evidence that is largely dependent on the size of the company, the sector, the number of posted workers and experience in posting. Employers from North Macedonia are not trying to bypass national legislation, but face challenges in accessing information in order to comply with the regulations. The absence of clear protocol and procedure for posting creates uncertainty among employers. In terms of worker protection, none of the existing institutions and mechanisms that protect and fulfil employees' rights recognizes and protects the rights of posted workers.

The report starts with a short overview of the country context in terms of socio-economic developments and labour mobility rates and trends. It is followed by the section presenting the methodological approach employed in the Pow-Bridge project. Next comes the Results section divided into four subsections, starting with (1) regulatory framework; (2) national implementation and enforcement (3) employer practices and challenges; and (4) worker protection. The study is concluded in Chapter Five that also presents the main results and research findings. The final chapter offers some policy recommendations.

2 Country Context

2.1 Socio-economic overview

Over the past decade, labour market trends in North Macedonia have been overall positive. In 2019, the economy added almost 40,000 jobs, bringing the overall employment rate for the working age population (15–64 years of age) to 54.7 per cent¹. Between 2018 and 2019, most new jobs were created in manufacturing, support services, arts and recreation, transport, and trade. According to Eurostat database, 18.3 percent of the total employment in the country during 2018, represented vulnerable employment, that includes unpaid family workers and self-employment out of necessity². Men are more likely to be in vulnerable employment (with a share of 20.1%) relative to women (15.8). Next to this, on yearly basis there is a significant number of discouraged people who are not looking for work because they appreciate that there are no available places. The number of discouraged workers has been constantly increasing from 20,540 workers in 2017, to 25,862 and 30,560 in 2018 and 2019 respectively³. Yet, the long-term unemployment rate has been constantly reducing from 17.4 during 2017, to 15.5 and 13.1 in 2018 and 2019 respectively. Among the general population, informal employment represents around 19 per cent for the past few years, with women slightly less affected. An astonishingly large number of workers continue to earn below the average (almost 75 per cent).

In order to identify the short-term needs of the labour force in the country, since 2007 the National Employment Agency conducts an annual skills' needs assessment. According to the latest analysis, published in 2020, the majority of employment (or 40.1 per cent) is expected in big enterprises, while 37.4 per cent of employment is expected in medium enterprises and only 22.5 per cent in small enterprises (Employment Agency of the Republic of North Macedonia, 2020). From the industry perspective, 44.8 per cent and 22.2 per cent of employment are expected in the manufacturing and wholesale and retail industry, respectively. The data from the skills' needs analysis in terms of educational level of the labour force show that from the expected employment, 46.9 per cent for persons with secondary education, 35.4 per cent for persons with primary education, while the least employment is expected for persons with secondary and vocational education (9.3 per cent) and persons with high education (8.4 per cent).

In other words, the Macedonian economy seems more focused on creating blue-collar jobs, for which a decent secondary education should be sufficient. On the other hand, workers with a secondary education are disproportionally represented among the unemployed, particularly in long-term unemployment (almost 80 per cent of total unemployment). Reasons that stand behind this development on the labour market have been identified in the quality of general secondary and vocational education, as well as in the presence of skills mismatches (ILO, 2019).

¹ Source: Activity of population data from Makstat, available at:

<http://makstat.stat.gov.mk/PXWeb/pxweb/mk/MakStat/?rxid=46ee0f64-2992-4b45-a2d9-cb4e5f7ec5ef>

² Source: Labour Force Survey data from Eurostat, available at: <https://ec.europa.eu/eurostat/data/database>

³ Source: Activity of population data from Makstat, available at:

<http://makstat.stat.gov.mk/PXWeb/pxweb/mk/MakStat/?rxid=46ee0f64-2992-4b45-a2d9-cb4e5f7ec5ef>

Overall, the working conditions in North Macedonia have been slightly improving since 2012, but not at the required level yet. Data presented in Table 1 provide an overview of the labour market dynamics in the last three years and demonstrate advancements in the GDP growth, employment rate, average monthly gross wage and monthly gross minimum wage, as well as reduction in the unemployment rate.

Table 1: Overall labour market dynamics

	2017	2018	2019
GDP real (annual growth in %) ⁴	1,1	2,7	3,6
Employment rate, population aged 15+ (%) ⁵	44,1	45,1	47,3
Job vacancy rate (%) ⁶	1,5	1,6	1,6
Unemployment rate, population aged 15+ (%) ⁷	22,4	20,7	17,3
Average monthly gross wage ⁸ (in EUR)	547	579	606 ⁹
Monthly gross minimum wage ¹⁰ (in EUR)	240	279	N/A

The real GDP has been growing constantly, albeit moderately since 2013. In 2019, growth accelerated to 3.6 per cent, up from 2.7 per cent in 2018. The main contributors – wholesale and retail trade, construction and real estate services— together added 1.7 percentage points to growth. Agriculture and public services each contributed 0.3 percentage points, while the contribution of manufacturing was neutral, due to a slowdown in late 2019. North Macedonia is expected to enter a recession in 2020, with the country forecast to experience negative growth as it continues to grapple with the economic impacts of the COVID-19 pandemic. The National Bank of the Republic of North Macedonia (2020) for 2020 projected a decline of the economic activity of -3.5 percent, and a recovery of 4.7 percent in 2021, with a return to the medium term forecasts of 4% in 2022.

Nevertheless, employment and labour force participation rates (66.3 per cent¹¹) remain below those recorded in the EU27 (68.4 percent and 73.4 percent, respectively, in 2019). Low participation rates are due mainly to women’s low activity rates (54.8 percent, compared with 77.3 percent for men), of young people in the age group 15–24 years of age (32.2 percent) due to school attendance; and of persons over 50 years of age (35.8 percent). The labour market situation of young people (15–29) shows low labour force participation rates, especially among young women (41.7 percent for young women in 2019 compared with 56.7 per cent for young men).

⁴ Source: Ministry of Finance: <https://www.finance.gov.mk/mk/node/401>

⁵ Source: SEE Jobs Gateway, based on data provided by national statistical offices and Eurostat

⁶ Source: SEE Jobs Gateway, based on data provided by national statistical offices and Eurostat

⁷ Source: SEE Jobs Gateway, based on data provided by national statistical offices and Eurostat

⁸ Source: SEE Jobs Gateway, based on data provided by national statistical offices and Eurostat

⁹ Data refer to 2019, Q2

¹⁰ Source: SEE Jobs Gateway, based on data provided by national statistical offices and Eurostat

¹¹ Source: Makstat database, Labour market indicators:

<http://makstat.stat.gov.mk/PXWeb/pxweb/mk/MakStat/?rxid=46ee0f64-2992-4b45-a2d9-cb4e5f7ec5ef>

Wages moderately increase in the country, mostly as the result of increases in the minimum wage, rises in public sector wages as well as labour shortages in some sectors. The wage pressure amid declining or stagnating productivity has not been contained, thus eroding the overall competitiveness on national level. According to the report published by the Vienna Institute for International Economic Studies (2020), for North Macedonia, relatively high economic growth was outstripped by even higher employment growth, resulting in the strongest decline (down 1.5 percent) in labour productivity compared to other countries in the region. Labour productivity in all the EU peer countries was driven by (much) higher growth in GDP than in employment. Average real gross wages increased by 5.1 percent, due to a rise in the minimum wage in April 2019, and to wage increases for public servants since the beginning of the year.

In North Macedonia, the minimum wage was introduced in 2012 with the adoption of the Law on Minimum Wage. In the general provisions of this law, the right to a minimum wage remains the same throughout the years of its adoption, and that right belongs to all workers. For part-time workers or those who work fewer hours than full-time, the minimum wage is calculated according to the number of hours worked. This law does not apply to the self-employed. Between 2012 and 2018, minimum wage continuously increased, from 199 EUR in 2012 to 279 EUR in 2018, which represents an increase of 40 percent.

2.2 Labour mobility and posting rates and trends

In North Macedonia, as in other Balkan countries, a complete analysis of migration is significantly hampered by the lack of reliable and detailed data. The exact number of persons who leave, the length of their stay abroad, along with the characteristics of emigrants such as gender, age and education, are data without relevant administrative sources. Despite recent improvements in data collection and statistics, partly as a result of the EU accession process that emphasizes the importance of harmonized national data collection systems, data on labour migration is still challenging to gather. In addition, in recent decades only a small proportion of citizens of North Macedonia have officially reported their stay abroad. As a result, available national statistics are incomplete (Government of the Republic of North Macedonia-Minister in charge of Diaspora, 2019). Nevertheless, the estimates available give us a sense of the overall trends. Part of the data available are presented in Table 2.

Traditionally, North Macedonia has been recognized as an emigratory country which is highly related to the long transition process and the slow socio-economic development. Based on the World Bank's Bilateral Migration Matrix for 2018, there were in total 564,949 Macedonians living abroad. According to UN data, in 2017 around 535,000 North Macedonia-born people lived outside North Macedonia. As regards the destination, around 55 percent went to high-income countries (Switzerland, Austria, Germany), and the rest to middle-income countries, mostly Turkey. According to this data, in 2017 around 437,000 people who emigrated from North Macedonia (around 82 per cent of all migrants from this country) lived in Europe. Around 56,000 people went to Australia, which is around 10.5 per cent of all migrants since 1990, while around five per cent went to the USA, which is around 27,000 people. The remaining migrants went mostly to Canada, and a small number to Asia and Africa (Government of the Republic of North Macedonia-Minister in charge of Diaspora, 2019).

At the beginning of the new millennium, two new factors influenced labour migration, both linked to the intensified EU integration processes in the Balkan region. Following the visa liberalization in December 2009, the citizens of North Macedonia were allowed to travel without visa into the countries of the Schengen area for a period up to 90 days but they have no right to live or work in the Schengen countries without a visa or longer-stay permit. However, there is an unknown number of citizens that use the visa-free regime to actually migrate and find better-paid long-term jobs or temporary/seasonal jobs, mostly in the informal labour market of EU countries. The second trending factor is the EU membership of Bulgaria. The scarce available research provides some evidence that Bulgarian passport acquisition by Macedonian citizens is seen as a tool of free movement within the European Union and an opportunity to work in its member states (Avirovic, 2015). According to the official data published by the Bulgarian Ministry of Justice (2020), in the last ten years, in total 66.000 Macedonian citizens acquired Bulgarian citizenship all based on the ability to prove their Bulgarian origin, which allows them access to the European labour market.

Table 2: General labour migration and posting trends in the last four years available

	2016	2017	2018	2019
Total number of emigrants ¹²	440	141	144	612
Total number of immigrants	2481	2322	2556	2811
Total EU migrants received	518 ¹³	436	535	490
Total TCN migrants received	1963	1886	2021	2321
Share of immigrants of working age (19-65 years old) ¹⁴ in %	1.998 (80,53%)	1.877 (80,83%)	2.161 (84,51%)	2,310 (82,18%)
Total number of outgoing posted workers ¹⁵	N/A	570	570	530
Total number of incoming posted workers	N/A	N/A	N/A	N/A
Labour market share of incoming posted workers	N/A	N/A	N/A	N/A
Main countries of destination for posted workers	Germany	Germany	Germany	Germany
Main countries of origin of posted workers received	Turkey	Turkey	Turkey	Turkey

Based on the available official data published on Makstat and provided in Table 2, there were in total 1.337 Macedonian citizens who emigrated in the period from 2016-2020. From regional perspective, the majority of emigrants are from Polog, Southwest and East region. Official statistics provide evidence that men are more likely to emigrate compared to women. Data also suggest that people from all ages are likely to emigrate, however the working age population

¹² Source: Makstat Database on Migrations (indicators on population). As a sources of data on the movement (migration) of the population in the database are the immigration and emigration records obtained from the regional offices of the Ministry of Interior of the Republic of North Macedonia. Data refer only to citizens of the Republic of North Macedonia and capture only citizens who officially report their departure.

¹³ The numbers include data for Switzerland, Norway and UK

¹⁴ Source: Makstat database (indicators on population). The numbers showcase the number of foreigners who immigrated to North Macedonia

¹⁵ Data presented are based on available data from the Ministry of Labour and Social Policy, related to the existing Law on Posting. However, these numbers do not provide real estimates on posted workers.

(aged 20-54) is most likely to leave the country. In terms of education, the majority of emigrants are with finished high school education or with unknown educational level.

In the attempt to capture the size of emigrations from North Macedonia to EU countries, Table 3 shows that there is a growing trend of Macedonian citizens who were issued with first residence permit by EU Member States in the period from 2008-2018. From all citizens from enlargement countries, Macedonian citizens represent 7.9 percent. Data published by Eurostat, confirm that Germany issued the largest numbers of first residence permits for citizens of six of the enlargement countries, except for Albania. During 2018, of all residence permits issued for Macedonian citizens, 47.4 percent were issued by Germany, followed by Italy with 9.1 percent and Slovenia with 8.4 percent.

In the period from 2008-2017, in total 52.770 Macedonian citizens acquired citizenship from an EU country that brings new rights and opportunities, such as the rights to move, live and work freely within the EU. Three fifths (60.3 %) of citizens of North Macedonia who acquired the citizenship of an EU Member State in 2017 became Italians, followed by Germans with 16.5 percent and Austrians with 4.6 percent.

Table 3: Number of citizens from North Macedonia issued with first residence permits and acquisition of citizenship (2008-2018)

Year	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Number of citizens issued with first residence permits	20895	15172	13129	10906	9816	10349	10174	12129	14336	16917	24442
Acquisition of citizenship	6834	3625	3439	3328	3522	4231	4615	7569	9235	6372	N/A

Source: EUROSAT¹⁶

When it comes to immigrants, according to the latest data available, there are 7014 foreigners that live in North Macedonia in 30 different cities (Ministry of Internal Affairs, 2020). The majority of foreigners are with temporary residence 90.8%, while 9.2% are with permanent residence, and of them the largest number of foreigners 3502 people (or 50%) live in Skopje. The most frequent purpose of stay is education, employment or marriage (for information see Table 4). Statistics confirm that the majority of foreigners are from the neighbouring countries. According to the reports from the Ministry of Interior, in 2017, by country of origin, the majority are Turkish citizens, 1.566, then 367 from Kosovo, 296 citizens from Albania and 293 from Serbia. In 2018, Turkish citizens 1.134, Serbs 375; Albanian-313, Kosovo- 278; Greek-87 and German-81. In 2019, Turkish citizens 1,098, Serbs 366, Albanians 238, Kosovo 238, Bulgarians 96, Greeks 84 and a smaller number of other foreign nationals. Most immigrants are of working age (Table 2), which might indicate also that the main reason for their mobility is labour migration.

¹⁶ Source: EUROSTAT. Enlargement countries - statistics on migration, residence permits, citizenship and asylum. Available at: https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Enlargement_countries_-_statistics_on_migration,_residence_permits,_citizenship_and_asylum

Data presented in Table 4 provide more detailed overview of the main purpose of stay of foreigners in North Macedonia. During 2017, 2018 and 2019 in total 1220, 1539 and 1135 residence permits were issued for employment, work and self-employment respectively.

Table 4: Overview of the purpose of stay of foreigners in North Macedonia (2017-2019)

	2017	2018	2019
Total number of residence permits issued	2975	3414	3454
Employment, work, self-employment	1220	1539	1135
Members of close family of citizens of North Macedonia	638	708	667
Education and study	572	602	115
Family reunification	431	N/A	394

Source: Ministry of Internal Affairs- yearly reports

When it comes to posted workers, in North Macedonia there are no exact numbers on inflows and outflows. In terms of outflows, the only statistics available are the number of workers posted to Germany which is quota based and regulated by the labour shortages registered in Germany. This research, provides evidence that companies in North Macedonia are posting workers abroad (to Turkey, Ukraine, Bosna and Herzegovina, Poland etc.), but workers are not officially registered or reported to authorities (for more information see Chapter 4 of the report).

In terms of inflows, this research also provides evidence that workers are posted to North Macedonia but no separate statistics are collected. According to the data of the Employment Agency of the Republic of North Macedonia (2020), the employment of foreigners in the country has been growing steadily in recent years. The increase in the number of employed foreigners in the country is due to the increased foreign direct investments and the relatively simplified procedure for employment of foreigners in the country. In terms of occupation, the majority of employed foreigners are hired on positions such as managers and directors. However, in the last two years the number of general workers, seamstresses, mechanical technicians and economists has increased. The educational structure, on the other hand, shows that most of the foreigners working in North Macedonia have secondary education and a university degree, but the number of those with doctoral and master's degrees is also significant.

3 Methodology

3.1 Data collection

The methodology of the report reflects its objective of investigating how the Posting of Workers Directive (96/71/EC) interplays with and is influenced by other EU and national rules and regulations on social security, health insurance, temporary agency work, and company law, how this might lead to potential inequalities, unfair competition and exploitation of posted workers, and identify gaps between national policy and practice from the point of view of employers as well as of public authorities and social partners.

The research tools are qualitative. A desk research focused on labour market developments was conducted to explore the economic and legal context. Existing research and reports on migration, labour and posting of workers in North Macedonia were reviewed, followed by inspecting legislation and institutional roles and responsibilities. In this regard, the main laws on labour issues such as the Law on Labour Relations, Law on Employment of Foreigners, Law on Posting, Law on Health Care and Law on Pension and Disability Insurance, followed by by-laws, served as a primary source of information in understanding the legal and regulatory framework of labour that relates and impacts the adoption of the PWD. The legal framework was analyzed in comparison to EU Directive 96/71 (as amended). Official reports and strategic documents published by different public institutions as well as research and publications from experts in the field of employment and labour migration were used. Important strategic documents such as the Resolution for the migration policy of the Republic of Macedonia (2015-2020), National Program for Adoption of the Acquis (NPAA) and the 2020 Progress Report of the European Commission on North Macedonia were referred to in the context and analysis. Statistical information and data from the State Statistical Office (Makstat Database), Eurostat, the Vienna Institute for International Economic Studies¹⁷ and annual reports from relevant institutions such as the National Agency for Employment, Ministry of Labour and Social Policy and Ministry of Internal Affairs.

The results and findings of the report were enriched by the information provided through in-depth interviews. In total ten interviews have been conducted with the following stakeholders: 3 interviews with social partners; 4 interviews with representatives from public institutions; and 3 interviews with employers). Primary data were collected in each to assess the impact of different regulations on actual practices. The method used for the primary data collection was based on semi-structured interviews with posting employers and representatives of public authorities and social partners in each country. A particular feature of the qualitative interviews is the use of vignettes to elicit insights from both sides of the institutional relationship: posting employers and street-level bureaucrats/state agencies representatives on posting practices.

The data analysis utilizes a mixed-methods approach combining qualitative data sources with secondary data. The qualitative data from interviews were collected by following a semi-structured interview template and were analyzed by using qualitative thematic analysis. In an iterative effort, the different data interview responses were thematically organized and then

¹⁷ Available at: <https://wiiw.ac.at/see-jobs-gateway-database-ds-5.html>

compared with each other in order to create a comprehensive picture of the situation in question and of the perceived challenges.

3.2 Analytic Framework

The analytical framework analyzed below, comprised the identification of the national legislation, policy measures, government instructions and related regulations in various domains pertaining to posting, cross-border labour mobility, temporary agency work, social security, health insurance, company law and any other relevant regulation. Documents under study include rights and obligations of posted workers, of cross-border mobile workers, and of posting companies, as well as conditions for and incentives of cross-border service provision.

3.3 Challenges and limitations

The absence of reliable data on migration and migrants' profiles do not provide an opportunity for effective management of labour migration, including the posting of workers. In summary, the research has the following limitations:

- a) Although the number of conducted interviews was significant to understand the posting of workers as a phenomenon, to evaluate the existing institutional capacities for the implementation of the Directive and map the practice of workers, still more research is necessary to capture the entire spectrum of posting inflows and outflows.
- b) Lack of general understanding of the Posting of Workers Directive among stakeholders such as public institutions, social partners and employees presented a challenge during the interview process as respondents would not always be able to provide a response to some of our interview questions.
- c) Reserved stakeholders, including public institutions, were reluctant to disclose information and opinions about the obstacles faced by migrant/posted workers, therefore more research is needed to further explore the questions posed in this report.
- d) Covid-19 represented a practical challenge in conducting the fieldwork in terms of scheduling and conducting the interviews.

4 Results

4.1 Regulatory Framework

4.1.1 Posting and cross-border labour mobility

Posting and cross-border labour mobility in North Macedonia is primarily regulated with the **Law on Working Relations from 2005**¹⁸, as a major law that regulates labour relations between workers and employers established with the employment contract. The existing Law on working relations is applicable to: 1) employment relations between employers who have headquarters or residence in the Republic of North Macedonia and their employees, when work is constantly performed on the territory of the country, as well as in the cases when the employer temporarily sends the employee to work abroad; 2) employment relations between an employer from the territory of an EU member state or an employer from a non-EU member state, who are established on the basis of an employment contract for the purpose of performing the work of the territory of the Republic of Macedonia; 3) for workers who are sent to work on the territory of North Macedonia on the basis of a contract for temporary employment, whose employer is either from an EU or non-EU members state, will post them for temporary work on the territory of North Macedonia, this law regulates working hours, daily and yearly holidays, night shifts, minimum yearly holidays, minimal salary as well as health and safety at workplace; and 4) working relations of workers who are posted for work abroad by their employer to provide services for another employer from an EU or non-EU member state.

Under the Law on Labour Relations, a posted worker is defined as a worker who works on a temporary basis in the territory of a Member State other than the State in which it has full-time employment. This definition is not fully consistent with the definition in the Posting of Workers Directive, where a posted worker is defined as an employee who is sent by his 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. Posted workers are different from EU mobile workers in that they remain in the host Member State only temporarily and do not integrate its labour market. EU mobile citizens who go to another Member State to seek work and are employed there, are entitled to equal treatment with nationals in access to employment, working conditions and all other social and tax conditions.

The existing Law on Working Relations explicitly recognizes and regulates the conditions for posting of workers abroad. As stipulated under Article 248, based on the employment contract, the employer has the right to post employees abroad, while the length of posting will be calculated in accordance with a reference period of one year starting from the date of post. Also, the law provides the right to the employee to decline the post, but only under determined conditions such as: pregnancy, disability, health issues, and care for children under 7 years old, care for children under 15 years in case of single parents and other reasons as determined under the employment contract or the collective agreement. However, if the existing employment contract does not foresee work abroad, a new contract will have to be signed prior to the post. When the employee signs a contract for work abroad, pursuant to the Law on Working

¹⁸ Office Gazette of the Republic of North Macedonia, no. 62/05

Relations, the following provisions need to be explicitly specified: duration of posting, national holidays and non-working days, minimal annual leave, the salary and the currency in which it is paid, other financial benefits and the conditions upon the finalization of the post. Moreover, the law regulates the conditions when an employee is posted on short-term to provide services to another employer. Travel, board and lodging are not explicitly regulated. The Law foresees a fine in amount of 3.000 euros in case of misdemeanour of the above-mentioned provisions¹⁹.

As of 26.12.2012, the **Law on posting of workers** from the Republic of North Macedonia in other countries for carrying out construction works through project contracts and other seasonal works was adopted. The posting of workers from North Macedonia to other states for carrying out project contracts is performed under certain conditions and in a way as determined by a contract and/or agreement signed between the country and the other state. In case that the posting for carrying out project contracts is implemented in accordance with a predefined quota, the legal basis for posting would be the defined quota. In case of workers being posted for carrying out construction works and other seasonal works without a signed project contract, the posting is regulated under the contract and/or agreement signed between North Macedonia and the other state, with the Law on posting and the contract signed between the worker and the employer. In case of seasonal work, workers are selected in accordance with a previously defined quota and defined requirements by the receiving country. Before the posting, the employer from the other state is responsible to send a list of selected candidates to the Ministry of Labour and Social Policies.

So far, North Macedonia has concluded bilateral agreements with Germany on posting workers and with Slovenia and Qatar on seasonal workers. However, representatives from the Ministry of Labour and Social Policies claim that in practice only the agreement with Germany has been functional so far. The agreement with Slovenia is under modification and at this moment not operational, while the agreement with Qatar, although signed, has not been applied yet (Ilijevski & Iloska, 2018).

The Law gives clear guideline on the terms and conditions that companies need to fulfil prior the posting, as well as clear guideline on how to acquire the right to post workers abroad. Furthermore, the company that has been granted the right to post workers abroad based on a specific project have to ask for a consent of the Ministry of Labour and Social Policy. If, through control or otherwise, it is determined that the beneficiary of the right to post workers has relinquished that right to another company or employs more workers than the number reported to the Commission for Posting, or employs workers who do not have a work permit or residence, or does not pay the employee the salary provided in the previously concluded contracts and in other cases when it acts contrary to law, Contract or Agreement, the Commission makes a Decision to exclude that company from the right to post workers, for the next three years.

The **Law on Employment of Foreigners** regulates the access to the labour market of foreign workers in the country. Every year, the country decides on the maximum quota of working permits for foreigners divided by types. A foreign worker can obtain a single permit by

¹⁹ Article 265

submitting a single application to one authority under the current institutional set up. As stipulated by this Law, a foreigner can be employed, self-employed or work in the country. Foreigners must have a temporary residence permit issued by the Ministry of Internal Affairs or working permit issued by the Employment Agency or have regulated stay with other purpose. The Law does not define posted workers, the different forms of posting (posting under a contract of services, intra-group posting temporary agency posting) nor makes reference to the Posting of Workers Directive. However, though the content of the Law posting under a contract of service and intra-group posting can be recognized. For example, workers who are temporary posted by a foreign legal entity in a registered branch office or another organizational unit for carrying out managerial or specialized works are not included in the annually determined quota of foreigners²⁰.

The quota is divided into groups of permits for the following purposes: employment of foreigners; workers posted to North Macedonia; seasonal works and individual services rendered by foreigners. This division is not complemented with clear definition of the different groups of permits. On the other hand, such division of the quota between workers posted to North Macedonia and individual services rendered by foreigners represents good basis to start collecting data on workers posted to North Macedonia based on different forms of posting. In terms of data collection, a challenge will remain only the data on foreigners who are temporarily posted by a foreign legal entity to a registered branch or other organizational unit to perform managerial or other specific works, who are not included in the annual quota of foreign workers. Moreover, in compliance with the established policy for employment and work of foreigners, the Government is able to conclude international agreements setting up the conditions for a certain category of workers, the course of the services between the signatory countries which can be exempted from the anticipated quotas, and can adopt measures for protection of the domestic labour market, determined by this Law. In practice it remains unclear how this opportunity introduced with the Law on Employment of Foreigners is enforced and implemented, or how it differs from the other opportunities for labour mobility as foreseen under this legal framework.

Next to this, the work permit also is not being required in cases of short-term services provided by foreigners, including cases where the work lasts up to 60 days the most. This opens the question on the regulation and reporting of short-term postings to North Macedonia, as the PWD enables mandatory exception in cases of initial assembly and/or first installation of goods when the posting does not exceed eight days.

The Law on Foreigners foresees misdemeanour sanctions (full amount to the employer as a legal entity and 30 percent to the responsible person of the entity in the following cases: 1) Fine in the amount of 1.500 Euros when the employer participates in illegal employment of foreigners in the Republic of Macedonia or of Macedonian citizens abroad; 2) Fine in the

²⁰ The annually determined quota of foreigners that can work in North Macedonia does not include: 1) foreigners who have been entitled equality with the citizens of the Republic of North Macedonia on the basis of a reciprocity agreement with the European Union; 2) who carry out activities on the basis of an international agreement concluded between the Republic of North Macedonia and another country, based on a reciprocity principle, 3) professional sportsmen and sports workers; 4) who are temporary posted by a foreign legal entity in a registered branch office or another organizational unit for carrying out managerial or specialized works; and 5) who are included in implementation of development projects supported by the Government.

amount of 2.000 Euros when the employer is not returning the work permit of a foreigner whom it has not employed or with whom it has not entered into a contractual relation or whom it has terminated the employment or the work contract prior to the expiry of the work permit; 3) Fine in the amount of 1.500 Euros when the employer has not provided access to the complete available documentation on the basis of which the documents permitting foreigner's employment or work have been issued; and 4) Fine in the amount of 1.500 Euros when the employer is not keeping the work permit in the head office of the trade company or at the construction site out of the head office of the trade company.

The **Law on Records in the Field of Labour** from 2004 regulates the establishment of the records in the field of labour and the manner of their management. The Law provides detailed instructions on data to be recorded in cases when an employee is posted abroad and data on foreign nationals working in North Macedonia. Pursuant to this Law, these records are kept by the National Employment Agency. Next to this, the records on insured persons from the health insurance are managed by the Health Insurance Fund. The records for the insured and the users of the rights from the pension and disability insurance are managed by the Pension and Disability Insurance Fund. Records on employees posted for work abroad, among personal data and qualifications, require the exact date of departure and arrival after posting and the exact dates of start and end of the social security. Moreover, pursuant to Article 32, both the employer and the employee are obliged to report dates of posting to the Employment Agency.

Furthermore, Article 32 stipulates that the employer who sends his workers abroad, eight days before the day of departure of the workers is obliged to submit a written application for sending workers abroad; while for the returning workers a written report should be sent within 15 days upon arrival of workers. In case of employment of foreign citizens in North Macedonia, within eight days of the establishment of the working relations, the employer to the agency should submit an application for employment relations²¹. In cases when the employer does not submit the right data to the Agency, a fine in total amount of 300-330 EUR is foreseen.

The records for citizens of the Republic of North Macedonia who work abroad recognize the following workers: 1) citizens who went to work abroad with or without mediation of the Agency for employment; and 2) posted workers for performing investment works abroad (on the basis of business and technical cooperation with foreign business partners).

Despite the established regulatory framework that enables strong monitoring and recording of labour migrations, including outflows and inflows of posted workers, this research confirms challenges in the data collection and management. The reasons that stand behind can primarily be identified in the absence of clear by-laws and protocols that provide clear information for both employers and enforcement agencies.

²¹ Article 40 and Article 42

4.1.2 Temporary agency work

Another important piece of legislation in terms of labour mobility is the Law on Private Agencies for Employment adopted on the 13th of June, 2018²². It regulates the conditions, the manner of establishment and the operations of private employment agencies. Prior to this Law, the establishment and operation of two types of private agencies, i.e. the employment agencies for employment mediation in the country and abroad and the temporary employment agencies, were regulated by two separate laws, the Law on Temporary Employment Agencies and the Law on Employment and Insurance in the Case of Unemployment. Such an arrangement often led to legal uncertainty among potential candidates and founders of agencies. Taking into account the importance of flexibility in the labour market and recognizing the role that private employment agencies can play in the labour market, while at the same time ensuring that workers' rights are protected, the Ministry of Labour and Social Policy adopted new regulation, the Law on Private Employment Agencies. The need for a new regulatory framework comes from the increasing number of opened job positions outside the borders of North Macedonia. It is expected that this law will improve the data on labour mobility as private employment agencies will be obliged to provide data on the persons sent for employment abroad on a monthly basis to the National Employment Agency.

The Law on Private Employment Agencies allows agencies to perform one or more of the following activities: temporary employment; mediation for employment in the country; mediation for employment abroad; and mediation for employment in the country and abroad. Now, private employment agencies have equal treatment with the National Agency for Employment in the process of mediation for employment and access to the database of unemployed persons of the National Employment Agency. However, private employment agencies have a mandate to provide temporary employment only in the territory of North Macedonia, not abroad. In other words, 'temporary agency posting' is not enabled from North Macedonia, and private employment agencies have only a mandate to mediate for employments abroad but do not hold the right to provide employment.

The National Employment and the private agencies for employment mutually exchange information on available vacancies and referral of unemployed persons for employment. As stipulated under article 37 of the Law, mediation for employment abroad is performed on the basis of a previously concluded agreement between a private employment agency with a license for mediation for employment abroad and a potential employer from abroad. This contract as regulated, must contain the following provisions: details for the employer from abroad (name, address, country), responsible person; employment conditions as regulated by the national Law of the receiving country (working hours, working place, working conditions, level of salary and payment, accommodation and other conditions regulated by the national regulation of the receiving country); and conditions for termination of contract. The agency is obliged by Law to provide a contract from the employer abroad to the worker. The Law also grants the worker

²² The Law is available on the following link:

<http://www.mtsp.gov.mk/content/pdf/zakoni/2018/%D0%97%D0%B0%20%D0%90%D0%B3%D0%B5%D0%BD%D1%86%D0%B8%D0%B8.pdf>

the right to compensation by the employer for unfulfilled obligations that arise from the employment contract.

4.1.3 Social security

In North Macedonia, social security is regulated under two coherent regulatory frameworks, the Law on Pension and Disability Insurance and the Law on Compulsory Social Insurance Contributions²³. **The Law on Pension and Disability insurance** regulates the mandatory pension and disability insurance, the scope of insured persons, the rights exercised by this insurance, the personal records of insured persons, the basics of fully funded pension insurance, as well as the special conditions under which certain categories of insured persons exercise their pension and disability insurance rights. The Law regulates the pension and disability insurance of posted workers. Although it does not provide a clear and explicit definition of posted workers, it stipulates that for employers who post their workers abroad it is compulsory to provide pension and disability insurance, in the entire duration of their post. All citizens are compulsorily insured by employers operating abroad. This is also applicable to foreign workers employed in the country²⁴. The sanctions in cases when an employee is not insured are foreseen in the Law on labour relations. The Law stipulates a fine in the amount of 7,000 euros, for a misdemeanour to an employer - a legal entity, if no employment contract has been concluded between the employee and the employer and the employer has not registered the employee in the mandatory pension and disability insurance, health insurance and insurance in case of unemployment before the employee starts working²⁵.

The Law on Compulsory Social Insurance Contributions²⁶ regulates the compulsory social security contributions, the manner of calculation, deadlines for payment of contributions, control of calculation and payment of contributions, and other issues relevant to the determination and payment of contributions. This regulatory framework also does not provide an explicit definition of posted workers, but as liable for the payment of contributions for mandatory pension and disability insurance it recognizes each citizen of the Republic of North Macedonia who carries on business abroad or is posted abroad²⁷. All citizens are compulsorily insured by employers operating abroad. This is also applicable to foreign workers employed in the country.

The social security of posted workers is further operationalized through the **bilateral agreements on social security**. There are 23 bilateral agreements that coordinate social security systems, 14 of which are with EU Member States²⁸. In addition to the agreements,

²³ The Law is available on the following link: <https://dejure.mk/zakon/zakon-za-pridonesi-od-zadolzhitelno-socijalno-osiguruvanje>

²⁴ Article 13, Law on Pension and Disability Insurance

²⁵ Article 264, Law on working relations

²⁶ The Law is available on the following link: <https://dejure.mk/zakon/zakon-za-pridonesi-od-zadolzhitelno-socijalno-osiguruvanje>

²⁷ of contributions for mandatory pension and disability insurance, health insurance and insurance in case of unemployment.

²⁸ All bilateral agreements on social security can be found on the following link:

[http://www.mtsp.gov.mk/content/pdf/1.12_Dogovori%20lista%202015%20\(2\).pdf](http://www.mtsp.gov.mk/content/pdf/1.12_Dogovori%20lista%202015%20(2).pdf) . The source of these data is the annual report for Macedonia on EU integrations. On the web site of the Ministry of labour and social policy

administrative agreements have been concluded which regulate the manner and procedure for exercising the established rights with the agreements, the manner of calculating costs, administrative legal assistance, application of bilingual forms that facilitate mutual communication between holders of social security and insured persons and others. Given that the agreements have been concluded in different periods and with countries with different social security systems, and some of them at a time when there were no opportunities for Macedonian citizens to get employment in other countries, different principles have been accepted. Therefore, there is a non-uniformity of the solutions in the period of regulation of certain issues in the field of social security.

All bilateral agreements on social security are based on the following basic principles: 1) equal treatment of all insured persons, regardless of whether they are domestic or foreign insured persons in terms of social security rights and obligations; 2) unity on the territory of the two contracting countries for the purpose of acquiring, preserving and re-establishing social security rights; 3) enjoyment of social security rights at the expense of the country where the person is insured; and 4) application of the legal regulations on social security of the contracting country in which the posted worker is employed.

4.1.4 Health insurance and coverage

The Law on Health Care regulate the health insurance of the citizens, the rights and obligations from the health insurance, as well as the manner of implementation of the health insurance. The Law regulates both the temporary work abroad and a temporary stay abroad for other purposes such as study visits, education, scientific or cultural exchange. In case of temporary work abroad the insured person who is sent for temporary work abroad in the countries with which North Macedonia has signed bilateral agreement on social security, can use health services abroad to the extent and in a manner determined by the agreement. The insured person who is sent for temporary work abroad in countries with which North Macedonia has not signed bilateral agreement for social security, can use health services abroad only for emergency medical care, if the contribution for compulsory health insurance is paid in accordance with the regulations for compulsory social insurance.

The country has 18 mutual agreements for health insurance that allow citizens from one country to use health care services of another country, on the basis of temporary employment, tourism or business travel, education, science and cultural cooperation. There are nine agreements on the use of the European Health Insurance Card between the country and Member States. No new agreement was ratified since 2018.

4.1.5 Company law

The Law on Trade Companies regulates the rights and obligations, control and supervision of different forms of trade companies, including the sole proprietors. This law applies to the sole proprietor, trade companies, the business interest communities and the subsidiary organized by a foreign trade company, registered in the central register of the country.

Only 20 bilateral agreements are listed:

[http://www.mtsp.gov.mk/content/pdf/1.12_Dogovori%20lista%202015%20\(2\).pdf](http://www.mtsp.gov.mk/content/pdf/1.12_Dogovori%20lista%202015%20(2).pdf)

Moreover, it recognizes and regulates the conditions under which a foreign person can be a partner, or a shareholder, including the rights of foreigners in North Macedonia. It also regulates the work of a foreign trade company or foreign sole proprietor; the subsidiaries of a foreign company, including representative offices of foreign companies. As stipulated by this Law, foreign companies and foreign sole proprietors are obliged to operate according to the conditions determined by law and in the operation are equal on the territory of the Republic of North Macedonia with the domestic legal persons, unless otherwise specified by international agreement or by law.

The Law on Trade Companies does not recognize nor regulates companies (both domestic and foreign) who are posting their workers on service contract abroad. However, the Law on Labour Relations that regulates posted workers is applicable to all employers on the territory of the Republic of North Macedonia and their employees, as well as in cases when the employer posts the worker abroad. The Law is also applicable to employers from both EU and non-EU countries that post their workers on the territory of North Macedonia, and explicitly requires that the employer regulates working hours, daily and annual leaves, work at night, minimum annual level, minimum salary and health and safety at work.

4.1.6 Other relevant regulation

There are no other regulations relevant to the posting of workers from and to North Macedonia. A summary of the regulatory framework is presented in Table 5.

Table 5. Rules and regulations on posting in the national context

	Law/ Regulation	Posting Workers Rights	Posting Companies Rights and Incentives	Posting Companies Obligations	Public Authorities Mandate
Posting-specific or cross-border service provision regulations	Law on Working Relations	<p>The Law provides the right to the employee to decline the post, but only under specified conditions such as: pregnancy, disability, health issues, and care for children under 7 years old, care for children under 15 years in case of single parents and other reasons as determined under the employment contract or the collective agreement.;</p> <p>If the existing employment contract does not foresee work abroad, a new contract will have to be signed prior to the post. When the employee signs a contract for work abroad, pursuant to the Law on Working Relations, the following provisions need to be explicitly specified: duration of posting, national holidays and non-working days, minimal annual leave, the salary and the currency in which it is paid, other financial benefits and the conditions upon the finalization of the post.</p>	<p>The Law guarantees the freedom to companies to provide services outside the borders of North Macedonia.</p> <p>The employer has the right to post employees abroad, while the length of posting will be calculated in accordance with a reference period of one year starting from the date of post.</p>	<p>The terms and conditions for distribution of quota of workers for implementation of construction works through project contracts are regulated into details in the Law on Posting.</p>	<p>The records of the exercise of the right to post workers are kept by the Ministry in charge of labour affairs (Article 19).</p> <p>Supervision and control over the implementation of this law is performed by the State Labour Inspectorate (Article 20);</p> <p>In case of confirmed abuse of the right to post workers, the company will be withdrawn from this right for a period of three years (Article 21).</p>
	Law on Posting of Workers	<p>N/A</p> <p>Posting workers' rights are regulated in the Law on Labour Relations.</p>	<p>The Law guarantees the freedom to companies to provide services outside the borders of North Macedonia.</p> <p>Posting employers rights are regulated in the Law on Labour Relations</p>	<p>Article 5 regulates the terms and conditions for distribution of quota of workers for implementation of construction works through project contracts.</p> <p>Companies that for the first time apply for posting of workers in another country may be allocated up to 20% of the total entitlement to the specified quota for the current year. For acquiring the right to post workers abroad, the sending company is obliged to send a set of paperwork to the Ministry of labour and social policies.</p>	<p>The Ministry of Labour and Social Policy based on the opinion of the Commission for Posted Workers, provides consent for posting workers. The consent is provided within a period of 8 days if all conditions are met by the employer.</p> <p>Records regarding the use of the right to post workers are kept by the Ministry of Labour and Social Policy.</p> <p>Supervision over the application of the regulations in the field of labour legislation, over the trade</p>

				The user of the right to post workers is obliged to comply with the provisions of the contract or the posting agreement, the Law on posting and the general regulations on labour relations regarding posting of workers to another state (Article 18).	companies, which have received the right to refer workers, is performed by the State Labour Inspectorate , at least once a year.
	Law on Employment of Foreigners	<p>Foreigners may be employed, self-employed, or work in North Macedonia.</p> <p>The foreigner has the right to file an appeal against the decision of the Employment Service Agency, as a first instance body, rejecting the foreigner's application for work permit, with the Ministry of Labour and Social Policy within eight days as of the day of receipt of the decision.</p> <p>A work permit which is issued for a definite period of time of up to one year can be a renewable or permanent form of a work permit, which allows the foreigner free access to the labour market during its validity period.</p> <p>The registration of the work performed by foreigners is a mandatory condition that applies to all foreigners who are employed or work in North Macedonia</p>	The Law guarantees the freedom to foreign companies to provide services in North Macedonia.	<p>The persons who are responsible to register the work performed by foreigners should mandatorily register the commencement and the termination of the work performed by the foreigners.</p> <p>The employed foreigner and the employer should mandatorily cooperate with the authorized supervisory bodies and act in compliance with the measures imposed by these bodies.</p> <p>The foreigner is obliged to keep the work permit at his place of work and at request of the authorized control person to produce it as evidence in the procedure.</p> <p>The employer is obliged to keep the complete documentation related to the work and the payments to the foreigners within a period of five years as of the day of termination of the employment or the work performed by the foreigners in the Republic of Macedonia.</p>	<p>The Employment Service Agency adopts a decision on issuance of work permits and extension of work permits. The decision should be adopted within a period of five working days. The supervision over the implementation of this Law is carried out by the Ministry of Labour and Social Policy. The inspection over the implementation of this Law is carried out by the State Labour Inspectorate. The Labour Inspectorate is obliged, every six months, to submit reports to the Employment Service Agency which is obliged to keep records.</p> <p>The records of foreigners employed are kept and stored in the Employment Service Agency in an electronic form. The Employment Service Agency submits monthly reports to the Public Revenue Office regarding the employers that have employed foreigners or where foreigners have been engaged on the basis of a contract for provision of services.</p>
Temporary Agency Work regulations	Law on Private Agencies for Employment	Private agencies for employment in North Macedonia have a mandate to provide employment only on the territory of the country, not abroad. In terms of employments abroad, Agencies have a mandate to mediate for employment.	N/A	N/A	N/A
Health insurance and coverage	Law on Health Insurance ²⁹	<p>Temporary work abroad (Article 30).</p> <p>The insured person who is sent for temporary work abroad in the countries with which North Macedonia has signed bilateral agreement on social security, can use health services abroad to the extent and in a manner determined by the agreement. The insured person who is sent for temporary work abroad in</p>	N/A	The procedure for issuing the health certificate is initiated on the request of the legal entity, the natural person and the state bodies, i.e. the employer. The Law provides clear direction on the documents that need to be submitted to the Fund for Health Care ³¹ :	The manner of using health services (for temporary stay abroad) and the most favourable prices of health services abroad are determined by the Fund for Health Care with a general act to which the Minister of Health gives consent (Article 30).

²⁹ The form is available on the following link:

http://www.fzo.org.mk/WBStorage/Files/Obrazec_D1_barawe_za_izd_na_dvoj. obr_za_rab_upat_na_priv_rabota_vo_drz_so_koja_RM_ima_skлучeno_Dog_za_soc_osig.pdf

Упатство за пополнување образец:

http://www.fzo.org.mk/WBStorage/Files/Obrazec_D1_barawe_za_izd_na_dvoj. obr_za_rab_upat_na_priv_rabota_vo_drz_so_koja_RM_ima_skлучeno_Dog_za_soc_osig.pdf

³¹ The list of bilingual forms is available here: <http://www.fzo.org.mk/default.asp?ItemID=7C3D485B1FF1914CAF85E6ED1CD66808>

		countries with which North Macedonia has not signed bilateral agreement for social security, can use health services abroad only for indication of emergency medical care, if the contribution for compulsory health insurance is paid in accordance with the regulations for compulsory social insurance ³⁰ .		After the completion of the temporary work abroad, the employer notifies the Fund for the termination of the temporary work abroad.	
Social security regulation	Law on Pension and Disability Insurance ³²	As stipulated under Article 13, it is compulsory for employers to provide insurance for posted workers in the entire duration of their post, if they are not compulsorily insured according to the regulations of the post country or if otherwise determined by a ratified international agreement. All citizens of the Republic are compulsorily insured by employers operating abroad. This also applies for foreign worker's employer in the country (Article 14).	N/A	The insurance payers entities are obliged to provide the Fund with insight into its own records in order to check the accuracy and completeness of the reported data.	The personal records of ensured persons, along with the manner for calculation and payment of the contribution are kept so that the data are submitted electronically in prescribed electronic form, to the Fund for pension and disability insurance . The manner of keeping the personal records, and a unique code of codes for entering the data in the personal records, are prescribed by the Fund. The Fund has the competency to determine the accuracy and completeness of the data, based on an inspection of the original documentation with the data reporting taxpayer and records of monthly data of calculated and paid contribution, for each insured separately.
Company law	Law on Trade Companies	N/A	N/A	N/A	N/A
Any other relevant legislation, e.g. anti-dumping laws	N/A	N/A	N/A	N/A	N/A

³⁰ The procedure for issuing the certificate is submitted at the request of the insured person. The insured person encloses the following documents with the request: 1) certificate of health status, issued by the selected doctor; 2) assessment and opinion of the medical commission of the Fund

The certificate is not issued to insured persons who have been diagnosed with acute illness or acute exacerbation of chronic illness.

³² https://www.mtsp.gov.mk/content/pdf/pravilniciPenzii/10.11_zpio.pdf

4.2 National implementation and enforcement

4.2.1 Institutional Framework

The different aspects of inflows and outflows of posted workers from and to North Macedonia are covered and interact with a variety of regulatory frameworks that regulate the different aspects of posting such as social security, health insurance etc. Currently, private agencies for employment do not have a mandate to post workers abroad. The major aspects of labour and employment relations are legally regulated through the Law on Labour Relations. Other important laws affecting labour and employment relations include Law on Posting; Law on Employment of Foreigners, the Law on Records in the Field of Labour; Law on Pension and Disability Insurance; Law on Compulsory Social Insurance Contributions; existing bilateral agreements on social security and bilateral agreements on health insurance.

Following the diversity of legal frameworks that interact with the Posting of Workers Directive, the institutional framework is also complex and involves a variety of stakeholders such as central government institutions, implementing agencies at national and regional level, employers' and employees' organizations, etc. Posting represents a labour migration issue, involving institutions from both sending and receiving countries, but institutions dealing with out-posting and in-posting are different in North Macedonia and regulated under different regulatory frameworks. The mapping of the institutions and the distribution of their role and responsibilities are mainly based on the legal framework, but a developed practice, understanding of the posting as a concept, coordination among enforcement agencies still represents a challenge.

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. As foreseen under the Rulebook for Internal Organization of the Ministry of Labour and Social Policies, the development and implementation of employment policies with regard to posted workers are delegated to the department for the labour market. Moreover, the same department is responsible for the introduction and implementation of bilateral agreements on the coordination of social security systems.

The Ministry of Interior Affairs is the responsible institutions to implement the Law on Employment of Foreigners through issuing permits of stay for foreign citizens working in North Macedonia, even those under posting arrangements. The implementation of this Law involves the Assembly of North Macedonia that upon the proposal of the Government with a resolution determines the migration policy and the bases of the policy for employment and work of foreigners that will be implemented. The draft resolution to the Government is prepared by the Ministry of Interior in cooperation with the Ministry of Foreign Affairs and the Ministry of Labour and Social Policy. Based on the established policy for work and employment of foreigners, the Government on annual basis determines the quota of working permits that will be provided to foreigners for work in North Macedonia.

The Employment Agency of the Republic of North Macedonia is a public institution that performs professional, organizational, administrative and other activities related to employment and insurance in case of unemployment and provides support, assistance and services to labour market participants. The agency provides professional service with regional units - employment centres. Currently, it counts 30 regional units³³. The Agency is responsible for monitoring labour market developments, including employment and unemployment, skills demand and human capital needs of the economy. The employment services support skill match and employment through mediation between firms and job-seekers. They are the national authority issuing the work permits for foreigners, including work permits for posting assignments. 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. In its annual report, the Agency on yearly basis publishes data and statistics on the number of foreigners that work in North Macedonia, but it is not clear how many of them are posted. Also, the Agency does not provide data on the number of employed citizens abroad, nor on the number of posted workers.

The Law on Posting of Workers from North Macedonia to other countries for carrying out construction works through project contracts and other seasonal works, foresees an establishment of a separate **Commission for posting of workers** with a competency to define a yearly quota of workers that will be posted for carrying out project contracts. The Commission is appointed by the Ministry of Labour and Social Policies and consists of 5 members, one from each of the following ministries: The Ministry of Labour and Social Policies itself, the Ministry of Economy, the Ministry of Finance, the Ministry of Transport and Communications and the Chamber of Commerce of Macedonia. The field research confirms that the Commission is operational, it usually gathers once or twice per year and it is of a rather administrative character to evaluate the offers from companies that are willing to utilize the right to post workers abroad (for more details on the practice of the Commission see sub-chapter 4.2.2)

The State Labour Inspectorate supervises the implementation of the following Laws: Law on Labour Relations, Law on Occupational Safety and Health, Law on Labour Inspection, Law on Inspection, Law on Prohibition and Prevention of Unregistered Activity, Law on Employment and insurance in case of unemployment, Law on Private Employment Agencies, Law on Employment of Disabled Persons, Law on Employment of Foreigners, Law on Volunteering, Law on Minimum Wage, Law on Protection from Harassment at Work, Law on Protection from Smoking, Law on Internship, Collective Agreements and bylaws in the field of occupational safety and health. Under the supervision of the Labour Inspectorate the existing Law on posting is not explicitly recognized although the Law is operational and represents an integral part of the labour policies. In the annual reports for the work of the Inspectorate, posted workers are not recognized separately nor there is any information available about inspections carried out abroad.

³³ More information on the regional units can be found in the following link: <http://av.gov.mk/centri-za-vrabotuvanje.nspj>

The web page of the inspectorate³⁴ is rich with information on the obligations and advices for both employees and employers, but there is no information package available for posting workers or work abroad. The field research confirms that in practice the Labour Inspectorate operates with a very limited number of employees, especially inspectors. In 2019, in total 197 employees of whom 115 are inspectors followed the implementation of 15 different laws. Out of 115 inspectors, 77 provide inspection on labour relations, while 38 inspectors provide inspection on health and safety issues. All inspectors provided in total 20.522 sight inspections. Stakeholders interviewed underlined the need for the Labour Inspectorate to work more proactively and preventively – to inform, alert and educate employers, trade unions and institutions, so as to prevent undesired event.

The National Council for Safety and Health at Work represents an advisory and consultative body of the government responsible for matters of safety and health at work, education, legislative initiatives. The Council represents an expert advisory body established by the Government. It consists of 15 members³⁵.

The Fund for Health Care and the Fund for Pension and Disability Insurance manage the registration of social and health contributions, manage the social and health contribution funds to ensure social protection and implement bilateral agreements with countries on social contributions and health care, which means that posted workers also fall under their purview.

4.2.2 Enforcement Agencies Practices

Despite the existing regulatory framework that enables outflows and inflows of posted workers from and to North Macedonia, the enforcement agencies practices remain weak and underdeveloped. In most of the cases, they do not recognize posted workers nor the different forms of posting, while the majority are faced with lack of personnel and technical knowledge on the Directive of Posting of Workers. Legal changes regarding posting are recent, while the lack of by-laws and protocols creates difficulties in the implementation of the existing legal framework in North Macedonia, without clear vision on the transposition of the Enforcement Directive on posting. Among enforcement agencies, posting is not yet seen as a reform of the legal framework that aims at ensuring fair labour mobility on the internal market. The field research identifies a need for capacity building of enforcement agencies and social partners on the PWD and its enforcement directive.

The Commission for Posting that is coordinated by the Ministry of Labour and Social Policy is in full service for implementation of the Law on Posting of Workers. The Ministry of Labour and Social Policy on yearly basis publishes a public call for collecting applications from interested legal entities for participation in the distribution of the right to post workers for

³⁴ Available at: <https://dit.gov.mk/>

³⁵ of which four members are from organizations of employers, additional four members are from trade unions, three members are appointed by the Government itself, one member from high education institution that implements programs occupational health and safety, one from high education institution that implements programs in occupational medicine, one member representative of the association of occupational safety professionals and one member representative of the association of occupational medicine experts.

implementation of project contracts in the Federal Republic of Germany³⁶. In cases when the quota has not been fulfilled, the Ministry holds the right to publish a second call. The call is opened for 15 days. It is designed based on the labour market needs identified by the Employment agencies in Germany. For example, in the latest call for posted workers published on the 24.09.2020 in total 550 workers from the following profiles were requested: 120 workers for insulation project contracts; 110 workers for assembly project contracts and 320 workers for construction project contracts. In the call published in 2019, in total 570 workers from the following profiles have been requested: 120 workers for insulation project contracts; 120 workers for assembly project contracts and 330 workers for construction project contracts. The call provides clear definition on the criteria for company participation such as: 1) holds sufficient number of personnel and technical equipment for independent implementation of specific project contracts abroad; 2) has a registered activity in the field of construction; 3) has at least ten full-time employees, six months before applying for a public call; has a positive creditworthiness in the operation in the previous year; 4) has paid all taxes, contributions and other public duties; 5) no bankruptcy and no liquidation procedure has been initiated against the trade company.

After the call is closed, the Commission for posting jointly opens the arrived offers, evaluates their eligibility and each member individually scores the offers in accordance with a defined set of criteria: 1) total number of employees (for 10-20 employees the company scores 15 points; for 21 to 50 employees scores 30 points; and if the company has 51 or more employees, it scores 50 points; 2) References of the company for provided works abroad: If the company holds references for successful works abroad in Germany is evaluated with 15 points; for references in other countries 7 points and for references in North Macedonia, 3 points; and 3) degree of utilization of previously obtained right to post workers abroad. For utilization between 0-20%-0 points; for utilization between 21-40 percent, 5 points; utilization between 41-60 percent-10 points; utilization from 61-80 percent, 15 points and utilization from 81-100 percent, 25 points.

When a company is awarded with the right to post workers, before workers are posted, in order to obtain a consent for posting issued by the Ministry of Labour and Social Policy it is obliged to send additional, supporting documentation as stipulated under the Law on Posting (such as Contract with German company for works abroad translated in Macedonian language; contracts with workers, list of workers that are posted etc.).

As soon as the consent form for posting of workers is issued, the Ministry of Labour and Social Policies does not have any control and monitoring mechanism on the rights of posted workers, including salary levels nor provide any additional support to companies that are posting. As the quote below demonstrates, the existing Commission for Posting is only of administrative character.

“As soon as we issue the consent form for posting, we have no information on how the right for posting is exercised, how the rights of workers are ensured, what is the level of salary and how it is calculated etc. We do not have such competences. We just ensure

³⁶ Example of a public call: https://www.mtsp.gov.mk/oglasi-izvestuvanja-ns_article-j-a-v-e-n-p-o-v-i-k-23-9.nspix

that the administrative procedure is implemented as stipulated in the Law on Posting. Usually, the same companies are posting every year. So far, we have never received any complaint, nor from employers nor from workers”.

(interviewed representative from MLSP)

As an integral body of the Ministry of Labour and Social Policy, through its own inspectors, the **State Inspectorate for Labour** carries out an inspectoral supervision over the enforcement of the regulatory frameworks as listed under section 4.2.1. Although, the Law on Labour Relations that recognizes and regulates the outflows of posted workers from the country, and the Law on Employment of Foreigners that regulates the inflows of posted workers, are both under the supervision of the State Inspectorate for Labour, so far no inspections have been conducted abroad and no official inspections on employed foreigners have been officially reported in their annual reports. And finally, the existing Law on Posting is not explicitly recognized in the list of regulatory frameworks under the supervision of the Inspectorate.

In terms of health and safety, the current **Law on Health and Safety at the Workplace** does not explicitly recognize posted workers and citizens working abroad. As a result, there are no data available on occupational health and safety of Macedonian workers posted abroad, nor clear data on foreign workers posted to North Macedonia. Only general data are available, based on the reports published by the Macedonian Health and Safety Association, in the last five years there were in total 750 injuries at the workplaces, of whom 140 were with fatal outcomes and lead to deaths at work.

The Macedonian Health and Safety Association in the last two reports is reporting on the number of injuries and deaths that happened abroad. So far, the Association reported one injury in 2019 and one injury and three deaths in 2018.

Table 6: Reported injuries and deaths at work

Year	2015	2016	2017	2018	2019
Injuries	105	94	134	124	153
Deaths at work	39	19	24	33	25
Total	144	113	158	157	178

Source: Macedonian Health and Safety Association³⁷

In cases when there is an injury at the workplace, a report is prepared and is submitted to the labour inspection in the host country and the Health Fund in North Macedonia is notified to start a procedure for health insurance of the worker. As stipulated under the Law on Labour Relations, the employee has the right to start a court procedure against the company for violation of workers' rights. In such cases companies always prefer to settle with the worker and provide a certain compensation. In case when no agreement has been reached between the worker and the company, a court procedure is started. The research confirms that in practice

³⁷ Source: <https://mzzpr.org.mk/%d0%b8%d0%b7%d0%b2%d0%b5%d1%88%d1%82%d0%b0%d1%98-2015-%d0%b3%d0%be%d0%b4/>

workplace injuries do occur during posting and in such cases, employers apply both their internal procedures and the Law on Working Relations, as the quote below illustrates:

“We had an injury at the workplace when implementing construction project in a Balkan country. As a Joint Stock Company we have special procedure that regulates injuries at the workplace. Following the procedure, the injury is reported by the employee to the Commission for Evaluation of Injuries, consisted of three persons. The Commission receives the documents and informs the employee after the end of the treatment, to perform a medical examination in a special medical institution that determines the level of disability if any. The Commission makes a decision and informs the company. The company pays the employee a certain compensation for the injury at work. If the employee does not agree with the decision, he has the right to appeal, i.e. he has the right to file a lawsuit before the basic courts”.

(Interviewed representative from a construction company)

In general, when it comes to ensuring health and safety at work and reporting of accidents and work, the absence of clear response procedure is evident among stakeholders. Policy makers who are part of the process of posting have no clear guidelines for the procedure. In such cases the guideline documents are the bilateral agreements on social security, but it is not clear what happens in cases when there is no bilateral agreement in place. All expenses should be covered by the employer as stipulated in the bilateral agreement and in accordance with the procedures for health and safety at workplaces of the host country. After the recovery, the worker is sent back home, and workers' rights are ensured and provided in accordance with the Law on Labour Relations. In cases when the worker can no longer work, can submit paperwork for disability pension or another option is evaluation of the working capability and transfer to a new, more suitable workplace with the same employer.

Moreover, if all social contributions are covered, the worker has the right to open sick leave for up to 15 days at the expense of the employer and then an additional 30 days at the expense of the Health Fund. The employee is always paid for the hospital or home treatment at the expense of the company or the Fund, or the funds are reimbursed with attached bills for the incurred medical expenses.

4.2.3 Enforcement through Transnational Cooperation

In order to ensure adequate monitoring of the labour rights of posted workers, the involved institutions in the chain of posting will need to establish clear protocols of cooperation with both national and international institutions. In practice, there is very little knowledge about the working conditions of Macedonian workers abroad, including posted workers a fact that even further increases the need of prioritization of the enforcement of the posting regulation through transnational cooperation. Moreover, stakeholders, including employers, employees' organizations, and institutions with implementing responsibility, are not aware of the risks of employment by posting in EU and non-EU countries.

The posting of workers is a complicated phenomenon where service providers and posted workers fall under several jurisdictions. So far, in North Macedonia the strongest capacities and

knowledge on posting, policy makers identify among social partners and civil society organizations, who in practice have no enforcement power. As the quote below illustrates public authorities have only administrative role in terms of policy development and ensure transposition of existing EU Directives, but adopted policies are not further operationalized on the level of enforcement agencies.

“Social partners and civil society organizations have better insight and more information than public authorities. We, as public authorities have more administrative nature and prepare the regulatory framework. But very often we do not receive feedback on the implementation of the regulatory framework or we receive it occasionally. The Labour Inspectorate is expected to provide regular and structured report on the existing practices of companies, but they have lack of technical and human resource capacities. At the end, most of the feedback we receive is through international projects and cooperation, but this is not regular nor sustainable.”

(Interviewed public authority)

Interviewed stakeholders agree that the Macedonian context is still very fragile in terms of labour rights and violations, due to the various challenges associated with the labour market, such as low wages, informal economy; labour shortages in certain industries and the ongoing brain drain. And according to the interviewed representative from social partners:

All these factors might postpone the prioritization of the regulation of posted workers, including enforcement of that regulation.

Till today, cooperation with other countries is mostly done through electronic exchange of needed data on concrete cases and each country has its own database. The bilingual forms issued by the Fund for Health Care ensure electronic exchange of data on posted workers between the sending and receiving country. The bilingual forms on social security are perceived as a major achievement in terms of addressing labour mobility. The bilateral agreements on social security foresee explicit measures to ensure the protection of data during the information exchange.

North Macedonia is not part of IMI (Internal Market Information system) which is used as a tool by labour inspectors (and other relevant state actors) to exchange information and to transmit labour inspection related requests via the system to any other EU country. Integrating accession countries in this system can significantly increase cooperation, while at the same time will increase capacities of enforcement agencies, especially of the Labour Inspectorate.

4.2.4 Enforcement Agencies Challenges

The major challenge that has been identified among enforcement agencies is the low level of knowledge and preparedness of existing human resources with regards to the issue of posted workers. Social partners and employers identify a significant lack of knowledge, experience and protocols of cooperation/coordination with partner institutions in other countries with regard to posting of workers. The judicial system is not exposed nor prepared, as no court case on posting has been reported so far. Another challenge that has been identified and stressed by

policy makers is the lack of information concerning companies that post workers abroad and the workers they employ, that creates difficulties and confusion in the practice of enforcement agencies.

Both policy makers and social partners as a challenge also identify the lack of cooperation between labour inspectors from different countries and stress the need for multilevel cooperation in tracking the development of irregular posting, especially of third-country nationals.

Another enforcement challenge that has been identified is with regard to payment and taxation. In practice, policy makers have no mechanisms for control and monitoring of payment and taxation of employers when posting their workers abroad. They consider the level of salary and payment to workers as issues out of their competence. All interviewed social partners are aware on the existence of various manipulations and abuses among employers. As a weakest link in the entire system, they identify the Labour Inspectorate. In cases of posting, the Labour Inspectorate in cooperation with other national public authorities is expected to monitor the payment of all contributions (health, social and pension insurance) and ensure better coordination with relevant public authorities from host countries, but in practise this does not happen.

At the European level, the Posting of Workers Directive requires that each country assigns a managing authority, responsible to monitor posting and coordinate and exchange information among national agencies and countries. The managing authority, or liaison office as defined in the Directive, is held responsible for the inter-agency coordination. The Law on Labour Relations and the Law on Posting in North Macedonia has not assigned the responsibility to monitor posting, i.e., to coordinate, share and exchange information within a dedicated structure. The law assigns this responsibility to the Ministry of Labour and Social Policy/ Commission for Posting Workers which is only in charge of the administrative procedures and protocols as well as guidelines supporting implementation of posting of workers to Germany. However, this Commission does not monitor or collect data on the different form of regular and irregular posting that is taking place from North Macedonia. With regards to inflows of posted workers, the existing Law on Employment of Foreigners creates various ambiguities related to posting (for more information see sub-chapter 4.1.1) that create additional challenges in the enforcement of the existing regulatory framework and ensure transnational cooperation.

The absence of joint database for monitoring labour mobility from and to North Macedonia increases the challenges of enforcement agencies. Different institutions have their separate database e.g., records of workers posted abroad and of foreign nationals working in North Macedonia kept by the employment agency, records on insured persons from the health insurance are managed by the Health Insurance Fund, records for pension and disability insurance are managed by the Pension and Disability Insurance Fund etc.

4.3 Employer practices and challenges

4.3.1 Employer practices

This field research confirms that the absence of clear regulatory framework, access to information and procedures for posting, including monitoring and control mechanisms, create practices that are not in the best interest of workers nor are in accordance with the PWD and its enforcement Directive. The conducted field research identifies two types of employers: 1) Employers whose posting of workers is fully regulated in the Law on Posting; 2) Employers whose posting of workers is recognized in the Law on Labour Relations, but have not been further operationalized with clear guidelines and procedures, which leads to development of irregular practices.

The conducted field research focused on identifying the practice of employers that post workers that is not regulated under the Law on Posting. Interviewed employers are aware that they have the right to provide services abroad and they do exercise this right. Depending on the size of the company, the sector, the number of posted workers and experience in posting, employers have different posting practices. This research also provides evidence that there is high interest among workers to work abroad due to the higher incomes, which confirms that employers do provide higher payrolls but there is no evidence that the payroll in the amount of the minimum salary stipulated in the sector in the specific host country.

Employers have different practices, depending on the sector and the number of workers they are posting. In cases when few workers are posted, mostly for consultancy projects, the company directly covers the expenses for travel and accommodation and additional allowance is directly paid to the worker, in cash or as honorarium. The practice shows that companies are trying to avoid increases in salaries due to the high amount of taxes that need to be paid to the State. On the other hand, in the construction sector the salary of workers is estimated on the basis of a construction norm. Additionally, workers are entitled to compensation for living abroad. The proposal for the salary is then submitted to the board of directors for approval. In such cases, companies follow their own internal procedures.

When it comes to informing the state authorities in North Macedonia, the practice confirms that employers do not inform state authorities nor have awareness on this step in the process of posting. The only legal step that employers undertake in North Macedonia is signing a new contract with workers, that regulates their work abroad.

Small consultancy companies that provide project-based consultancy services abroad do not use any procedures or protocols when post workers abroad. As the quote below describes, this type of employers usually provides short-term services and use the visa-free stay in EU countries for up to 90 days and in this way they regulate the stay of workers.

“In this way we regulate the stay of our consultants. We send them to work for a client abroad, on existing project. We usually try to finalize the project within a period of 90 days. Once we had a case when our employee had to stay for a longer period. Then our client or partner company provided temporary employment to regulate the stay.

(Manager of a small consultancy company)

Companies from the construction sector that post workers abroad have different posting practices in different countries. The field research provides evidence that the posting in such cases is regulated with the procedures in the host country, while national state authorities in North Macedonia are not informed or involved.

“We have different experiences in different countries such as Poland, Ukraine, Bosna and Hercegovina. It is different for each country; we act depending on the regulations in the country to which we send workers. In some countries we hire a foreign lawyer to consult us, sometimes we work with Embassies that have their premises here in North Macedonia, in other cases managers from the company go abroad, we consult institutions from abroad such as employment agencies, relevant ministries and receive the necessary advice.”

(Representative of a construction company)

Construction companies that post workers abroad, in practice usually open a branch office in the host country. As part of that branch office they engage an employee, usually from the host country that provides advice on the conditions for health and safety at work and ensures that all necessary paper work has been obtained in case of labour inspection.

When it comes to posting of workers to North Macedonia, this research provides evidence that posting is largely dependent on the sectors in which foreign direct investments operate. Though, most of the respondents report negative employer practices of posted workers to the country in the construction industry. Interviewed social partners confirm that foreign companies are also posting workers to North Macedonia, mainly in the construction industry due to its expansion in recent years. Social partners identified foreign companies from neighbouring countries such as Albania and Greece or other non-EU countries such as China. They also noticed that existing working and living conditions for foreign workers in the construction industry are very poor and reported the existence of social dumping.

Generally, policy makers and social partners have very little knowledge on employers’ practices in the process of posting and have difficulties to distinguish posted workers from other mobile workers. Policy makers recognize and hold detailed information only for workers that are posted to Germany in accordance with the procedures foreseen in the existing Law on Posting and have no information nor recognize other forms of regular and non-regular posting. For example, policy makers are not aware on the newly developing pattern, according to which workers from Western Balkan countries, in particular Bosnia-Herzegovina, North Macedonia, and Serbia are posted through companies in EU-8 countries, mostly from Slovenia (Danaj and Zólyomi, 2018). What has been identified as a weakness during the field research, is that there is no mechanism available to public institutions to monitor the flow of workers after they are employed abroad.

Private agencies for employment have a mandate to provide employment only on national level, and mediate for employments abroad, meaning that temporary agency posting as a form is not possible from North Macedonia. Social partners that participated in the field research do recognize a role of private agencies in the process of posting, some in positive and others in a negative context. While some of them report that existing private employment agencies support companies with information in the process of posting, others provide input that agencies abuse workers, mediate their employment abroad, but afterwards do not deliver the promised conditions.

Generally social partners have different perspectives on posting. Some of the employers' organizations recognize the need for the business sector to improve knowledge and understanding on posting workers and use it as a strategic business opportunity. They believe that if companies are able to understand the main goal of this Directive, its application will increase significantly especially at times of globalization. Other employers' organizations report that their members from the business sector have never reported a need for capacity building or support when providing services abroad, nor have declared any issue so far. When it comes to the construction industry, trade unions' representatives, do not see huge potential in posting. In their opinion, taking into consideration the expansion in the construction industry in North Macedonia, foreign companies are more motivated to post workers here, than the opposite.

4.3.2 Employer challenges in applying posting rules

The absence of clear protocol and procedure for posting creates uncertainty among employers. All stakeholders agree that a detailed guideline in Macedonian language should be established and that might significantly reduce the challenges for companies when posting workers.

The field research identifies a need for clarification of the rights and obligations of employers that are constantly posting workers abroad. It confirms that companies are not trying to bypass national legislation, but face challenges in accessing information in order to comply with the regulations. As one of them put it:

As an employer, I am not informed about my obligations when posting workers abroad. Clear information and procedures need to be publicly available, so I can be informed about the exciting laws and procedures, including documentation that I should provide in a timely manner.

(manager of a small consultancy company)

When it comes to posting, the major potential identified by stakeholders is in the bilateral agreements on social security. Therefore, another challenge mapped is the absence of bilateral agreements with all EU countries and the slow processes in establishment of new agreements. As one of the stakeholders explains, in practice these agreements enable them to provide services abroad and posting practice is developed only in countries with whom we have bilateral agreements.

Bilateral agreements on social security represent a key aspect in the process of posting. Policy makers should focus on concluding such agreements with as many countries as

possible. In this way they open access to new markets for companies. So far, we have posting experience only with countries with who we have bilateral agreements on social security. This simplifies our procedures and at the same time in future workers wo not face challenges in the realization of their social rights. We work on big capital projects and we have never faced any challenge.

(representative of a construction company)

One of the interviewed employers that posted workers to Turkey, reported challenges with the health insurance, although there is a bilateral agreement on social security between North Macedonia and Turkey. In this case, the bi-lingual document on health insurance issued by the Macedonian Health Fund, has not been recognized and accepted as a valid one in Turkey.

Companies report more challenges when registering a foreigner to work in the country, rather than in the case of posting workers abroad. However, in both cases companies share the opinion that procedures should be digitalized, and the process of posting can be considerably simplified if there is one stop bureau where they can submit all paperwork before the posting assignment.

4.4 Worker Protection

4.4.1 Mechanisms for worker protection: institutional, social partners

Social dialogue in North Macedonia is generally not well developed. It has a rather formal character with institutionalized consultative tripartite bodies established at the policy level, dominated by national governments in the decision-making process, and weak collective bargaining mechanisms. In the area of labour mobility and more specifically posting, which represents a relatively unknown policy area, the impact of social partners is even lower. Social partners have not played a significant role in the process of transposition and implementation of the PWD in the Western Balkans, which is a result of the modest role they play in the industrial relations in these countries (Danaj et al.,2019).

When it comes to trade unions, respondents reported pluralism of trade unions in North Macedonia, that was partly caused by personal rivalry and has contributed to the fragmentation of the trade union movement. Available research literature also confirms these findings and elaborates that the two largest national trade union organizations which meet the condition of representativeness have been developing rivalry (Helsinki Committee on Human Rights, 2020). Another negative trend that has been identified is that trade unions have a downward trend in membership numbers, low esteem and trust among citizens. The situation of organization in trade unions in the private sector and many other industry activities is aggravating. Other mechanisms that could protect posted workers, such as collective bargaining agreements and NGOs specialized on labour rights and violations exist, but their impact is considered modest.

The main state institutions and mechanisms that protect and fulfil employees' rights are: 1) basic courts that have a department for labour disputes; 2) the Commission for Protection against Discrimination; 3) the Commission for Equal Opportunities; 4) labour inspectors and conciliators and arbitrators for solving individual and collective labour disputes.

The main institutions that monitor and improve health and safety at work are: 1) the National Council for Safety and Health at Work; 2) the Occupational Safety and Health Inspection; 3) the Safety and Health Association; and 4) the Employees' Representative for Safety and Health in enterprises. The National Council for Occupational Safety and Health is an advisory and consultative body of the government and is composed of 15 members.

However, none of these institutions, has an in-depth insight on the working conditions of Macedonian citizens working abroad. Taking into consideration the level of development of social partners, the weak social dialogue and practice, the mechanisms for worker protection during posting are weak and underdeveloped.

None of the interviewed stakeholders had understanding on what remuneration in the context of posting means nor on the opportunities it provides in terms of access to information. Host Member States have the obligation to provide the information on the terms and conditions of employment, including the constituent elements of remuneration to be applied to workers posted to their territory. Moreover, the employer must reimburse the posted worker for travel, board and lodging expenditure in accordance with the national law and/or practice. The amounts paid by the employer (or the reimbursements made) concerning travel, board and lodging are not part of remuneration. They are therefore not taken into account when comparing the amounts actually paid to the worker.

None of the national stakeholders from North Macedonia is familiar with the above-mentioned obligations, including stakeholders that have participated in international projects on posting. Nor employers, not social partners are familiar with the information that the employer should provide in writing to the worker before the posting. None of the employers reported that so far they have been approached by the trade unions of the host Member State to engage into collective bargaining.

All stakeholders agree that the majority of workers in North Macedonia are not well informed on their rights nor have information how and where to report abuse of their rights. Some of them identify this issue in the insufficient engagement of trade unions who should follow posting more proactively, inform workers and favour the protection of their rights. In practice, the PWD Enforcement Directive requires that a national website that informs workers, and that should be set up by public authorities. On the other hand, the quote from the field research provided below demonstrates that public authorities actually expect that trade unions are more engaged in the role to inform workers.

“Posted workers have no access to information about their rights, including information on how to protect the basic rights. On the other hand, employers have no guidance when they are posting their workers, there is no national web site with information nor national contact point in place. When we will have these mechanisms in place, then the labour inspector would be able to identify irregularities in payment of salaries and protection of workers' rights. Therefore, a systemic solution is needed that will primarily improve the understanding of the process of posting and then will ensure protection of workers' rights.”

(An interviewed policy maker)

None of the interviewed stakeholders has information on national guidelines on working hours and existing collective bargaining agreement that exist in host countries, nor has awareness that they should be consulted prior the posting. Many of workers and companies in North Macedonia are not part of trade unions and have no collective agreement on company level. Stakeholders argue that as a society we still do not have the capacity to recognize and use the power of collective bargaining.

A positive practice is that in cases when trade unions start a court procedure against companies for unfulfilled collective rights, such cases always end with positive outcomes for workers. Interviewed trade unions confirmed that so far, they never had cases when posted workers have been represented. On the contrary, they report high interest among workers for temporary work abroad and high satisfaction of their working conditions, including salary level. Moreover, they report high interest among foreign companies for construction works in North Macedonia, especially from China and the increase presence of Chinese workers as cheap labour force.

4.4.2 Challenges to worker protection: access to information, legal support and trade union representation

The high levels of informality and unemployment have contributed to the degradation of workers' rights and violations of these rights by employers in North Macedonia. There is an obvious challenge when it comes to workers' representation in North Macedonia as the trade union landscape is highly fragmented as the analysis in section 4.4.2 demonstrates.

Informing employees, provision of legal support and ensuring trade union representation remains a challenge for posted workers from North Macedonia, as well as for workers posted to North Macedonia. Their poor information does not allow them to report inconsistencies or violations in terms of their working conditions. There is no awareness among the workers regarding the information about the directives and regulations, about their rights and obligations as well as access to information, legal support and trade union representation. They act in accordance with the requirements of the employer. Information about the level of payment is usually provided by other workers or word of mouth, not through official communication channels and standardized procedures.

All stakeholders agree that it is a priority to strengthen the role and action of the unions and ensure increased support to workers to realize their workers' rights. As a challenge they identify the low capacities and absence of awareness of Macedonian workers on the content of existing national collective agreements in North Macedonia, which then is reflected in their lack of knowledge of collective agreement entitlements in the receiving countries:

Workers primarily do not have awareness and information about what is indicated in the collective agreements in the home country, they have even less awareness of the collective agreements in the country where they are posted. They do not even know that those agreements exist. Their primary motivation is to go abroad and earn more money.

(interviewed social partner)

5 Synthesis and Conclusions

In this report we investigate how the Posting of Workers Directive and other EU regulations interplay with national rules and regulations on social security, health insurance, temporary agency work, and company law in posting rule enactments in North Macedonia. Moreover, we address the main characteristics of the trend of posting of citizens of North Macedonia, as third country nationals to work in the EU, with main focus on the construction sector. We also assess the practice of posting workers to North Macedonia. The main areas of the study included: 1) legal analysis that comprise the identification of the national legislation, policy measures, government instructions and other related regulation on the following domains: Posting and cross-border labour mobility; Temporary agency work; Social security; Health insurance and coverage; and Company law; 2) implementation of existing regulatory framework and practice of enforcement agencies (3) employer practices and challenges when posting; and (4) worker protection. We will summarize our findings for each of these sub-questions below.

The transposition of the regulation on posting in North Macedonia is part of the EU integration process the country is undergoing through and the approximation of the national legislation to the *Acquis Communautaire*. So far, the PWD has been partially transposed, whereas its Enforcement Directive has not (Danaj et al, 2019). The Directive is transposed in two parts: posting EU workers to North Macedonia is regulated through a Law on Foreigners, whereas the posting of nationals to other countries is regulated through the Law on Labour Relations and Law on Posting. The existing regulatory framework enables posting under a contract of services and intra-group posting, while temporary agency posting is not enabled. While the laws have been reformed, the by-laws and other accompanying regulation and administrative provisions are still not in place. In terms of issue-relevant matters, such as the coordination of the social security systems and health care, the country has signed bilateral agreements on social security and on health insurance. These bilateral agreements are properly integrated with the existing Law on Pension and Disability Insurance, the Law on Compulsory Social Insurance Contributions and the Law on Health Care.

North Macedonia is already recording inflows and outflows of posted workers (Ilijevski and Iloska, 2018). The practice showcases that the existing regulatory framework regulates different patterns of posting. The Law on Labour Relations ensures that companies are entitled with the right to provide services abroad and this right has been exercised by various companies from different sectors (construction, consultancy, telecommunications, IT etc.). Next, to this the existing Law on Posting has more administrative character and is mostly designed to answer the identified labour shortages in the German labour market in the construction industry and is based on quota (on average 570 workers annually). On the other hand, posting of workers to North Macedonia is also developing into a practice, mostly linked to foreign direct investment, and is enabled by the Law on employment of Foreigners. This study identifies a need for systematic solution of posting and its clear regulation under a new regulatory framework, that will regulate both outflows and inflows of posting.

Due to the incomplete legal framework, the existing assessment of the institutional arrangement in North Macedonia indicates that a number of institutions responsible specifically for the implementation of the Directive are either not in place or just partially established. Therefore,

there are no liaison offices established, the public authorities responsible exist and are specifically tasked with overseeing posting but in practice the enforcement remains very weak and complemented with numerous challenges. When it comes to monitoring, control and enforcement of the regulatory framework, the State Labour Inspectorate has a partial responsibility for posting, as it has to inspect posting companies once a year, but in practice this does not happen. State agencies responsible for ingoing and outgoing labour migration only partially exist and have no clear mandate and training on the specificities of posting.

Depending on the size of the company, the sector, the number of posted workers and experience in posting, employers have different posting practices. Companies from the construction sector that post workers abroad have different posting practices in different countries that largely depend on the regulatory framework in the host country. It seems that national authorities from the host country do provide support and access to information when foreign company is providing services in large capital projects. Interviewed employers do not report to national authorities in North Macedonia when posting workers abroad. When it comes to posting of workers to North Macedonia, this research provides evidence that posting is largely dependent on the sectors in which foreign direct investments operate. Though, most of the respondents report negative employer practices of posted workers to the country in the construction industry. Social partners identified foreign companies from neighbouring countries such as Albania and Greece or other non-EU countries such as China. They also noted that existing working and living conditions for foreign workers in the construction industry are very poor and reported existence of social dumping.

The absence of clear protocols and procedure for posting creates uncertainty among employers. All stakeholders agree that a detailed guideline in Macedonian language should be established and that might significantly reduce the challenges for companies when posting workers. There is a need for clarification of the rights and obligations of employers when posting workers abroad. The research confirms that companies are not trying to bypass national legislation, but face challenges in accessing information in order to comply with the regulations. Employers share the opinion that procedures should be digitalized, and the process of posting can be considerably simplified if there is one stop bureau where they can submit all paperwork before the post.

When it comes to worker protection, the high levels of informality and unemployment have contributed to the degradation of workers' rights and violations of these rights by employers in North Macedonia. All interviewed stakeholders confirm an increasing interest of Macedonian workers for temporary work abroad due to the higher salary. The field research identifies absence of mechanisms for worker protection not only on institutional level, but also among social partners. None of the existing institutions and mechanisms that protect and fulfil employees' rights recognizes and protects the rights of posted workers. None of the interviewed stakeholders had understanding on what remuneration in the context of posting means nor on the opportunities it provides in terms of access to information. Policy makers have no mechanisms for control and monitoring of payment and taxation of employers when posting their workers abroad. They consider the level of salary and payment to workers as issues out of their competence. All interviewed social partners are aware on the existence of various

manipulations and abuses among employers. As a weakest link in the entire system, they identify the Labour Inspectorate. Additionally, none of the stakeholders has awareness to consult national guidelines on working hours and existing collective bargaining agreement that exist in host countries. Moreover, there is an absence of clear response procedure in order to ensure health and safety at the workplace. The field research also identified that the majority of workers in North Macedonia are not well informed on their rights nor have information how and where to report abuse of their rights. Some of them identify this issue in the insufficient engagement of trade unions who should follow posting more proactively, inform workers and favour the protection of their rights.

6 Policy Recommendations

EU Level

- 1) Create the necessary conditions for participatory transposition of EU Directives in the national legislation through involvement and consultations of all relevant stakeholders.
- 2) Ensure access to finance aimed at strengthening human resources among policy makers, enforcement agencies and social partners in terms of implementation of the PWD and its enforcement Directive. Adequate mechanisms should be established in order to ensure that the generated knowledge will be properly institutionalized.
- 3) Introduction of Western Balkans in the IMI (Internal Market Information system) which is used as a tool by labour inspectors (and other relevant state actors) to exchange information and to transmit labour inspection related requests via the system to any other EU country.
- 4) Ensure closer monitoring and control of workplaces where third-country nationals, including Macedonian citizens are engaged and report misdemeanour with national authorities from North Macedonia.

National Level

- 1) Policy makers should ensure full transposition of PWD and its Enforcement directive, in the national regulatory framework. It means to develop a systematic solution of posting including clear regulation of the posting under new regulatory framework, that will regulate both outflows and inflows of posting.
- 2) Ensure adequate institutional arrangement responsible specifically for the implementation of posting, such as establishment of liaison offices, clear definition of mandate of authorities. Moreover, the channels of cooperation, information sharing and exchange between national institutions and EU Member States and EU-level institutions should be clearly established.
- 3) Establishment of an information system that will improve migration and posting data collection and its availability.

Industry Level

- 1) Ensure site-level cooperation, including fast and effective data sharing between social partners and state actors to improve the monitoring of the construction sites and detecting unlawful practices.

Enforcement State Agencies

- 1) Ensure that the by-laws and other accompanying regulation and administrative provisions needed for smooth implementation of the existing regulatory framework that enables posting of workers from and to North Macedonia;

- 2) In terms of issue-relevant matters, such as the coordination of the social security systems and health care, enforcement agencies should ensure that such agreements are signed with all EU member states.

Social Partners

- 1) Develop and distribute detailed guideline that clearly explains the procedure, rights and obligations of workers and employers when posting of workers to and from North Macedonia. The procedure for posting should be digitalized and ensured through a one stop bureau.
- 2) Strengthen capacities of social partners on the PWD and its Enforcement Directive (with focus on remuneration, taxation, working hours, collective bargaining agreements, health and safety at the workplace) and ensure that mechanisms for worker protection are in place and are fully operational.
- 3) Ensure sufficient engagement of trade unions who should follow posting more proactively, inform workers and favour the protection of their rights.

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