



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

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

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Executive Summary

Serbia is traditionally a country of emigration. Eurostat data show increasing outflow of workers that doubled from 2016-2019, and which actually turns out to be the main reason behind a reduction in the unemployment rate in recent years. There is also an increasing trend in posting workers (PW), though with a slight fall in 2019. Majority of PWs are posted to the EU countries, Germany in particular due to the International Agreement signed in 1898 with the Federal Republic of Germany. Outflow of workers in recent years is also connected to the bilateral agreements that Serbia signed with Germany, Slovakia and Slovenia.

Posting of workers from Serbia abroad is regulated by the overarching Law on conditions for posting workers abroad and their protection (LCPW) entered into force in 2016 and updated in 2018. In addition, PW is regulated by general legal framework in Serbia, such as Labour Law, the Law on contributions for mandatory social insurance (LCMSI), Health insurance law etc. Posting via temporary agencies work is currently not possible in Serbia. Legislation is aligned with EU posting directives 1996/2014. It still has not been harmonized with the latest 2018 directive; specifically, minimum wage guarantee was not changed to remuneration.

Some legislation within Serbia is not aligned with each other, in particular LCMSI with LCPW. LCPW assume worker earning minimum gross wage in the receiving country, while the LCMSI explicitly mentions the amount of salary they would earn on the same or similar job position in Serbia, which cannot be lower than 70% of average monthly salary in Serbia. This leaves significant difference between minimum gross wage in receiving country compared to minimum contribution base for posted workers in Serbia leaving a long-term consequence for workers in terms of future pensions, but also short-term consequences in case of injuries/sickness as the sick leave.

When it comes to the gap between legal basis and practices, we may crudely conclude that there are two groups of practises. One group are “proper” employers that are legally posting workers and at least formally trying to obey legal framework. For this group of employers it is very difficult to realize whether there are gaps between legal framework and practises for number of reasons -PW not being informed on the EU directives and LCPW, complicated to understand what is the minimum remuneration in the receiving country, PWs being satisfied with given work conditions and pay, even if this is not in line with EU directives etc. Second group are fictitious employers sending PWs without proper contract, leaving workers without salaries or paid leave, without insurance and compensation for travel expenses. Due to the negative media coverage and reports from workers on this practices, labour inspectorate has been increasingly dealing with PWs and some improvements has been seen. There are also workers in the grey economy as well as recent emigrants who are wrongly considered PWs.

Employers` challenges regarding posting are most often connected to work permit in EU countries. Even in this case when employer is given a quota for work permits, there are number of administrative obstacles including recognition of diplomas that is a requirement for a work permit. In addition, employers are mentioning pre-financing as a problem and banks which do not want to open bank accounts for workers. For small employers it is quite expensive to provide a liaison person residing to in the receiving country, as stipulated by LCPW.

When it comes to PWs protection, they share the similar destiny as the general protection of workers in Serbia. Union landscape is highly fragmented with low coverage hence very often employees are not members of trade unions. Even when they are, they are reluctant to complain officially and provide a proof and start the procedures against employers, except when some drastic cases of fraud and abuse by employer. Trade unions believe that PWs are poorly informed, that they don't know what is the minimum salary in receiving country, they are

negotiating wage per hour or day hence they do not see this overtime work being overtime while working overtime in Serbia is a spread practice, hence this is a “normal” situation for working abroad particularly when fees are higher.

One of the recommendations for the EU level that emerges both from employers and trade union side is to simplify procedure regarding visa/work permits for TCN. Simplification of the procedure should include abolishment of the need for recognition of diplomas of certain professions that do not exist in Serbia, shortening the duration of procedure etc.

At the national level, legal regulations within the state that is not in compliance with each other such as LCMSI and LCPW needs to be addressed. Another important issue raised by the trade unions is LCPW provision in the article 8 that regulates duration of employment contract of PW, which should be changed in a way that the time worker is posted abroad is counted in the legal limitation of the duration of fixed-term labour contract. When it comes to health insurance, it is important to sign as many bilateral agreements as the major problems arising with the countries where there is no one.

Trade unions argue that there is a need for special collective agreement for posted workers. A recommendation stemming from trade unions is a suggestion for a construction industry that a provision should be made for the employers to form an occupational safety committee within each company.

International cooperation is of the utmost importance when it comes to enforcement of legal rights for PWs. Some improvements have already been made with signing the Protocol of Cooperation with Slovakia, there is an attempt to create a network of labour inspectorate of Western Balkan countries etc. In addition, labour inspectorate in Serbia and tax administration should cooperate on the issue of PWs.

Strengthening trade unions influence is a general policy recommendation for Serbian workers, including PWs. Networking between trade unions and efforts on informing PWs are very important. Good practices already exist and they should be continued

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Abbreviations

ASNS – Association of Free and Independent Trade Unions

CATUS – Confederation of Autonomous Trade Unions of Serbia

CROSO – Central Register of Compulsory Social Insurance

KIRS – Commissariat for Refugees and Migration Republic of Serbia

KSS – Confederation of Free Trade Unions

LCPW – Law on conditions for posting workers abroad and their protection

LCMSI – Law on contributions for mandatory social insurance

MLEVSA – Ministry of Labour, Employment, Veteran and Social Affairs

NES – National Employment Service

PW – Posting Workers

RSO - Republic Statistical Office

SEC – Socio-Economic Council

SFRY – Socialist Federal Republic of Yugoslavia

TAW – Temporary agency work/temporary work agencies

1 Introduction

Serbia is traditionally a country of emigration. There is also a long tradition in sending workers to provide services, particularly to Germany dating since 1968 on the basis of investment agreements and business-technical cooperation, though the bilateral agreement between Socialist Federal Republic of Yugoslavia (SFRY) and Germany was concluded only in August 1988 (Pavlica, 2005). An increasing trend is also visible in the last couple of years in the sending workers by posting them as part of the transposition of the Posting of Workers Directive (96/71/EC) of the European Union and bilateral agreements with Germany, Slovakia and Slovenia. Eurostat data show increasing outflow of workers, which doubled from 2016-2019, and which actually turn out to be also among the main reasons behind a reduction in the unemployment rate in recent years.

This study aims to investigate how the Posting of Workers Directives and other EU regulations interplay with national rules and regulations on social security, health insurance, temporary agency work, and company law. Country case studies identify gaps between procedures (legal basis) and practices (experiences) in posting rule enactments in Austria, Slovenia, Italy, Slovakia, Hungary, Poland, Serbia and North Macedonia. The current study focuses on the specific case of the Republic of Serbia.

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 viewpoint of both employers as well as public authorities and social partners. Semi-structured interviews use a vignette design to elicit insights from both viewpoints 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 suggest significant improvement in legislation regulating posted work in Serbia, which is to a certain extent is harmonized with the EU legislation. This effort needs to continue in particular when it comes to the Law on conditions for posting workers abroad and their protection (hereinafter: the LCPW) Compliance with EU Directive 2018¹. When it comes to the gap between the legal framework and actual practices, we may crudely conclude that there are two groups of practices. One group is constituted of “proper” employers that are legally posting workers, changing the code in the Central Register of Compulsory Social Insurance (hereinafter: the CROSO) and at least formally trying to obey the legal framework. The second group of /employers are fictitious employers sending workers without proper contract, who leave workers without salaries or paid leave, or make them stay and work longer than agreed - without insurance and compensation for travel expenses. Due to the negative media coverage on PWs and reports from workers, the Serbian Labour Inspectorate has been increasingly dealing with posted workers and some improvement in practices has been noticed.

The report is structured as follows: in section 2 of the report, the country context is explained with an emphasis on migration trends; section 3 presents the methodology; section 4 on main findings is divided by legal and institutional framework, employers` practices, and workers protection; section 5 presents a synthesis and conclusions and section 6 policy recommendations.

¹ DIRECTIVE (EU) 2018/957 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 28 June 2018 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services <https://eurlex.europa.eu/legalcontent/EN/TXT/PDF/?uri=CELEX:32018L0957&from=EN>

2 Country Context

2.1 Socio-economic overview

Overall labour market trends in Serbia in the recent years have been quite positive, with a steady decline of the unemployment rate and an increase in the employment rate. However, a reduction in the unemployment rate only partly reflects the economy growth, while the other part is a consequence of the mass outflow of workers abroad (FREN, 2018). Some researchers also attribute the increase in employment to unreliable statistics rather than the actual economic trends (Fiskalni savet, 2018).

Table 1: Overall labour market dynamics

	2017	2018	2019
GDP real (annual growth in %)	2.1	4.5	4.2
Employment rate, population aged 15+ (%)	46.7	47.6	49
Job vacancy rate (%)	/	/	/
Unemployment rate, population aged 15+ (%)	13.5	12.7	10.4
Average monthly gross wage (in EUR)	544	580	643
Monthly gross minimum wage (in EUR)	251	282	309

Source: MFIN (2020); RSO (2020a,2020b, 2020c); Nebilten (2020)

The most recent data shows that during the COVID-19 crisis both employment as well as unemployment increased on the account of increased inactivity (RSO, 2020). Anić also argues that “the decrease in the unemployment rate in Serbia is not a result of the effectively lower number of unemployed who found a job and started working. This is the result of delayed job search due to epidemiological constraints and deteriorating economic conditions” (2020: 55).

The Socio-Economic Council of the Republic of Serbia as a tripartite governmental body decides on the minimal wage. Though minimum wage is increasing every year, it is still extremely low and among lowest in Europe. Same stands for average wage, though it has been rising in euro terms the last years, it is still very low compared to EU levels.

2.2 Labour mobility and posting rates and trends

Serbia is traditionally a country of emigration. In addition to Germany, Austria, Switzerland and Sweden, to which people with primary and secondary education customarily have outflow, and overseas countries that have been interesting for students and highly educated persons, popular new destinations are Italy and Great Britain. Among new EU countries, the most important destinations for Serbian citizens are Slovenia and Hungary (Rašević, 2016). There is also a long tradition in sending workers to provide services, particularly to Germany dating since 1968 on the basis of investment agreements and business-technical cooperation, though the bilateral agreement between Socialist Federal Republic of Yugoslavia (SFRY) and Germany was concluded only in August 1988 (Pavlica, 2005). An increasing trend is also visible in the last couple of years in the sending workers by posting them as part of the transposition of the Posting of Workers Directive (96/71/EC) of the European Union and bilateral agreements with Germany, Slovakia and Slovenia.

Eurostat data show increasing outflow of workers, which doubled in just a few years from 2016-2019 (Table 2). Increasing emigration is seen to Germany, Slovenia, Slovakia, Czech Republic, Hungary and even Croatia, while only emigration to Austria has seen a decreasing trend. Emigration to Slovakia has been often illegal, which stemmed to a signed Protocol of

Cooperation between MLEVSA and Ministry of Employment, Social Affairs and Family of Slovakia in November 2017.

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

	2016	2017	2018	2019
Total number of emigrants	30573	39673	50270	62070
Total number of immigrants	6323	6714	7591	11119
Total EU migrants received	/	/	/	/
Total TCN migrants received	6323	6714	7591	11119
Share of immigrants of working age (19-65 years old) in %	/	/	/	/
Total number of outgoing posted workers	9040	13608	15615	11843
Total number of incoming posted workers	538	431	572	1080
Labour market share of incoming posted workers	/	/	/	/
Main countries of destination for posted workers	DE	DE	DE	DE
Main countries of origin of posted workers received	/	/	/	/

Source: CROSO for outgoing posted workers; NES for incoming posted workers; KIRS (Migration profiles) for immigration; EUROSTAT of total number of emigrants to EU

There is also an increasing trend in posting workers, with a sudden fall in 2019. In Table 3 there are some more detailed data on the outgoing posted workers showing increasing trend in posting workers abroad. In 2019 there was a decrease in total number of workers posted, number of trips and total months, while the average number of months spent by posted worker increased.

Table 3. Outgoing posted workers, 2016-2019

	No of posted persons	Number of trips	Total months in posting	Average months per person
2016	9040	11032	32193	3.6
2017	13608	17117	56754	4.2
2018	15615	19971	61365	3.9
2019	11843	16122	52960	4.5

Source: CROSO (2020)

According to CROSO data, the majority of PWs are posted to the EU countries, most of them to Germany due to the International Agreement with the Federal Republic of Germany signed in 1989 (see section 4.1.1. for details).

The inflow of foreign workers in Serbia significantly increased in the observed period, including the inflow of posted workers, which doubled. There is a distinction between posted workers as a part of a subcontracting firm (figures indicated in Table 2) and those sent to Serbia to work within the same company i.e., from parent to daughter company. Table 4 presents data of both categories, including total number of foreign workers in Serbia. The majority of permits were issued to foreigners from China, the Russian Federation etc. EU nationals are not among the dominant groups of immigrants or posted workers to Serbia.

Table 4 Incoming foreign workers (posted and other), 2016-2019
of which:

	Total work permits	<i>PW</i>	<i>Daughter company</i>
2016	7340	538	512
2017	7647	431	542
2018	8990	572	1912
2019	13809	1080	1516

Source: National Employment Service – NES (2020)

3 Methodology

3.1 Data collection

Secondary national data are based on a literature review and statistics. The main data sources used for this report are Central Register of Compulsory Social Insurance (hereinafter: the CROSO) for data on outgoing posted workers; National Employment Service (NES) being and Agency that issues work permits, for data on incoming posted workers; Republic Statistical Office (RSO) for data on labour market trends, RSO and Ministry of Finance for economic trends and Eurostat and the publication Migration profiles regularly issued by the Commissariat for Refugees and Migration Republic of Serbia.

Primary data were also collected 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. 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 qualitative data from interviews were collected by following a semi-structured interview template and were analysed by using qualitative thematic analysis. In an iterative effort, the different data interview responses were thematically organized and then compared with each other in order to create a comprehensive picture of the situation in question and of the perceived challenges.

The fieldwork process was carried out over the period stemming from the second half of June until the end of October. During this time 11 interview were conducted, most of them in person. Interviews were carried out in the Serbian language. Only an interview carried out via skype was recorded, while for face-to-face interview notes were taken.

	Stakeholder group	Date	Place
	Public officials or social partners		
1	Ministry of Labour, Employment, Veteran and Social Policy (MLEVSA)	26 June 2020	MLEVSA
2	Institute for Social Insurance (ISI)	10 July 2020	ISI
3	Trade Union Confederation NEZAVISNOST	11 September 2020	NEZAVISNOST
4	Confederation of Autonomous Trade Unions of Serbia (CATUS)	15 September 2020	CATUS
5	Central Registry for Compulsory Social Insurance (CROSO)	22 October 2020	CROSO
6	Labour Inspectorate	26 October 2020	Skype
	Employer-related stakeholders		
7	Employer 1 (construction)	22 June 2020	CSP premises
8	Serbian Association of Employers (SAE)	17 September 2020	SAE
9	Chamber of Commerce	7 October 2020	Chamber of Commerce

10	Employer 2 (construction)	16 October 2020	Employer`s premises
11	Employer 3 (care services)	20 October 2020	phone interview

3.2 Analytic Framework

The analytical framework comprised the identification of the national legislation, policy measures, government instructions and related regulations in various domains pertaining to posting, temporary agency work, social security, health insurance, company law and any other relevant regulation. Documents under study include rights and obligations of posted workers and of posting companies. The empirical data analysis utilizes a mixed-methods approach combining qualitative data sources with secondary data. Finally, the analysis was strengthened by triangulation of data sources, data analysis methods and reviewers.

3.3 Challenges and limitations

One of the main challenges faced during the research and particularly the interviews was that many informants are not making a clear distinction between some terms. For example, posting of workers vs. temporary work abroad and emigration into EU countries with the help of hiring agencies and the National Employment Service; hiring agencies vs. temporary work agencies (TWA); agency as a form of business (for example agency for care services) vs. TWA; posting workers vs. business trip². This sometimes created a confusion as the interviewees were talking about posting workers but actually thinking on emigration, talking about TWAs but actually having in mind agencies for care etc.

Another challenge was obtaining the information on employers` practices. Although vignettes were a very good way to avoid this problem, it is still quite challenging as employers do not like to speak about the gap between formal and actual procedures, even when it is spoken from the third person point of view as it may be too obvious that they might be following the same practice.

Finally, due to the epidemic situation in Serbia which significantly worsened during the summer, combined with the summer vacation period, we made a pause in the interviewing process during the summer and continued in September and October.

² According to Serbian Law the period of stay abroad which does not exceed 30 consecutive days, or 90 days in total with interruptions during the calendar year is not considered posting but business trip. However, this may not be the definition in EU countries.

4 Results

4.1 Regulatory Framework

4.1.1 Posting and cross-border labour mobility

General labour issues and working conditions in Serbia are regulated by the *Labour Law* ("Official Gazette of the Republic of Serbia", Nos. 24/05, 61/05, 54/09, 32/13, 75/14, 13/17 and 95/18).

Posting of workers abroad is additionally regulated by the overarching *Law on conditions for posting workers abroad and their protection* entered into force in 2016 ("Official Gazette of the Republic of Serbia", No. 91/15) and updated in 2018 ("Official Gazette of the Republic of Serbia", No. 50/18). Previously the legal basis for posting workers abroad was the Law on Protection of Citizens of the SFRY at Work Abroad ("Official Gazette of the SFRY", No. 24/98, "Official Gazette of the RS", No. 101/05; 36/09), which expired on 13.01.2016. (Reformator, 2016).

Furthermore, a special category of posted workers is regulated by the *International Agreement signed with the Federal Republic of Germany* signed in 1989.

Separate set of regulations apply to employees of the Ministry of Foreign Affairs transferred to diplomatic and consular missions abroad, posted teachers, police officers and members of the Serbian Army abroad, which are not subject of this Study.³

The *Law on conditions for posting workers abroad and their protection (LCPW)* gives a framework and regulates the rights of employees; conditions, procedures and obligations of the employers; cooperation of public institutions and organizations that perform activities related to the protection of the rights of employees; and supervision of the implementation of this law. The abovementioned law applies to: a) implementation of investments and other works b) the provision of services (based on the contract of business cooperation) and c) workers' vocational training and trainings in the framework of inter-company movement (Djuric & Todorovic, 2018a).

The law defines the *duration of the posting* of workers which is *up to 12 months* with the possibility of extension. It is not specified under which circumstances the extension can be made and for how long.

The posted employee has to be *at least 18 years old*⁴. The employee must be employed for at least *three months with the employer* to be eligible for posting in another country, unless posting is performed within the predominant activity of the employer, which is registered with the competent authority and the number of posted employees working less than 3 months does not exceed 20% of the total number of employees with the employer on the day of posting⁵.

An employee may be sent to work temporarily abroad only with his prior *written consent*, unless the employment contract already envisages the possibility of sending temporary work abroad and even in that case the employee has the right to refuse to be sent to temporary work abroad in justified cases such as pregnancy, child younger than 3 years old, lone parent with child younger than 16, etc.

³ Article 44. Law on Foreign Affairs ("Official Gazette of the Republic of Serbia", No. 116/07), Art. 92. i134. Law on the Basis of the System of Education and Upbringing ("Official Gazette of the Republic of Serbia", No. 72/09, 52/11, 55/13, 35/15 - other regulations 68/15); Art. 19, 19a, 19bi151. Law on the Police ("Official Gazette of the RS", No. 101/05, 63/09 -US, 92/11 and 64/15)

⁴ Article 4. of the LCPW

⁵ Article 8. of the LCPW

The employer is obliged to *conclude an annex* of the employment contract with the worker with the following elements: country, place of work and period to which the employee is being posted; name and description of jobs that employees will perform abroad, if they change; the amount of basic salary and the currency in which the salary will be paid and other monetary and non-monetary benefits related to the stay abroad; working hours, vacations and annual leave. The annex to the contract does not have to contain these elements if they are determined by law, collective agreement, rulebook or other act of the employer, in which case the annex must indicate the act by which these rights are determined at the time of concluding the annex⁶.

The employer is obliged to *change the basis of insurance* for the posted employee in the single database of the CROSO, in accordance with the regulations governing the submission of a single application for compulsory social insurance (code 101 for permanent labour contract in Serbia to code 109 for posting). This serves as a proof that the worker was employed and registered for compulsory social insurance before posting (Reformator, 2016). In addition, this guarantees that the employer will pay contribution and taxes on at least the two minimum contribution bases, which is a rule for posted work (see Section 4.1.3). Furthermore, this also serves as a replacement of previous obligation of employers to submit a notification on posting workers to the MLEVSA a month before posting, followed with MLEVSA's consent that is published on the Ministry's website⁷. The Central Registry is obliged to submit to the MLEVSA regular monthly, quarterly and annual reports on posted workers by country and by employer. The reports contain: list of countries, total number of posted workers by type of contract (definite-indefinite), by gender and age (18-30, 31-40, 41-65)⁸.

When reporting a change in the basis of insurance, the employer enters the country of secondment, and any subsequent change of country, as well as duration of posting (CROSO, 2016).

The employer is obliged to provide the posted employee with⁹:

- i) *health, pension and disability insurance and unemployment insurance* in accordance with the regulations governing these types of insurance or when the employer is posting the employee to a country with which an international agreement on social insurance has been concluded in accordance with that agreement;
- ii) *safety and health at work* in accordance with the regulations in the field of safety and health at work in the Republic of Serbia i.e., with the regulations of the receiving country if it is more favourable for the employee;
- iii) *accommodation, food and transportation for arrival and departure from work* according to the standards of the receiving country and to cover the cost of transportation from accommodation to work;
- iv) *wage* which may not be less than the guaranteed minimum wage in the receiving country¹⁰;
- v) *preparation for posting*, which means to inform the employee about the living conditions in the posting country and the place to which the employee is sent; provide the necessary health examinations and preventive health measures; provide transportation to the posting place and return to the Republic of Serbia; to ensure obtaining work and residence permits.

⁶ Article 11 of the LCPW

⁷ This procedure was too demanding for the Ministry hence ceased with the amendments on the LCPW in 2018

⁸ Article 24 of the LCPW

⁹ Article 13 of the LCPW

¹⁰ Article 17 of the LCPW

The Law envisages a *set of fines for employers not obeying the Law*¹¹. A fine of 600,000 RSD (~ 6 thousand euro) to 1,500,000 RSD (~ 15 thousand euro) is to be imposed on an employer with the status of a legal entity for a misdemeanour such as: sending an employee under the age of 18 for temporary work abroad or if he assigns the employee to another foreign person, contrary to the provisions of this Law (Article 6); sending an employee for temporary work abroad without his prior written consent or if he sends an employee who refused to be sent, in accordance with the provisions of this Law (Article 9); sending the employee for temporary work abroad without a previously concluded annex to the employment contract or if the annex to the employment contract does not contain the prescribed elements, in accordance with the provisions of this Law (Article 11); if the employer does not apply more favourable regulations on safety and health at work in accordance with the provisions of this Law (Article 15); if the employer does not provide accommodation, food and transportation to the employee on temporary work abroad in accordance with the provisions of this Law (Article 16); if he does not provide the employee with temporary work abroad in accordance with the provisions of this Law (Article 17); if the employee is not provided with the necessary health examinations and preventive health measures before being sent to temporary work abroad, fails to provide transportation to the place of work abroad and return to the Republic of Serbia and does not obtain work permits in accordance with the provisions of this Law (Article 18.). These fines are significantly lower stemming from 200.000 RSD (~2 thousand euro) to 400.000 RSD (~ 4 thousand euro) in case the employer is not a legal entity¹².

The Labour Inspectorate supervises the application of this law within its scope jurisdiction. In performing the supervision, the labour inspectorate shall cooperate with other state agencies such as the Central Registry and other organizations in the field of compulsory social insurance, tax administration as well as with competent agencies abroad, in accordance with the law and international agreements¹³. For more details on enforcement see Section 4.2 below.

The International Agreement with the Federal Republic of Germany was signed in 1989 with the then Socialist Federal Republic of Yugoslavia (SFRJ). Serbia as successor to Yugoslavia continues the implementation of this agreement, which was renewed in 2001. The contingent of workers posted to Germany is negotiated in advance between Ministry of Labour, Employment, Veteran and Social Affairs (MLEVSA) and the Germany Bureau for Employment and is approved annually (Djuric & Tiodorovic, 2018a). In 2016, by Conclusion of the Government of Serbia 05 number: 337-4653/2016, the Chamber of Commerce of Serbia (CCS) was appointed as an institution responsible for the allocation of the quota for posted workers, management of records and control. A company based in Serbia, registered to perform the activity for which posting is assigned, may apply for the posting quota. The company should have a non-independent branch ("Unselbständige Zweigstelle" - "Betriebsstätte") in Germany, operate in accordance with German regulations and meet the criteria of Article 7 of the Decision on the distribution of the established maximum number of posted workers to employers from the territory of the Republic (PKS, 2020). The annual quota has not changed in the last ten years and amounts to 2,770 posted employees (V.N., 2018). In order to post worker to Germany the posting company needs the consent issued by the CCS. The request for Consent can be submitted only when a Serbian company has already opened a representative office and concluded an employment contract with a partner from the EU territory. After obtaining the Consent, the Consent and the accompanying documentation are sent by post or brought in person to the Bundesagentur für Arbeit (Federal Employment Agency in Germany) in order to obtain work permits for employees. Issuance of work visas is done after obtaining work permits (PKS, 2020).

¹¹ Article 26 and 27 of the LCPW

¹² In Serbia, self-employment/entrepreneurship is not registered as legal entity, regardless whether self-employed is employing other workers or not.

¹³ Article 25 of the LCPW.

The legal framework for posting workers from Serbia abroad is aligned with the *Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services*. It still has not been harmonized with the latest 2018 directive, specifically minimum wage guarantee was not changed to remuneration; and does not mention long-term postings (longer than 12 or 18 months) and the application of an extended set of terms and conditions of employment of the receiving Member State.

*Posting workers to Serbia is regulated with the Law on Employment of Foreigners*¹⁴. Serbia issues work permits for PW on the basis of the business-technical cooperation agreement with a foreign employer, under condition that PW possess the following: a long-stay visa on the basis of employment or a temporary residence permit; proof that the PW has been employed by a foreign employer for at least one year; an act on posting to temporary work in the Republic of Serbia, which determines the rights and obligations from employment, as well as the accommodation and meals during the stay and work in the Republic. A work permit is issued for the period for which a contract has been concluded between the employer for which the services are performed and the foreign employer but not longer than one year. Exceptionally, it can be extended for a maximum of two years, with the consent of the MLEVSA. NES is the institution that issues work permits to foreigners in Serbia.

4.1.2 Temporary agency work

Posting via temporary work agencies is currently not possible in Serbia. Posting via agencies is envisaged in the *Law on Temporary Agency Employment* adopted in 2019¹⁵, however the articles regarding posting (article 10. and 12.) shall apply from “the day of acquiring full membership of the Republic of Serbia in the European Union” (article 37).

The Law envisages a set of large fines for employers not obeying the Law. A fine of 800.000 RSD (~ 6,7 thousand EUR) up to 1.500.000 RSD (~ 12,5 thousand EUR) is to be imposed on an employer with the status of a legal entity, while the entrepreneur (physical entity) shall pay fines ranging from 200.000 RSD (~ 1,7 thousand EUR) to 400.000 (~ 3,3 thousand EUR).

The Labour Inspectorate is the enforcement agency in charge.

Practises regarding agencies sending Serbian workers abroad are explained in Section 4.3.

4.1.3 Social security

The Law on contributions for mandatory social insurance (LCMSI) explicitly mentions posted workers defining PW as an “employee/insured who performs work in another country for an employer with its registered office in the Republic of Serbia, or works at a diplomatic or consular mission or in an international organization abroad”¹⁶.

In general, this Law defines the contribution base as “salary and salary compensation in accordance with the law governing labour relations, general act and employment contract”¹⁷.

However, the contribution base for posted workers is defined as the amount of salary they would earn, in accordance with the Labour law, general acts and labour contract, on the same or similar job position in Serbia, unless otherwise stipulated by an international agreement. This contribution base cannot be lower than twice the minimum monthly contribution base, which is 35% of the average monthly salary in Serbia, meaning that minimum contribution base for

¹⁴ "Official Gazette RS ", br. 128/2014, 113/2017, 50/2018 and 31/2019

¹⁵ "Official Gazette RS", no. 86/2019.

¹⁶ Article 6, paragraph 5 of the Law on contributions for mandatory social insurance.

¹⁷ Article 13, paragraph 1 of the Law on contributions for mandatory social insurance.

PW is 70% of the average monthly salary in Serbia. The maximum contribution base is 5 average salaries, same as for the employees working in Serbia.

Accordingly, PW acquires pension (social security) insurance in line with the Pension and Disability insurance Law in Serbia and the pension benefit is calculated according to the same formula for the posted and non-posted time.

Fines for breach of this Law¹⁸ are regulated with the relevant provisions of the law governing the personal income tax, the tax procedure and tax administration. The Tax Administration is the competent enforcement agency.

4.1.4 Health insurance and coverage

The health insurance law explicitly mentions PW as a mandatory insured. PW is covered with health insurance subject to employer paying health contribution on the contribution base defined by the Law on contributions for mandatory social insurance (explained in 4.1.3).

The PW has the right to use health care at the expense of the compulsory health insurance, in accordance with the concluded international agreements on social insurance. A member of the immediate family of the insured PW who resides with the insured abroad uses health care under the same conditions¹⁹. In case the PW is posted to the country where an international agreement is not concluded, the PW has the right to use health care only in the case of emergency, in order to eliminate the immediate danger to the life of the insured person²⁰.

The insured person has the right to use health care abroad if he/she is in a good health condition before departure meaning that he does not suffer from acute or chronic diseases in the acute phase, which is determined by the authorized Commission of the Republic Fund for Health Insurance (CRFHI). The certificate for the use of health care is issued on the basis of a direct examination of the insured person by the chosen doctor, as well as on the basis of medical documentation. The authorized Commission may order the insured person to perform certain types of medical examinations. A certificate is issued for the period for which the PW has been sent abroad.

If an insured person does not obtain the certificate, even in the country where the international agreement is concluded Republic Fund for Health Insurance (RFHI) is not covering the cost. In particular, the costs of emergency medical care including transportation costs to return to the place of residence in the Republic of Serbia is paid by the RFHI but the costs are borne by the insured person upon the submitted request for reimbursement of expenses by the Republic Fund²¹.

Health insurance covers sick leave that is 65% of the contribution base (100% in case of employment injury).

4.1.5 Company law

There are no provisions or reference regarding the posting of workers in the Serbian Company Law²².

¹⁸ Law on contributions for mandatory social insurance.

¹⁹ Article 111 of Health insurance Law

²⁰ Article 112 of Health Insurance Law

²¹ Article 116 of the Health Insurance Law

²² The mention of word posting workers is only in the transitional and final provisions of this Law stating that stamp which was envisaged for the form of notification on posting workers abroad, does not apply anymore. However, the Rulebook on the form of notification on posting workers abroad was also ceased to be valid with the adoption of LCPW (Official Gazzete, No. 111/15).

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	<i>Law on conditions for posting workers abroad and their protection (LCPW)</i> <i>The International Agreement with the Federal Republic of Germany</i>	Defines PW's rights such as accommodation, food and transportation, minimum wage in receiving country etc.	A right to post worker who is at least 18 years old and employed for at least three months with the employer Provides basis for workers quota - 2770 workers annually	Obligation to provide the PW with the guaranteed minimum wage in the receiving country; social insurance, safety and health at work, accommodation, food and transportation for arrival and departure from work.	Ministry of Labour, Employment, Veteran and Social Affairs (MLEVSA) Labour Inspection Chamber of commerce of Serbia
Temporary Agency Work regulations	<i>Law on temporary agency work</i>	/	Envisages possibility for TAW to post workers but not before Serbia becomes full EU member	Company needs to obtain a permit to work as	Ministry of Labour, Employment, Veteran and Social Affairs (MLEVSA) Labour Inspectorate
Health insurance and coverage	<i>Law on Health Insurance</i> <i>Law on contributions for mandatory social insurance</i>	Defines the right and conditions for PW to use health care at the expense of the compulsory health insurance abroad PW acquires pension right as well as long term care insurance	/	Company has an obligation to pay health insurance contributions on at least Defines contribution base and minimum contribution bases for PW being at least two minimums	Ministry of Health Republic Fund for Health Insurance (RFHI) Commission of the Republic Fund for Health Insurance (CRFHI). Tax authority
Social security regulation	<i>Law on Pension and Disability Insurance</i>	Regulates right to pension and long-term care benefit and compensation for physical injury at work	/	Obligation to pay contributions	Pension Disability Insurance Fund Tax authority

	<i>Law on contributions for mandatory social insurance</i>			Defines contribution base and minimum contribution bases for PW being at least two minimum contribution bases	
Company law	/	/	/	/	/
Any other relevant legislation, e.g., anti-dumping laws	<i>Double taxation treaties</i>	/	/	Determines in which country employer should pay taxes	Tax authority

4.2 National implementation and enforcement

4.2.1 Institutional Framework

MLEVSA is the responsible ministry for the implementation of labour and employment policies. The Labour Inspectorate is a “second-instance complaints authority within MLEVSA that has rights to review employers’ general and individual acts, records, interrogate and take statements from responsible persons, examine business premises and facilities” (Djuric & Todorovic, 2018a). Tax administration is in charge for tax and contributions payment.

The legal framework in Serbia is to some extent in compliance with EU directives on posting workers. Serbian legislation is aligned with EU 1996/2014 directives, in particular LCPW. It still has not been harmonized with the latest 2018 directive, specifically minimum wage guarantee was not changed to remuneration; and does not mention long-term postings (longer than 12 or 18 months).

However, the Law on contributions for mandatory social insurance (LCMSI) is actually not in compliance with LCPW. In particular, LCPW assumes worker earning minimum gross wage in the receiving country, while the LCMSI explicitly mentions the amount of salary they would earn on the same or similar job position in Serbia, which cannot be lower than 70% of average monthly salary in Serbia. This leaves significant difference between minimum gross wage in a receiving country, for example in Germany in 2018 it was 1414 euro (KPMG, 2018) compared to 380 EUR minimum contribution base for posted workers in Serbia²³. This has long-term consequences for workers, in terms of future pensions, but also short-term consequences in case of injuries/sickness as the sick leave is in that case only 65% of the contribution base (100% in case of employment injury).

Health insurance is regulated by the Health Insurance Law and bilateral international agreements. The problem arises when a worker is posted to a country that has not signed an agreement with Serbia. In that case, Serbian RFHI covers only urgent medical help. However, as the urgency is assessed by the receiving country, it may happen that RFHI consider it not urgent and then the problem arises as RFHI is not willing to reimburse the expenses. In addition, the problem may arise when a worker posted to the country with the signed agreement cannot obtain the medical certificate needed for insurance coverage²⁴ in which case RFHI is not going to fund the cost even if it is an urgent medical situation. For example, due to high blood pressure,

²³ <http://www.cekos.rs/najni%C5%BEa-mese%C4%8Dna-osnovica-za-pla%C4%87anje-doprinos-a-u-2018-godini>

²⁴ See section 4.1.4. for explanation

a worker did not receive a certificate from CRFHI and he breaks his arm while posted, then he will not be covered by Serbian RFHI, which goes against what is stipulated in the international agreements.

4.2.2 Enforcement Agencies Practices

The Labour Inspectorate has been increasingly dealing with posted workers. The interest in this type of contracts/employers occurred due to the repeated workers' complaints. Reports on negative experiences were coupled with frequent media coverage connected to posting and temporary work in Slovakia. The majority of those posted to Slovakia are from Vojvodina (northern part of Serbia), therefore the labour inspectorate from Novi Sad, capital of Vojvodina, has the most experience in the monitoring and control of posted workers.

According to the labour inspectorate, they as an institution gave a significant input in the preparation of the LCPW seeing the problems with illegal posting in practice and the need to regulate this more strictly. One of their suggestions was to request that posting is performed within the predominant activity of the employer and that the employee is employed for at least 3 months and with an indefinite-term labour contract. This is because the problems were particularly pronounced with i) employers posting workers to the sectors that were not related to their work process whatsoever, acting therefore as hiring agencies; ii) workers who were in fact not working for the posting employers prior to being posted, and they were literally signing labour contracts on the bus while traveling to the posting country.

When the LCPW was adopted, the labour inspectorate used this opportunity to connect with CROSO and get the data on the companies posting workers in order to control them. They have discovered very different practices - from firms posting workers within the legal framework and following all LCPW provisions, usually as a specialisation/secondment, to many irregular practices such as employees without contract, agencies without licenses, employees who were not paid, not provided board and lodging, travel expenses not being covered etc. However, the labour inspectorate also notices significant improvement in the posting practice since the adoption of the LCPW.

Nonetheless, in terms of enforcement, because each institution's mandate is narrow and competences are distributed among different institutions, some dubious practices might go unnoticed. So, the Labour Inspectorate has a mandate to control the LCPW enforcement (including labour regulation in general) while the LCMSI has a mandate of tax administration. Therefore, when controlling the application of LCPW, the labour inspectorate focuses only *at the net wage*. According to the Serbian regulations when the wage is mentioned without any other determinant, as it is in the case of LCPW, it means gross wage. However, the wage amount that has to be written in the annex of the labour contract according to the LCPW is "the amount of the wage and the currency in which it will be paid", implicitly excluding contributions since they are not paid in the receiving country. This means that part of the difference between the minimum contribution base for posting workers in Serbia and the minimum wage in the receiving country, what would actually be called posting allowance²⁵ is implicitly not subject to social contributions payment as already explained in section 4.2.1. However, even if it is, the labour inspectorate is not controlling contributions payment while tax administration seems not to be familiar with LCPW and is only pursuing compliance with LCMSI.

4.2.3 Enforcement through Transnational Cooperation

Due to the problems with the often-illegal posting and work in Slovakia (see Djuric & Todorovic, 2018a), Serbia has signed a *Protocol of Cooperation between MLEVSA and Ministry of Employment, Social Affairs and Family of Slovakia* in November 2017. Article 1.

²⁵ According to Practical guide on Posting published by European Commission in 2019 (Luxembourg: Publications Office of the European Union)

of the Protocol states that cooperation is of the particular importance in the field of labour and employment in order to “combat illegal employment”. Furthermore, the parties shall ensure a “more efficient exchange of information and control of temporary employment and referral of workers”. According to the labour inspectorate in Serbia, this cooperation is of the utmost importance in preventing the illegal employment in Slovakia and improving posting workers` labour conditions.

In addition, there are anecdotal evidence of Serbian workers being emigrants to EU countries, such as Slovenia for example, and then posted to other EU country. This is a typical example of posting third country nationals. However, Serbia does not have information nor it is in its jurisdiction to control this kind of posting, which is actually a matter for the posting country where Serbian nationals have emigrated.

4.2.4 Enforcement Agencies Challenges

The adoption of the LCPW eliminated many challenges labour inspection used to face, giving them appropriate legal framework for enforcement (see Section 4.2.2 for details).

The current major problem of enforcement agencies is the difficulty to assess and control labour conditions and compliance with the regulations in the receiving countries. That was the reason to sign the Protocol of cooperation with Slovakia (explained in the section 4.2.3), but other countries are still not covered. According to Labour Inspectorate, this seems to be showing some results.

Similar challenges emerge with workers being posted to Serbia, where the major one is again cooperation with the legal framework and labour inspections in sending countries. This is a field where the labour inspectorate is currently trying to establish cooperation.

4.3 Employer practices and challenges

4.3.1 Employer practices

Based on the interviews as well as anecdotal evidence and media reports, there seem to be two categories of employers: law-abiding and those with irregular practices.

The interviewed employer working within the legal national framework claimed to pay workers not only minimum wage, but “the payroll is higher than the minimum due to sector and position”. Expenditure related to the travel and lodging are covered directly by employers. Still, it is difficult to be sure that workers are indeed paid minimum wage of host country, overtime work, board etc.

What is almost certain is that employers do not pay contributions on the difference between the payment above two minimum contribution bases since this is not required by the LCMSI. This may give some scope for employers to make a profit at the expense of contributions payment, as workers are satisfied with the net wage that they would earn in the receiving country so they simply agree contributions are not being paid. According to one employer we interviewed who was posting workers to Germany, income tax is paid on the whole amount in Germany, according to the treaty between the two countries. It is not clear whether there is a scope for income tax refunds in Germany, as something like that was briefly mentioned by one employer.

In addition, it is difficult from the interviews with employers to disentangle whether the posted workers are working overtime, weekends etc. Most likely this is the case, but this is something employers did not say despite using vignettes.

When it comes to *Temporary agency work (TAW)* as employers, according to the legal framework it is not possible for them to post workers abroad for the time being²⁶. Public authorities including the labour inspectorate confirm this is true in practice, and that they have not encountered nor heard about the practice that TAWs are posting workers abroad. However, there is an impression in public that this is actually happening due to the following practices.

Firstly, “National Employment Service (NES) and private employment agencies with the appropriate licence are acting as mediators in the employment of Serbian citizens abroad and vice versa. On employers’ demand, the NES announces the job vacancies whereas the requirement process is settled between employer and job-seeker. The NES is not involved in the process of selection of candidates. They also provide information to potential working migrants from and to Serbia on the risks of irregular migration, procedures for legal employment abroad, access to health care, education abroad, and so on” (Djuric & Todorovic, 2018b:5). This is actually due to an Agreement on mediation on temporary employment of Serbian workers in the Federal Republic of Germany that was signed between Serbia and Germany in 2013 and involved both NES and GIZ that were running a project called Triple Win to facilitate this agreement²⁷. This arrangement was meant to employ medical and care workers in Germany. Beside this Agreement, medical staff have been emigrating via private channels as well. There are no precise data how many people emigrated since 2013 to Germany, but in any case, it is a significant number of medical workers leading to a shortage of medical personnel in Serbia. Hence the Government decided to cease the Agreement at the beginning of 2020²⁸. A similar agreement was signed at the beginning of 2018 with Slovenia, while this agreement is still in force²⁹.

²⁶ Until Serbia eventually joins EU.

²⁷ <https://www.mc.kcbor.net/2013/01/18/potpisan-sporazum-izmedu-sluzbi-za-zaposljavanje-nemacke-i-srbije/>

²⁸ https://rtv.rs/sr_lat/drustvo/obustavljen-projekat-triple-win-preko-koga-su-drzavljan-i-srbije-masovno-odlazili-u-nemacku_1090874.html

²⁹ http://www.parlament.gov.rs/upload/archive/files/lat/pdf/predlozi_zakona/1013-18%20-%20LAT.pdf

Another practice are agencies as a form of business (in particular agencies for care services) sending people abroad for short-term work in the grey economy. In this case it is not easy to understand who actually pays workers, are they paid through agencies, meaning that people are actually posted although their employment is non-formal and the service is provided for very short periods of time; or they are paid directly by the client in which case the agency serves only as a mediator. In any case, this is a practice in grey economy, without work permit and therefore employees stay short period of time in order to fulfil the proposition of tourist trip (maximum of 90 days within a 6-month period).

4.3.2 Employer challenges in applying posting rules

The most often mentioned employers' challenge is *connected to work permits in EU countries*. This seems as the most important challenge, both in terms to make posting happen as well as in term of demanding procedures that can jeopardize meeting companies' deadlines in the receiving country. One of the interviewed trade unions share the employers' view and argues that requirements for work permits or visa such as Van der Elst³⁰ is too demanding.

The easiest way to obtain work permits is for employers posting workers based on the International Agreement with the Federal Republic of Germany, and this is the reason why the largest portion of posted workers are sent to Germany. However, even in this case when the employer is given a quota for work permits, there are a number of administrative obstacles.

There is a challenge with recognition of diplomas³¹ i.e., recognition of qualifications that is a requirement for a work permit in Germany³². The problem becomes more complicated for certain occupations for which there is no formal education in Serbia (for example for parquet workers), consequently the workers do not possess diplomas to attest their skills.

The procedure to obtain work permits is quite long and complicated (partly explained in section 4.1.1) and it can take a long time from the date of signing the contract in Germany to the moment workers are ready to start work. In particular, only the issuing of work permits at the Federal Employment Agency in Stuttgart can take 4-6 weeks.

An employer posting to Germany stated that reporting the residence for workers can be difficult, due to the complicated procedures.

Finally, sometimes there is a difficulty when it comes to obtaining a quota for Germany at the appropriate time. In particular, quotas are being allocated from 1st of September to 31st August following year, and in the recent years, quotas are exhausted months before September. So, for example, employer who is already posting workers to Germany and wants to continue in September has to send workers back to Serbia and wait for new round of quotas. This may produce a significant problem for employers.

An employer in construction sector mentioned pre-financing as a problem. In addition, he stated banks in Germany, which do not want to open bank accounts for workers, being a huge problem. For small employers it is quite expensive to provide a liaison person residing to in the receiving country, as it is prescribed by the LCPW. Simply, it is quite expensive to pay an extra person in the receiving country.

³⁰ The Van Der Elst visa is a type of visa or work permit available to non-EEA/EFTA citizens employed by and working for a company in an EU/EEA/EFTA country, that allows them to work for that company in another EEA/EFTA member state, subject to meeting certain eligibility conditions

³¹ Recognition of diploma is the procedure/act of adopting a foreign diploma, degree, paper, etc., as of equal validity within the country that is applying recognition of diploma.

³² <https://www.arbeitsagentur.de/en/recognition-of-qualifications>

4.4 Worker Protection

4.4.1 Mechanisms for worker protection: institutional, social partners

Legal mechanisms for the protection of posted workers are the same as for labour relations in general. In case of labour disputes the employee may follow the standard judicial procedure according to Labour Law, LCPW or other relevant legislation.

The Social and Economic Council (SEC) is an independent tripartite body made up of representatives of the Serbian Government, representative associations of employers and representative trade unions. It was established with the aim of developing a social dialogue on the issues of importance for economic and social freedoms and rights, improving the financial, social and economic position of employers and employees and their living and working conditions, developing the negotiation culture, encouraging a peaceful settlement of work-related disputes, etc. SEC is involved in the development and promotion of collective negotiations, employment, wage and pricing policies; workplace and living environment protection, etc³³. According to article 112 Of the Labour Code, minimum wage is also determined by a decision of the SEC.

The trade union landscape in Serbia is characterised by five main organisations clustered in two mutually opposed blocs. On one side, there is a *Confederation of Autonomous Trade Unions of Serbia (CATUS)* and *UGS Nezavisnost*. On the other hand, the *United Trade Unions of Serbia Sloga (USS SLOGA)*, the *Confederation of Free Trade Unions (KSS)* and the *Association of Free and Independent Trade Unions (ASNS)* coordinate various actions with one another. An announced alliance between these three organisations under the name »Serbian Trade Union Front« did not prove possible (Ladjevac, 2017: 4). Worker protection for PWs is the same as the general protection provided to other workers in Serbia. PWs are represented as usual workers via trade unions and they can get support while posted, if they are members of trade union. However, trade union representation is generally problematic, which is discussed in the next section. PWs share the same destiny of workers protection as all other workers in Serbia.

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

There is an obvious challenge when it comes to workers representation in Serbia as the trade union landscape is highly fragmented with only 20 per cent of workers organised in five rival organisations. In addition, the process of tripartite social dialogue initiated in the form of SEC has been in “permanent crisis since the outset, at both local and national level”. The main reason for this is the government, which, with its 600,000 public employees, is the largest employer and thus can be said to be dominant as a third party in the tripartite body. Furthermore, because of the high public debt the Serbian state has been under intense pressure from international donors, such as the IMF, to cut wage costs. Hence, when important laws are passed the state withdraws from the very social dialogue it had institutionalised. Furthermore, the legitimacy of the Council is called into question because of the problematic representativeness of the social partners. Finally, the operations of the Social and Economic Council are not supported by the state budget, therefore not being in a position to pursue analytical or publicist activities from its own resources, let alone to expand the network of local socioeconomic councils nationwide (Ladjevac, 2017:6,7).

This is what trade unions during the interviews also claimed, i.e., very often employees are not members of trade unions and even when they are, they are reluctant to complain officially, start the procedures against employers, and provide the necessary evidence, except in certain drastic cases of fraud and abuse by an employer.

³³ http://www.socijalnoekonomskisavet.rs/eng/pocetna_eng.html

When it comes to actual working conditions of PWs, it is quite difficult to find out whether they are fully aware of their remuneration rights regardless of the efforts from trade unions involved in EU projects to educate them. For example, CATUS implemented a project on the rights of posted workers ‘Protect our workers’³⁴. As a result of this project CATUS translated and posted on its website a YouTube clip on the rights of PWs³⁵ and printed the brochure in Serbian *Guide for posted workers* (Vodič za upućene radnike). In addition, there has been a cooperation between CATUS and The Association of Free Trade Unions of Slovenia (ZSSS), The Austrian Federation of Trade Unions (OGB), as well as SS of Germany (DGB), and The Swedish Trade Union Confederation (LO), where a number of instructions for employed workers in the Serbian language are available, and there are contact persons in those unions that speak the Serbian language and workers can contact if they need/want to.

Nevertheless, trade unions believe that PWs are poorly informed, and that they do not really know what the minimum salary in the receiving country is. They also emphasize that this is not that surprising bearing in mind that sometimes it is difficult, despite the EU countries’ attempts to inform on minimum wages via websites, as for example six EU countries do not have a minimum wage. Trade union representatives also doubt that most PW contracts in the annex mention the minimum wage.

This argument is supported by the results of the study conducted by CATUS (2018: 22-23), which included a survey of posted workers. Among the surveyed PWs in Serbia, 64% said they were not satisfied with the availability of information on PWs. Answering the question “Can the Trade Union protect you in the event of a violation of rights?” more than 50% of interviewed PWs answered yes, somewhat less than 20% answered no and around 30% didn’t know what to expect. Most respondents answered that in order to improve the role of trade unions when it comes to posted workers, better information is needed, networking and a “special European Platform”. This study concluded that in the case they have problems, PWs often don’t know who to contact, while general public usually learn about the problems from the media.

It is also difficult to find out whether PWs are exceeding maximum working hours defined by collective bargaining agreements. Trade unions think that workers negotiate their wage with employers per hour or day hence they do not see overtime work being overtime. In addition, working overtime in Serbia is a spread practice³⁶, hence this is a “normal” situation for working abroad particularly when fees are higher.

According to the above-mentioned study, the most common problems so far have been those caused by the companies with fictitious business names, subcontractors who left workers without salaries or paid leave, or made them stay and work longer than agreed - without insurance and compensation for travel expenses. Also, the contracts often don’t define precisely the elements of the salary, referring to other acts that workers, as a rule, know insufficiently about (CATUS, 2018:33).

When it comes to very concrete suggestions from trade unions, they argue that there is a need for special collective agreements for posted workers. According to the interviews with trade unions, there was an attempt to bargain one in 2016 and it was even concluded in September 2019, but never came into force because the state never approved it. There is no track of this process, neither the explanation of the Government for not approving it.

Another important issue raised by the trade unions is an LCPW provision in article 8 that regulates the conditions for posting, in particular the duration of the employment contract of PW. This article is in fact contradictory as in the first paragraph it says that only workers with

³⁴ <https://protectourworkers.com/>

³⁵ <https://www.youtube.com/watch?v=Yrspn8Ajjq8>

³⁶ See for example and article [Unpaid Overtime in Serbia - Threat to Workers’ Health and Privacy](#)

indefinite labour contracts may be posted, and then in the second paragraph says that there can be exceptions and the workers with fixed-term labour contract can be posted provided that the time spent on the work abroad *is not counted in the legal limitation of the duration of fixed-term labour contract*. According to Labour Law article 37, a fixed-term contract cannot last longer than 24 months at most and then it has to be changed to indefinite labour contract. Trade unions are challenging this provision of LCPW as unconstitutional.

Trade unions also suggest that a provision should be made for the employer form an occupational safety committee. They believe that each employer that is posting workers should form its own committee within the firm to take care of safety issues of posted workers.

5 Synthesis and Conclusions

Serbia is traditionally a country of emigration. Eurostat data show increasing outflow of workers, which doubled from 2016-2019, and which actually turns out to be the main reason behind a reduction in the unemployment rate in recent years. There is also an increasing trend in posting workers, though with a sudden fall in 2019. Majority of PWs are posted to the EU countries, Germany in particular due to the International Agreement signed with the Federal Republic of Germany signed in 1989.

Posting of workers from Serbia abroad is regulated by the overarching Law on conditions for posting workers abroad and their protection (LCPW) entered into force in 2016 and updated in 2018. A special category of posting workers are regulated by the International Agreement signed with the Federal Republic of Germany signed in 1989. In addition, PW is regulated by general law such as Labour Law, The Law on contributions for mandatory social insurance (LCMSI), Health insurance law etc. Posting via temporary agencies work is currently not possible in Serbia.

Legislation is aligned with EU posting directives 1996/2014 directives, in particular LCPW. It still has not been harmonized with the latest 2018 directive, specifically minimum wage guarantee was not changed to remuneration; and does not mention long-term postings (longer than 12 or 18 months).

However, LCMSI is not in compliance with LCPW. In particular, LCPW assume worker earning minimum gross wage in the receiving country, while the LCMSI explicitly mentions the amount of salary they would earn on the same or similar job position in Serbia, which cannot be lower than 70% of average monthly salary in Serbia. This leaves significant difference between minimum gross wage in receiving country compared to minimum contribution base for posted workers in Serbia. This has long-term consequences for workers, in terms of future pensions, but also short-term consequences in case of injuries/sickness as the sick leave is in that case only 65% of the contribution base (100% in case of employment injury).

Another issue in Serbian legislation raised by the trade unions is LCPW provision in the article 8 that regulates conditions for posting, in particular duration of employment contract of PW. This article is in fact contradictory as in the first paragraph it says that only workers with indefinite labour contract may be posted, and then in the second paragraph says that there can be exception and the workers with fixed-term labour contract can be posted provided that the time spent on the work abroad is not counted in the legal limitation of the duration of fixed-term labour contract. Trade unions are challenging this provision of LCPW as unconstitutional.

When it comes to the gap between legal basis and practices, we may crudely conclude that there are two groups of practises. The first includes “proper” employers that are legally posting workers, changing the code in CROSO and at least formally trying to obey legal framework. For this group of employers, it is very difficult to realize whether there are gaps between legal framework and practises for number of reasons, PW not being informed on the EU directives and LCPW, complicated to understand what is the minimum remuneration in the receiving country, PWs being satisfied with given work conditions and pay, even if this is not in line with EU directives etc.

Second group of situation/employers are fictitious employers sending PWs without proper contract, who left workers without salaries or paid leave, or made them stay and work longer than agreed - without insurance and compensation for travel expenses. This are the cases we have heard about from the media. Due to the negative media coverage on PWs and reports from workers, labour inspectorate has been increasingly dealing with posting workers and some improvement in practices has been seen.

There are also workers, such as carers and constructions workers, who work few months per year abroad in the grey economy and who are mistakenly considered as PWs, as well as emigrants who left Serbia via help of NES and bilateral agreements signed by the Government, such as agreement signed with Germany and Slovenia, wrongly considered PWs.

When it comes to PWs protection, they share the similar destiny as the general protection of workers in Serbia. Union landscape is highly fragmented with only 20 per cent of workers organised in five rival organisations and actually very often employees are not members of trade unions. Even when they are, they are reluctant to complain officially and provide a proof and start the procedures against employers, except when some drastic cases of fraud and abuse by employer.

Trade unions believe that PWs are poorly informed, and that they don't really know what the minimum salary is in receiving country. According to a study conducted in 2018, 64% of surveyed PWs said they are not satisfied with the availability of information.

It is also difficult to find out whether PWs are exceeding maximum working hours defined by collective bargaining agreements, but it is very likely that PWs agree to work overtime. Trade unions think that workers negotiate their wage with employers per hour or day hence they do not see this overtime work being overtime. In addition, working overtime in Serbia is a spread practice, hence this is a "normal" situation for working abroad particularly when fees are higher.

Employers` challenges are most often connected to work permit in EU countries, even in this case when employer is given a quota for work permits, there are number of administrative obstacles. This include a challenge with recognition of diplomas that is a requirement for a work permit. The problem are some occupations for which there is no formal education in Serbia (for example for parquet workers), consequently they do not possess diplomas.

Employers further mention pre-financing as a problem, banks which do not want to open bank accounts for workers, being a huge problem. Finally, for small employers it is quite expensive to provide a liaison person residing to in the receiving country, as stipulated by LCPW.

To sum up, in Serbia posting workers is regulated by separate law (LCPW) which is aligned with EU posting directives 1996/2014, though still not been harmonized with the latest 2018 directive. However, certain part of legislation in Serbia have not been harmonized with each other – in particular LCMSI is not in compliance with LCPW, which leaves the loophole allowing for social contributions to be paid at a lower base compared to agreed wage with employer. Another issue is duration of employment contract prior to posting and the treatment of indefinite vs definite employment contract. Regarding PWs protection, they share the similar destiny as the general protection of workers in Serbia, which is characterized with low coverage and high fragmentation of trade union landscape. Even when they are trade union members, they are reluctant to complain officially and provide evidence and start the procedures against employers, except in some drastic cases of fraud and abuse by employer. In addition, trade unions believe that PWs are poorly informed, and that they don't really know what the minimum salary is in receiving country. Employers` challenges are most often connected to work permit in EU countries, complicated procedures, pre-financing etc.

6 Policy Recommendations

- *EU Level*

When it comes to EU regulations toward TCN, one of the recommendations that emerges both from employers and trade union side is to simplify procedure regarding visa/work permits for TCN. Understanding EU concern regarding visas, the argument is that there are bilateral agreements involving quotas, such as the one with Germany, which implies a significant level protection for EU country. Simplification of the procedure should include abolishment of the need for recognition of diplomas of certain professions that do not exist in Serbia, shortening the duration of procedure etc.

- *National Level*

Serbia has significantly improved legislation regulating PW with the introduction of LCPW, which is to certain extent harmonized with EU. This effort needs to continue in particular when it comes to LCPW compliance with EU directive 2018.

However, legal regulations within Serbian state are not completely in compliance. In particular, there is a difference between LCMSI and LCPW regarding the notion of contribution base. This situation of non-payment of contributions on the overall amount of the wage has a long-term consequence for workers, in terms of future pensions, but also short-term consequences in case of injuries/sickness as the sick leave is in that case only 65% of the contribution base (100% in case of employment injury). This is something that needs to be addressed.

Another important issue raised by the trade unions is LCPW provision in the article 8 that regulates conditions for posting, in particular duration of employment contract of PW. This article should be changed in a way that the time worker is posted abroad *is counted in the legal limitation of the duration of fixed-term labour contract*.

When it comes to health insurance, it is important to sign as many bilateral agreements as the major problems arising with the countries where there is no one.

Trade unions argue that there is a need for special collective agreement for posted workers. Apparently, this special collective agreement is prepared and only needs to be approved by the Serbian Government. This should be pushed forward again.

- *Industry Level*

When it comes to recommendations regarding industry level, a recommendation stemming from trade unions is a suggestion for a construction industry that a provision should be made for the employers to form an occupational safety committee within each company. However, this recommendation is not completely clear, and the question is whether it is feasible so this is something that has to be further considered.

- *Enforcement State Agencies*

International cooperation is of the utmost importance when it comes to enforcement of legal rights for PWs. Some improvements have already been made with signing the Protocol of Cooperation with Slovakia, there is an attempt to create a network of labour inspectorate of Western Balkan countries etc. In addition, labour inspectorate in Serbia and tax administration should cooperate on the issue of PWs.

- *Social Partners*

Strengthening trade unions influence is a general policy recommendation for Serbian workers, including PWs. Networking between trade unions and efforts on informing PWs are very important. Good practices already exist, and they should be continued.

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