



**Con3Post**  
Posting of Third Country Nationals



Con3Post – Posting of Third Country Nationals. Mapping the trend  
in the construction sector  
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# POSTING OF THIRD COUNTRY NATIONALS

## A COMPARATIVE STUDY

Sanja Cukut Krilić, Kristina Toplak, Mojca Vah Jevšnik

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## LIST OF ABBREVIATIONS AND ACRONYMS

AMDH - Moroccan Human Rights Association
AVI - Regional State Administrative Agency Southern Finland
BiH - Bosnia and Herzegovina
BUAK - Bauarbeiter-Urlaubs- und Abfertigungskasse (Construction workers leave and severance pay fund)
BWI - Building and Woodworkers' International
CDT - Democratic Confederation of Labour
CEE - Central and Eastern Europe
CGIL - Italian General Confederation of Labour
CGTT - General Confederation of Tunisian Workers
CISL - Italian Confederation of Workers' Unions
CJEU - Court of Justice of the European Union
EFBWW - European Federation of Building and Woodworkers
EMN - European Migration Network
EU MS - Member State of the European Union
FIEC - European Construction Industry Federation
GBH - Austrian trade union for construction workers
IMI System - Internal Market Information System
IT - Italy
JVs - Joint Visits
LI - Labour Inspectorate
LSDB - Competence Centre against Wage and Social Dumping
LSD-BG - Austrian Act to Fight Wage and Social Dumping

LTDH - Tunisian League of Human Rights  
MA - Morocco  
OPZZ - All-Poland Alliance of Trade Unions  
OSH - Occupational Safety and Health  
PBGB - Police and Border Guard Board  
PD A1 - Portable Document A1  
PL - Poland  
POW - Posting of Workers Directive 96/71/EC  
RL - Construction Trade Union Rakennusliitto  
RSU - Unitary Union Representatives  
SI - Slovenia  
TCN - Third Country Nationals  
TN - Tunisia  
UGTA - General Union of Workers of Morocco  
UGTT - Tunisian General Labour Union  
UIL - Italian Labour Union  
UA - Ukraine  
UMT - Moroccan Labour Union  
UNDOK - Anlaufstelle zur gewerkschaftlichen Unterstützung  
UNDOKumentiert Arbeitender (Union Support Contact point for Undocumented Workers)  
UTT - Tunisian Labour Union  
ZZZS - Health Insurance Institute of Slovenia

# EXECUTIVE SUMMARY

The study compares the findings from three Con3Post regional reports on mobility and posting flows between EU-sending, EU-receiving and third countries, namely Slovenia, Austria and Bosnia and Herzegovina; Italy, Belgium, Tunisia and Morocco; and Poland, Finland, Estonia and Ukraine. The study explores the main characteristics of the trend of posting of third country nationals (TCN) to work in the EU construction sector and focuses in particular on i) the labour market dynamics, ii) migration and mobility trends, iii) labour rights, occupational safety and health, iv) vulnerabilities of TCN posted workers, and v) management of transnational workplaces. The findings are based on the secondary sources and empirical research conducted in the period from June to November 2019. Data was collected at the so-called joint visit events, three for each posting flow, during which we conducted nine focus groups with 66 stakeholders, nine foresight workshops with 48 stakeholders and nine seminars with 45 presenters.

The findings indicate that immigration of TCN workers is driven largely by economic discrepancies and wage disparities between the third countries and EU countries, as well as political and economic instabilities in the third countries. We find that some companies have become quite active in the wider European markets providing services through posting of TCNs, which has in many cases become a business model for profit maximisation. We find that the intersection of the migration and employment regimes may enhance the vulnerabilities of posted TCN workers, who tend not to defy or report their employers, on whom they depend not only for employment but also for the renewal of their work and residence permits in the sending country. We find that despite the mechanisms for control and enforcement of national/EU standards, the vulnerability of TCN posted workers persists due to the cloaking effect of the posting employment characterised by subcontracting, cross-border mobility and temporary service provision.

Based on a number of stakeholder-specific recommendations provided in the three Con3Post regional reports we argue that various measures can be taken by employers, public authorities and other stakeholders in the sending, receiving and third countries, as well as at the EU level, to mitigate the negative effects of posting of TCNs. These include improving migration pathways, improving cooperation between enforcement agencies in all involved states and improving access to comprehensive information for posted workers on their labour rights. We provide recommendations for stakeholders on the national and regional level, industry and workplace level and EU level.

# 1 INTRODUCTION

Recent research suggests that the posting of workers,<sup>1</sup> already a highly politicised form of cross-border service provision within the European Union (EU), is not only increasing but developing new forms of recruitment that now include third country nationals (Bogoevski, 2016; Cimerman, 2017; Danaj and Zólyomi, 2018; Rogelja et al., 2016; Rogelja and Mlekuž, 2018). Posting of third country nationals adds significant momentum to debates about labour migration and mobility within the EU, and the impact these new mobility patterns have on the EU labour market. While the Posting of Workers Directive 96/71/EC (POW) does not make any specific provisions of mobility of third country nationals, the Court of Justice of the European Union (CJEU) case law clearly states that host Member States may not impose administrative formalities or additional conditions on lawfully employed third country nationals posted by a service provider established in another Member State (EMN 2013). This decision received a positive response from many employers and proponents of the free movement of services, with the aim of balancing out demand and supply with the EU. However, while many employers claim that there is a need to recruit and/or post migrants in order to fill labour and skill shortages and welcome the changing mobility patterns, sceptics argue that in many cases these claims simply reflect employers' preference for recruiting cheap and exploitable migrant workers over improving wages and employment conditions (Ruhs and Anderson, 2012). There are also concerns that third country nationals may find themselves in a particularly vulnerable position in comparison with both migrant workers and posted workers who are EU citizens.

This comparative report presents the findings from three regional reports that explore mobility and posting flows between three sets of EU-sending, EU-receiving and third countries: 1) Slovenia, Austria and Bosnia and Herzegovina; 2) Italy, Belgium, Tunisia and Morocco; 3) Poland, Finland, Estonia and Ukraine. The research question we pose for this study is: What are the main characteristics of the trend of posting of third country nationals to work in the EU construction sector?<sup>2</sup> The main areas of study include: 1. regional and EU labour market dynamics (skill and labour shortages); 2. labour migration and mobility trends (labour migration policies, recruitment strategies and posting practices of third country nationals); 3. labour rights, violations and representation of posted workers who are third country nationals (access to information, main violations and protection mechanisms); 4. social welfare and OSH (occupational safety and health) vulnerabilities of posted workers who are third country nationals; and 5. managing transnational workplaces (management practices and challenges in the receiving countries).

The findings are based on the secondary sources and empirical research conducted

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1 Posting of workers is defined as the sending of workers by their employer in one European Union Member State to provide a service for a definite period of time of up to 12 months to another Member State. This service provision is regulated by the Posting of Workers Directive (96/71/EC).

2 We use the term construction according to the Statistical Classification of Economic Activities in the European Community classification, i.e. NACE F.

in the period from June to November 2019. Data was collected at the so-called joint visit events, three for each posting flow, during which we conducted altogether nine focus groups, nine foresight exercises and nine seminars (see Figure 1). Joint visits were two-day events that took place in Ljubljana (Slovenia), Vienna (Austria), Venice (Italy), Brussels (Belgium), Warsaw (Poland) and Helsinki (Finland). At each joint visit, the perspective of either a sending, receiving or third country was the focus. Joint visits started with focus group discussions, which were the main source of data collection guided by the research questions. Altogether, 66 stakeholders from ten countries participated in focus groups. Second, an international seminar was conducted, where the perspective of the different stakeholders on the posting trends and issues related to third country nationals were delivered through presentations and discussions open to the public. The total number of presentations was 45. Finally, foresight workshops were conducted on the second day, which followed a foresight methodology using techniques that are participatory, creative, and multidisciplinary, geared at generating systemic understanding, and aimed at generating insights on the dynamics of change, future challenges and options (Da Costa et al., 2008). Foresight workshops were attended by 48 people from ten countries. The participants included representatives of the national policymaking and enforcement agencies (ministries of labour, labour inspectorates, public employment agencies, agencies for social protection), trade unions and employers' associations, non-governmental organisations and research institutions in the countries covered by the report.

The detailed findings from the three regional flows are presented in regional reports (Danaj et al., 2020; Cillo 2020; Kall et al., 2020). This study draws from those reports and uses a comparative multiple-case study approach to provide a comparison of the characteristics of regional posting flows, focusing primarily on the labour market and mobility dynamics within the construction sector. The main findings of this report indicate that immigration of TCN workers is driven largely by economic discrepancies and wage disparities between the third countries and EU countries, as well as political and economic instabilities in the third countries. In the EU construction sector in particular, the demand is high and contractors often resort to addressing the shortages by employing immigrant workers or using posted workers. Some companies have become quite active in the wider European markets providing services through posting, which has in many cases become a business model for profit maximisation. This intersection of the migration and employment regimes, however, may enhance the vulnerabilities of posted TCN workers, who tend not to defy or report their employers, on whom they depend not only for employment but also for the renewal of their work and residence permits in the sending country. We find that despite the mechanisms for control and enforcement of national/EU standards, the vulnerability of TCN posted workers persists due to the cloaking effect of the posting employment characterised by subcontracting, cross-border mobility and temporary service provision.

The report is structured as follows: it starts with a concise review of the existing literature on the posting of third country nationals in general and in the countries covered by the report in particular (Chapter 2). It then moves on to provide a

detailed description of the chosen methodology and data collection process (Chapter 3). The results are divided into five sections, each covering the five main areas of study: Labour market dynamics, labour and skill shortages (Chapter 4.1); labour migration and posting trends (Chapter 4.2); labour rights, violations and representation of workers who are third country nationals (Chapter 4.3); social welfare, occupational safety & health and vulnerabilities of posted workers who are third country nationals (Chapter 4.4); and managing transnational workplaces (Chapter 4.5). Chapter 5 provides the conclusions and a number of forward-looking perspectives that were developed by stakeholders at the foresight workshops. Finally, Chapter 6 provides policy recommendations grouped to address the challenges at the workplace and industry levels, national level, regional level and EU level.

## 2 METHODOLOGY

The research design for this study is based on the comparative multiple-case studies approach. The project has produced three regional case study reports that put focus on seven EU countries (Slovenia, Austria, Italy, Belgium, Poland, Finland and Estonia) and four third countries (Bosnia and Herzegovina, Ukraine, Morocco and Tunisia). Each report covers a sending, receiving and third country perspective. The comparative report builds on the findings presented in these reports. The main research question we posed for this study is: **What are the main characteristics of the trend of posting of third country nationals to work in the EU construction sector?** The research question is broken down into five thematic questions, each with its own specific sub-questions, as outlined below:

### 1. Regional and EU labour market dynamics and shortages

- What is the extent of labour and skills shortages in the EU construction sector in general and in the explored regions in particular (sending, receiving and third countries)?
- What are the dynamics of supply and demand of workers in the EU construction sector in general and in the explored regions in particular (sending, receiving and third countries)?

### 2. Labour migration and mobility trends

- What is the extent of recruitment/posting of third country nationals to work in the construction sector in the explored regions, and what are the projections for the future?
- What are the strategies used to recruit workers from third countries to work in the construction sector in the explored regions?
- How are public policies relating to labour migration/mobility and recruitment of workers responding to imbalances in the labour market in general and the construction sector in particular?

### 3. Labour rights, violations and representation of posted workers who are third country nationals

- What are the main violations of posted TCN workers' rights in the explored regions?
- What are the (policy) responses and other measures in place to safeguard posted TCN workers working in the construction sector in the explored regions?
- What are the main channels that TCN posted workers in construction use

to acquire information? How can information/communication channels be improved?

#### **4. Social welfare, OSH and vulnerabilities of posted workers who are third country nationals**

- What are the main vulnerabilities of workers who are third country nationals and are recruited to work in the construction sector in the explored regions?
- What are the legal mechanisms and practices in place in case TCN posted workers experience work-related accidents or develop occupational diseases? How is their safety and health affected if they are posted by letterbox companies?
- What measures can be introduced at the policy level to reduce the identified vulnerabilities of TCN posted workers?

#### **5. Managing transnational workplaces**

- What are the main challenges encountered by managers of transnational workplaces in the
- construction sector, and how are they managed?

The findings in the reports are based on the secondary sources such as academic and grey literature on posting to and from the countries included in the study and primary empirical data collected through Joint Visits (JVs) organised with representatives of national policymaking institutions, enforcement agencies, social partners and NGOs that have direct experience and knowledge of posting and/or labour migration to and from their country. Altogether, nine joint visits were organised in the period from June 2019 to November 2019 (see Table 1). Each JV had three parts with different objectives. They started with focus group discussions, which were the main source of data collection guided by the Con3Post research questions. Altogether, 66 stakeholders from ten countries participated in focus groups. Second, an international seminar was conducted, where the perspectives of the different stakeholders on the posting trends and issues related to third country nationals were delivered through presentations and discussions open to the public. The total number of presentations was 45. Finally, foresight workshops were conducted on the second day, which followed a foresight methodology using the techniques that are participatory, creative, and multidisciplinary, geared at generating systemic understanding, and aimed at generating insights on the dynamics of change, future challenges and options (Da Costa et al.,2008). The foresight workshops were attended by 48 people from ten countries.

Table 1: Details of data collection, June – November 2019

Country		Date and venue	Perspective	Participants in the Focus Group	Participants in the Foresight Workshop	Seminar Presentations
<b>Posting flow I</b>						
JV 1	Slovenia	5-6.06. Ljubljana	Sending	<b>7:</b> Policymakers, employment agency representative, labour inspector, trade union representative, employers' association representative, researchers	<b>6:</b> social partners, NGO representative, researchers	3
JV 2	Bosnia and Herzegovina	16-17.09. Ljubljana	Third country	<b>7:</b> BiH federal employment institute representative, employment service of Slovenia representative, SI trade unions representatives, researchers from BiH and SI	<b>4:</b> researchers	3
JV 3	Austria	23-24.09. Vienna	Receiving	<b>8:</b> policymakers, enforcement agency representatives, social partners, NGO representatives, researchers	<b>6:</b> policymakers, social partners, researchers	4
<b>Posting flow II</b>						
JV 1	Italy	13-14.06. Venice	Sending	<b>9:</b> trade union representatives, labour inspectors, anthropologist, academic researchers, trade union representative, journalist	<b>7:</b> trade union representative, labour inspectors, academic researchers; trade union representative, journalist	7
JV 2	Belgium	25 – 26.09. Brussels	Receiving	<b>6:</b> trade union representative, employers' organisation representative, labour inspectors, trade union representative, labour inspector	<b>6:</b> trade union representatives, labour inspectors	4

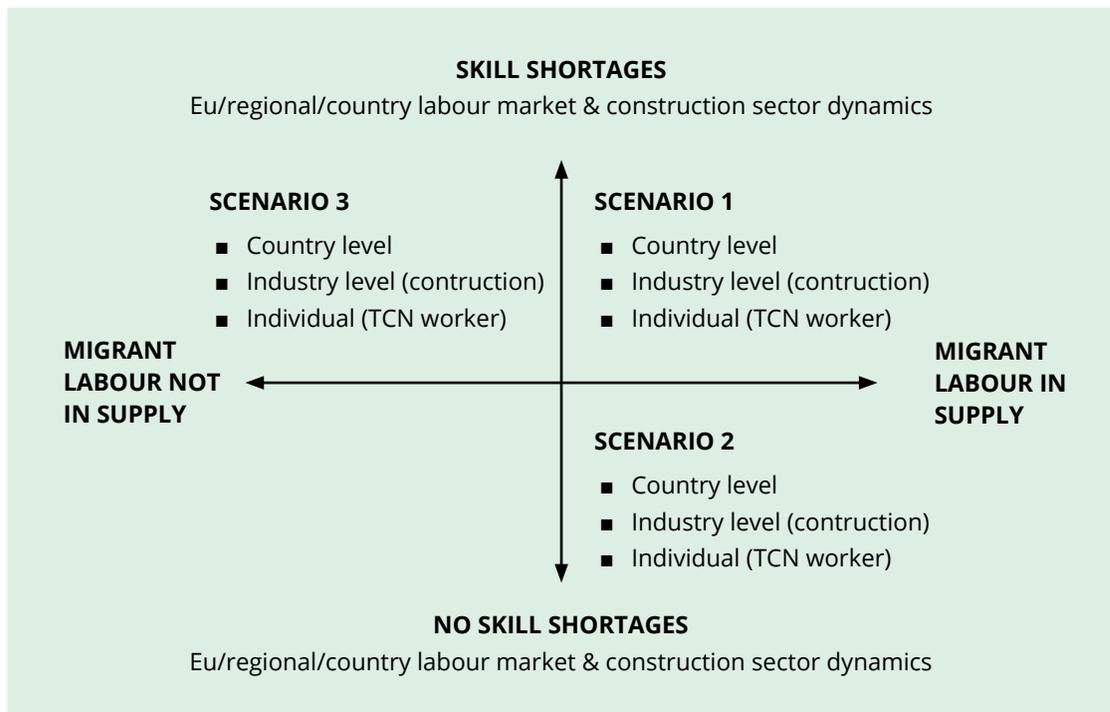
	Country	Date and venue	Perspective	Participants in the Focus Group	Participants in the Foresight Workshop	Seminar Presentations
JV 3	Morocco, Tunisia	18-19.11. Venice	Third country	<b>11:</b> trade union representatives, labour inspectors, expert on labour market dynamics, academic researchers	<b>4:</b> trade union representatives	4
<b>Posting flow III</b>						
JV 1	Finland	19-20.09. Helsinki	Receiving	<b>8:</b> labour inspectors, trade unionists, researchers, police and border guard representative	<b>3:</b> trade unionists, labour inspector, researchers	10
JV 2	Ukraine	10-11.10. Warsaw	Third country	<b>3:</b> representatives from an employment agency, third sector, researchers	<b>4:</b> representatives from an employment agency, third sector, trade unions, media, academia	4
JV 3	Poland	21-22.10. Warsaw	Sending	<b>7:</b> representatives from enforcement agencies, employment agencies, law firms, third sector organisation, trade unions and academia	<b>8:</b> representatives from enforcement agencies, employment agencies, law firms, third sector organisation, trade unions and academia	6

The aim of the foresight workshop was to develop scenarios/narratives about plausible futures concerning the expected dynamics of the EU and regional labour markets in the construction sector, supply and demand of skilled labour, and labour migration/mobility/posting dynamics in the region and each individual country. The guiding question was what could happen in their country/region in the field of our interest by 2035. Scenarios were built around two axes providing the overall scenario logic. The vertical axis represented 'Skill supply and demand on the EU/regional/country level', the extremes of the axis being a) significant skill shortages and b) no skill shortages. The horizontal axis represented the availability of migrant/posted workers; the extremes of the axis being a) migrant/posted labour not in supply and b) migrant/posted labour in supply (see Figure 1). The participants outlined the drivers for all four scenarios but chose to develop the one that they deemed most likely to happen.

The main challenges of data collection were to ensure a balanced representation of relevant stakeholders in focus groups and to involve stakeholders from all countries covered by the research. The participants representing governmental bodies, enforcement agencies, trade unions and academia contributed to all

focus group discussions, while the employers and employers' associations were underrepresented. We did not include posted workers themselves, but we collected data about their vulnerabilities from advocates for their rights (trade unions), NGO employees who provide counselling, labour inspectors who shared specific cases with us, and secondary literature. Despite significant logistical problems, we managed to organise JVs focussing on particular third countries from which posted workers come from by including stakeholders from or representing Bosnia and Herzegovina, Ukraine, Morocco and Tunisia.

Figure 1: Foresight scenario



### 3 LITERATURE REVIEW

More research is needed on the topic of transformations of work and labour market in the EU in light of the current posting trends that include posting of third country nationals. Academic research has not yet caught up with the phenomenon and the niche remains to be filled. Nevertheless, some mentions of posting of third country nationals have been noted. The European Migration Network (EMN) produced a report on the intra-EU mobility of third country nationals in 2013, also focusing on posted workers who are third country nationals. The report notes that the POW makes no specific provisions of mobility of third country nationals, but that based on CJEU case law, host Member States may not impose administrative formalities or additional conditions on lawfully employed third country national workers posted by a service provider established in another Member State (EMN 2013). The report highlights the fact that the mobility rights of posted third country nationals are nevertheless weaker than those of posted workers who are EU citizens. This is to be attributed to national rules and procedures for visa and residence requirements for third country nationals (*ibid.*). Some recently published academic articles on intra-EU mobility patterns also touch upon the problematic of posting of third country nationals, mostly in the context of exploring the changing mobility patterns within the EU. Lens et al. (2019), for instance, note that EU labour mobility is a diverse phenomenon that includes another rapidly growing mobility stream, i.e. third country nationals who are mobile within Europe as posted workers on short-term and circular assignments. Mussche and Lens (2019) write about the Vander Elst case law, which allowed third country nationals to be posted freely without work permits in the receiving countries, and argue that this mobility regime has grown in importance and such cases now even outnumber classical labour migration. They acknowledge the increasing role of the free movement of services in developing a single EU labour market, but also point out to further lessening of the migration sovereignty of Member States.

However, the review of literature on posting of workers in the EU Member States covered by the report shows that while there is a growing number of publications on posting of workers in general, there is little research on the posting of third country nationals specifically.

Academic and grey literature on the posting of workers in **Austria** has been mainly interested in the trends and developments from the receiving country perspective. Early publications (Afonso, 2012; Krings, 2009; Menz, 2003, 2005) were mostly focused on the national responses to the EU-induced liberalisation of the labour market and the role social partners (employers' associations and trade unions) played in shaping these responses. Cases of wage dumping also attracted attention and were documented in various studies (Hollan and Danaj, 2018a; Krings, 2019; Riesenfelder et al., 2012; Schmatz and Wetzel, 2014). Authors like Haidinger (2016) or Schmatz and Wetzel (2014) consider subcontracting and the challenge of enforcing legal obligations along the subcontracting chain due to non-comprehensive chain liability regulation as the main factors for wage dumping

practices in the country. Recently, researchers have looked more closely into the vulnerabilities and the enforcement of labour rights for posted workers. Hollan and Danaj (2018a) wrote on the vulnerabilities of posted workers with a special focus on occupational health and safety risks (OSH). They found out that posted workers are in general less informed on OSH risks and receive less training than local workers due to the negligence of the employers and workers but also due to language barriers. Even when posted workers are exposed to any irregularities or OSH risks, they often do not report their employers, out of fear of losing their jobs. These authors were among the first to identify third country nationals, most of whom from the countries of the Western Balkans such as Bosnia and Herzegovina, Serbia and North Macedonia, as a particularly vulnerable group of posted workers in Austria. In their research, they found that the intersection of the migration and employment regimes enhanced the vulnerabilities of posted TCN workers, who do not defy or report their employers on whom they depend not only for employment but also for the renewal of their work and residence permits in the sending country. Apart from the overall report on construction in Austria by Hofstadler et al. (2016), where posting is discussed as one of the ways employers use to undermine national wage standards, we could find only one report on posting in construction in Austria produced by the European Federation of Building and Woodworkers (EFBWW) and European Construction Industry Federation (FIEC) (Moghadam, 2009), which mostly focused on informing workers of their entitlements and about authorities where they can address their grievances to.

Similar to the literature review on posting to Austria, despite the relatively high number of posted workers abroad and several cases of infringements of the rights of posted workers, especially from third countries, exposed by the media and the ensuing heated public debates, researchers in **Slovenia** have only been investigating this phenomenon in recent years. In both academic and grey literature, information on the posting of TCNs is discussed as part of general questions on posting, a side issue, in most cases as an added layer of vulnerability, an example of bad practice, and/or as particular challenges to enforcing posting rules and providing protection. The topic of posting in the Slovenian literature is mostly discussed from the sending country perspective. The main characteristics of posting of workers from Slovenia, i.e. legal framework, access to information, monitoring and transnational cooperation, among others, are mostly depicted in reports/results of projects on labour mobility (Renar, 2014; Rogelja et al., 2016; Vah Jevšnik and Cukut Krilić, 2016;). A specific topic developed recently is the OSH of posted workers in Slovenia (see e.g. Vah Jevšnik, 2018; Vah Jevšnik and Rogelja, 2018). The posting of TCNs from Slovenia is discussed in the literature on posting from Slovenia to other EU Member States (Bogoevski, 2016; Cimerman, 2017; Rogelja et al., 2016; Rogelja and Mlekuž, 2018) and in the literature on working and living conditions of migrant workers in Slovenia (Medica and Lukič, 2011; Mozetič, 2009). In both sets of literature, the posting of TCNs (mainly from the territories of former Yugoslavia: Bosnia and Herzegovina, Serbia, Kosovo, North Macedonia) from Slovenia to other EU Member States is exemplified as bad practice. Slovenia is labelled a transit country for workers from BiH, and posting is the area or process

where a consistent violation of workers' rights takes place (Bogoevski, 2016; Cimerman, 2017; Mozetič, 2009; Rogelja & Mlekuž, 2018). Several authors point out that working conditions for TCNs posted from Slovenia to Germany and other EU countries are still largely exploitative, which is particularly emphasised in the case of workers from BiH and Serbia (Bogoevski, 2016; Cimerman, 2017; Mozetič, 2009; Rogelja & Mlekuž, 2018). A small corpus of literature on health and safety issues in regard to the posting of workers (Rogelja & Toplak, 2017; Teraž, 2014; Vah Jevšnik & Rogelja, 2018; Vah Jevšnik, 2017) deals with the vulnerabilities of posted workers, including TCNs (employment conditions, undeclared work, language barriers, lack of information, socioeconomic situation of posted workers, etc.). Posting of TCNs has in a few cases been discussed from the perspective of labour law and taxation (Mercina, 2015; Pal, 2015). It should be noted that literature tends to focus particularly on cases of exploitation, and there is a notable lack of assessment of best practices relating to the posting of workers. Posting of construction workers to Slovenia is analysed in only one country-specific report on posting to Slovenia in the construction sector by Renar (2014), published online by the EFBWW and FIEC. The literature shows that posted workers employed in the **Belgian** construction sector frequently experience working conditions characterised by irregularities with regard to remuneration, the payment of social security contributions in their country of origin, working hours and breaks, health and safety at work, and housing conditions. Moreover, they have to face problems caused by language barriers and social isolation, which reinforce economic vulnerability and dependence on their employers, making it difficult to access protection mechanisms and enforcement organisations (Cillo, 2017; Cremers, 2011; Danaj and Zólyomi, 2018; Idea & Ecorys, 2011; Ouali, 2012). These vulnerabilities also affect the working and living conditions of third country nationals employed as posted workers in Belgium (Albin, 2016; Engels, 2020; Grégoire, 2016; Stroobants, 2019). Especially during the past five years, trade unions' denunciations, labour inspectorates' investigations, journalistic inquiries and protests from the workers themselves have revealed a number of cases of exploitation involving TCN posted workers employed in the "cascade of subcontractors" that characterises both the public and private Belgian construction industry (Grégoire 2016). The spread of postings of TCNs is also evident from the academic literature that analyses the transformations of the labour market from a statistical point of view (Mussche et al., 2016; Mussche & Lens, 2018). Between 2008 and 2018 the percentage of postings of TCNs remained stable (around 10%), however there has been a growth in absolute terms (2018: 20,000) that involves posted workers from non-EU Eastern European countries, North Africa, Latin America and Asia that are posted to Belgium by companies located in both EU15 and EU12 Member States. This phenomenon mainly involves Ukrainian posted workers sent to Belgium by Polish companies, Bosnians and Serbians by Slovenian companies, Turks by German and Dutch companies, Brazilians by Portuguese companies, and Moroccans and Kosovars by companies located in Italy, France, Spain and the Netherlands (Mussche & Lens, 2018; MYRIA, 2019). As for the role of **Italy** as a country that sends TCN posted workers to Belgium and Central-Northern Europe, there is no academic literature or statistics that

specifically deal with this topic. However, in recent years journalistic inquiries, trade unions' investigations and enforcement agencies' controls revealed that Italian construction companies have been involved in episodes of severe labour exploitation of TCN posted workers sent to Belgium, Switzerland and Denmark (Acciari & Bellobuono, 2019; Albin, 2016; Sartor, 2020; Grégoire, 2016). For example, in 2015 Belgian trade unions reported the case of an Italian letterbox company working in the subcontracting chain of the construction of the hospital in Liège: this firm employed 20 Indian workers with Italian citizenship, without paying their wages and forcing them to live in containers located inside the construction site. After labour inspections, the judicial system charged the Italian company with human trafficking, and infringements of social legislation and well-being at work obligations (Bernard, 2015; Grégoire, 2016). Another important case concerned the construction of the Rive Gauche shopping centre in Charleroi (Belgium), which involved some Italian companies of the subcontracting chain that employed immigrant workers from Albania, Egypt, India, Kosovo and Romania. After not receiving wages for six months, these workers began to protest and climbed up a crane inside the construction site. Thanks to the protests, the support of Belgian unions and the media denunciation, these workers obtained €1,200,000 in unpaid wages and for non-compliance with the Belgian national collective agreement, and the company was charged with infringements of labour legislation, including human trafficking (Albin, 2016; Furlan, 2016). In the cases of Switzerland and Denmark, investigations carried out by journalists and trade unionists brought to light a case of severe exploitation of posted workers that implicated an Italian company linked to organised crime and specialised in railway construction (Acciari and Bellobuono, 2019; Sartor, 2020). After winning contracts for important public infrastructure projects thanks to offering the lowest bid, this company employed as workers to be posted both Italians and immigrants from North Africa and non-EU Eastern European countries. In order to cut production costs, the company forced workers to work 13-14 hours a day, without respecting breaks, without paying overtime, night work and holidays, and resorting to the gangmaster system to control workers and avoid contacts with trade unions and journalists. However, in both Denmark and Switzerland, some of the workers managed to break the isolation and denounce the working conditions, paving the way for controls by public authorities (Acciari and Bellobuono, 2019; Franchini, 2019; Sartor, 2020). Generally, the discussion on the inflow and outflow of posted workers in **Poland** has been dominated by the legal perspective: most of the publications in this area to date concern the analysis of EU and national law, especially issues regulating employees' rights to decent employment conditions (Ryszka, 2018) or social rights in the context of exercising the freedom to provide services (Kiełbasa, 2017). In the last few years, a large proportion of related publications in the Polish context have had the nature of guides, in which the authors explain how to effectively and legally post workers to other countries (Skibińska & Sokołowska, 2016; Sekita, 2018; Rycak et al., 2018). Nevertheless, Leiber et al. (2019) analysed the practices of posting workers from Poland to Germany, and their work drew attention to the practices of employment and brokering agencies (in the live-in homecare sector),

at the same time pointing to the problems and challenges faced by companies recruiting employees in Poland (e.g., lack of workers, legal uncertainty). Civinskas et al. (2017), taking the perspective of labour inspectorates, described the semi-legal practices regarding the re-posting of Ukrainians through Poland to the Baltic countries. Furthermore, Trčka et al. (2018) analysed internships undertaken by companies and employment agencies in Poland regarding the use of the so-called Polish visas based on the example of false posting of Ukrainian workers from Poland to Czechia. Moreover, Keryk (2018) claimed that in construction and service sectors employment agencies in Poland try to post Ukrainian workers to other countries, using strategies that lead to non-compliance and violation of many employee rights and are therefore pushing workers into a precarious situation. Although in the EU-15 countries the narrative of posting of workers from the Central and Eastern Europe (CEE) to the West is dominated by the social dumping perspective, and studies dealing with the use of posting practices to circumvent regulations in the host country prevail (Bernaciak, 2015), researchers from Poland tend to adopt a slightly different perspective. This discrepancy can be explained by the fact that Poland is one of the main beneficiaries of the posting of employees, which is why employers and posting agencies perceive this form of activity as an opportunity for expansion on foreign markets and an increase in profits. For example, in his research carried out among 16 entities posting workers to various industries (in total over 20,000 issued PD A1), Benio (2016) emphasised the high costs Polish employers incur if they duly fulfil formalities and pay taxes as well as social security contributions, making posted workers a more expensive solution for the recipient of services in a receiving country than hiring local workers. This perspective highlights the fact that if posting is done according to the regulations then it might make such services rather expensive. However, it is clear from the literature that companies sometimes circumvent local rules and regulations to gain competitive advantage in posting (see, for example, Lillie et al., 2014).

From the Estonian perspective, posting has only been studied marginally: a few legal studies were published, focusing on Estonian court cases related to posting from **Estonia to Finland** and on the working conditions applicable to these posted workers according to court rulings (Haljasmäe et al., 2013; Fornasier and Torga, 2013) and research was made covering the labour inspectorates' perspective (Civinskas et al., 2017; Kall, 2018). In the Finnish context, the phenomenon of posting has been studied from the legal perspective (e.g. Tuovinen, 2020), but also from that of worker and union strategies and worker rights and their violations (Danaj and Sippola, 2015; Lillie and Sippola, 2011; Sippola and Kall, 2016), and the construction sector has been the main focus of these studies. Finnish social partners in the construction sector have already for a long time been dealing with the corroding effects that the posting of workers has had on their national industrial relations systems. This led to the introduction of several regulatory measures (Dølvik and Eldring, 2006; Jorens et al., 2012; Sippola and Kall, 2016), safeguarding the generally applicable sectoral level collective agreement that sets wage levels for different categories of construction workers (also applicable to posted workers), and representing migrant workers. In the Finnish construction

sector the main problems that unions and inspectors have raised regarding posted workers have been underpayment and illegal (too intense) working hours/periods (Alho, 2018; Ruotsalainen et al., 2018). For example, posted workers are often not paid according to the right collective agreement category or their full working hours are not recorded and compensated (Ruotsalainen et al., 2018). This happens despite the ruling by the Court of Justice of the European Union (CJEU) in the case *Sähköalojen ammattiliitto v Elektrobudowa Spolka Akcyjna (C-396/13)* dealing with Polish posted workers in Finland, which confirmed that posted workers are eligible for the host country pay rates based on skill levels, and also to holiday entitlement and overtime payments set in the generally applicable collective agreements in the host country (Cremers, 2016; Lillie & Wagner, 2015). Studies show that although the Finnish construction union has been rather active in trying to recruit and represent migrant workers, the hypermobility of posted workers makes this group especially challenging to target (Danaj & Sippola, 2015; Lillie & Sippola, 2011). To date there have not been any studies that focus specifically on the posting of third-country nationals in the Finnish or Estonian contexts, but the PROMO project<sup>3</sup> established that in 2017-18 unions and labour inspectorates in both countries already saw the importance and complexity of the new phenomenon. They pointed out that the posting of TCNs might bring with it even higher levels of exploitation as workers (who do not speak the local language) are more dependent on their employer who might be the only contact that they have and/or trust in Finland and Estonia (Alho, 2018; Kall, 2018; Ruotsalainen et al., 2018). However, they also indicated that it is not always easy to distinguish posted TCNs from other types of temporary labour migrants (Alho, 2018; Ruotsalainen et al., 2018). The available data show an increase in the share of posted workers from Ukraine employed in the construction sector in European countries (Surdykowska & Owczarek, 2018). As noted by Surdykowska and Owczarek (2018), by liberalising its immigration policy in recent years Poland has created attractive conditions to pull employees from third countries who, in addition to taking up employment in Poland, are increasingly being sent by their employers to other EU countries. A review of the literature proves that despite the growing interest in the topic, there is a lack of in-depth analysis of the phenomenon of non-EU nationals (e.g. Ukrainians) being posted through Poland to other EU member states (e.g. to Finland and Estonia).

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<sup>3</sup> <https://www.solidar.org/en/projects/protecting-mobility-through-improving-labour-rights-enforcement-in-europe-promo>.

## 4 RESULTS

### 4.1 Regional labour market dynamics and labour shortages

#### 4.1.1 General economic and labour market conditions

The labour market dynamics in the three regions under study are shaped by the socio-economic conditions as well as the political situation in the selected sending, receiving and third countries. All national labour markets have undergone transformations linked also to the developments in transnational labour markets. National labour markets continue to rely on labour migration and on posting of workers mostly in sending and receiving countries, while immigration is used as a solution to counteract labour shortages to a lesser degree in third countries. Nevertheless, internal labour markets demonstrate some particular trends that are generally different for sending, receiving and third countries.

Table 2: Overview of economic and labour market trends

Third countries	Sending countries	Receiving countries
shortage of workers	shortage of workers	shortage of workers
incentives for workers to work in the sector limited	development of the transnational labour market - use of posted workers	continued reliance on boosting the internationalisation of the labour market through the use of postings
role of bilateral agreements (sending and receiving countries)	continuous growth of the sector	continuous growth of the sector
high rates of participation in the informal economy, low formal enforcement of labour rights	increased level of labour rights enforcement, but limited for migrant/posted workers	increased level of labour rights enforcement, but limited for migrant/posted workers

The sending, receiving and third countries show significant differences in the main indicators of the economic and labour market situation. For instance, in third countries (MA, TN, BiH, UA) the values for average monthly gross wages were €493, €309, €709.7 and €300, respectively, while for sending countries these are €2,588 in Italy, €1,631 in Slovenia and €1,049 for Poland, while for the receiving countries the values were significantly higher: €4,054 in Belgium, €3,929 in Austria, €3,732 in Finland and €1,311 in Estonia. This points to quite significant economic disparities between receiving and third countries and such differences are also

rather pronounced between receiving and sending countries. Additionally, there are also quite significant differences in per capita GDP. Employment rates are generally lower for sending countries, which accordingly also have significantly higher unemployment rates than receiving countries. In comparison with third countries, unemployment rates are lower for both sending and receiving countries, with the exception of Italy, where unemployment rates are higher than in other sending countries.

In third countries the national economies were generally strongly affected by the economic crisis from 2008 on, and the related political instability has also had a negative impact on the general socio-economic situation in these nations. In North Africa, the economies of Morocco and Tunisia also suffered from the economic crisis of 2008, and particularly in the case of the latter, as well as from the political instability following the Yasmine revolution (Cillo, 2020). The situation is very much similar in Bosnia and Herzegovina and Ukraine, where not only an economic downturn but also political instability have significantly influenced national economies and consequently emigration trends, which will be discussed in more detail in section 4.2. of this report.

#### 4.1.2 Economic and labour market conditions in construction

The labour markets of the construction sector in the studied countries have experienced different development dynamics during the last decade. Among the **third** countries, Bosnia and Herzegovina is experiencing a shortage of workers in construction that hinders growth in the sector (Danaj et al., 2020). Consequently, companies in BiH are now offering incentives such as scholarships, apprenticeships, professional training and capacity building actions. Despite such actions, economic development and employment opportunities remain poor, and a lack of proper investments and the lag in external trade exchange are still noticeable trends in the country (Danaj et al., 2020).

In Morocco, the construction sector has experienced strong growth in particular in the public sector due to state investments that since 2010 have facilitated the modernisation of infrastructure (port and airport expansion, railway networks and energy production and transmission) (Oxford Business Group, 2020). The growing urbanisation in the country has also increased the demand for housing, thus stimulating investment in the private sector (Oxford Business Group, 2020). As in Bosnia and Herzegovina, training policies in the form of vocational training and tertiary education to fill skill shortages, as well as bilateral agreements with other states (Germany) and foreign companies (Citroen, Renault), are also important to understand the growth of the construction sector in Morocco (Cillo, 2020).

In Tunisia, in contrast to Morocco, expansions in construction have been recorded mostly in the private sector mainly due to the increasing urbanisation of the population, while the public sector has been significantly affected by political instability and the lack of state investment (Oxford Business Group, 2017).

The construction sector in Ukraine rebounded in 2016 after a contraction, reaching 35.4% growth in 2017 (Timetric, 2018). The sector is expected to expand

further, with the government investing heavily in modernising roads, energy and residential infrastructure, although with regional disparities, with the capital and its surroundings experiencing a booming construction sector and better working conditions (Kall et al., 2020).

In this respect, low employment rates and high unemployment rates, particularly among the young population, are characteristic of all the third countries in the three regions under study. Furthermore, these countries have high rates of participation in the informal economy, which is important both in terms of low possibilities for formal enforcement of labour rights as well as in terms of a lack of labour union representation. Such national labour market trends help to explain the wider socio-economic and political context of emigration trends discussed in the next section. Although also affected by the economic crisis, the construction sectors in the sending countries examined in this study have generally been marked by a development of a transnational labour market that increasingly relies on posted workers.

In Slovenia, the shortage of labour in construction is also among the factors constraining construction companies, although the slow but continuous growth in the construction sector between 2016 and 2018 caused a rather large increase in the workforce employed in the sector (IMAD, 2019). Skill shortages are particularly evident with regard to blue-collar workers, and can be attributed to negative demographic trends, low interest among young people for occupations in the sector due to its bad reputation because of low wages, long working hours, seasonal work, low added value and a lack of an effective apprenticeship system for workers in construction (Danaj et al., 2020).

Like Slovenia, over the last decade Italy has become one of the main countries sending posted workers to Central and Northern Europe, especially in the construction sector (Cillo, 2020). Such a trend could partly be linked to the consequences of the global economic crisis that began in 2008. The recovery of the sector has been made even more difficult due to the crisis in the private sector and the austerity measures adopted in the last decade (European Construction Sector Observatory, 2018a). Multinational companies have intensified the internationalisation process, investing in the EU, Latin America, Africa and the Middle East, and such moves have increasingly involved a number of small and medium enterprises in the sector through the use of subcontracting (ibid.). Italy has been able to offer not only low-skilled but also high-skilled labour in construction, often with already long-standing experience in Italy, which has increased the competitiveness of Italian companies in the EU labour market (Cillo, 2020).

In Poland, the construction sector has grown by 21.5% since 2010, mainly due to a significant increase in the construction of buildings and also EU funding for infrastructure and transport (ECSO, 2019a), although the country has also seen increases in costs (building materials and wages) and struggled with late payments and labour shortages. Nevertheless, the Polish construction sector is expected to grow further due to social expenditure programmes, low interest rates and EU funding (ECSO, 2019a). As in the other two sending countries, there are also growing opportunities for highly qualified workers in the sector. In this regard, it comes as no surprise that construction companies in all the sending countries

under study continue to rely on foreign workers, which will be discussed in the next section of the report.

As for the **receiving countries**, the most important trend in the construction sector is the increasingly evident labour shortages in the sector. These are mainly linked to their particular national labour markets and vocational training characteristics, and also to their position on the transnational labour markets that shape migration and posting flows from the sending and third countries examined in this report.

Austria has experienced shortages of construction workers in recent years, as employment in construction increased by 13.9% from 2010 to 2017, mainly due to an increase in the number of professionals working in this sector (European Commission, 2019a). Austria generally has a well-developed vocational education and training (VET) system, but the training of new construction workers has fallen, and there is, for example no vocational training for professions such as iron benders, who are as a rule are supplied from other EU countries (Danaj et al., 2020).

The labour market of the Belgian construction industry has undergone profound transformations linked to the development of the transnational labour market based on postings. The effects of the 2008 economic crisis have been less felt due to state investment in private infrastructure and the growth in the private housing sector, leaving the housing market relatively unaffected (European Construction Sector Observatory, 2018b; Cillo, 2020). Nevertheless, such growth in the construction industry has not corresponded with a complimentary growth in the domestic workforce employed in the sector. This trend has led to labour and skill shortages in both the private and public sectors, and a continued reliance on boosting the internationalisation of the labour market through the increasing use of postings (Cillo, 2020). Posting has also been a favourable option due to its temporary nature, as construction companies have preferred flexible forms of employment in contrast to the permanent employment arrangements prevailing in the labour market in Belgium (Cillo, 2020).

In Finland, labour and skill shortages are also a pressing issue that might undermine the development of the sector, although digitalisation is seen as one of the alternatives to boost its growth (ESCO, 2019b). The number of vacancies in the narrow construction sector increased by 180% between 2013 and 2018, while the number of tertiary students in engineering, manufacturing and construction decreased by 25.8% between 2010 and 2017 (ECSO, 2019b). Furthermore, labour and skill shortages are due to the mismatch of qualifications and the location of the local workforce (ECSO, 2019b). In Estonia, the number of vacancies also increased considerably, from 266 in 2010 to 704 in 2018, but in contrast to Finland the number of students in engineering, manufacturing and construction experienced an 18.8% increase between 2010 and 2017 (ECSO, 2020). However, it is difficult to estimate the extent of labour and skill shortages in Estonia, and while construction companies generally agree there is a high need for foreign workers, they might just be seeking cheaper labour (Kall et al., 2020).

It can be concluded that the national construction sectors under study experienced considerable expansion in the last decade, and skill and labour shortages are

perceived as one of the main factors limiting their future growth. Its particular characteristics and the business cycles of the construction industry at the transnational and national levels make it one of the main sectors where service provision via posting is in high demand. The labour market and wider socio-economic disparities between sending, receiving and third countries thus have an impact on migration and posting trends, which we focus on in the next section of the report.

## 4.2 Labour migration and posting trends

### 4.2.1 Labour migration trends

The third, sending and receiving countries in all the regional posting flows experience quite different migration trends. **Net migration** is positive for all the sending (Poland, Slovenia, Italy) and receiving (Austria, Estonia, Finland and Belgium) countries, while it is negative for all the third countries (Bosnia and Herzegovina, Morocco and Tunisia, while for Ukraine, no data is available), with exceptionally high negative values for Bosnia and Herzegovina and Morocco, and, to a lesser extent, Tunisia. For emigrants from all the third countries, the preferred destinations are EU countries (especially Germany, France and Austria), Russia (significant outgoing migration from Ukraine) and Israel (a highly ranked destination country for migrants from Tunisia and Morocco) (Cillo, 2020; Danaj et al., 2020; Kall et al. 2020).

Table 3: Overview of migration and posting trends

Third countries	Sending countries	Receiving countries
negative net migration	high rates of emigration	positive net migration
role of bilateral agreements, especially BiH, Ukraine	only lately becoming important sending countries of posted workers, temporary/circular migration	generally immigration countries
high rates of emigration	sending (emigration) countries, especially Poland	restrictiveness, but promoting labour migration to some extent

#### *Labour migration trends in third countries*

While in general **statistics on emigration** are less reliable and complete than those on immigration due to the lack of deregistration of the population when leaving the country, there exist some indications of the extent of emigration from third countries. In Bosnia and Herzegovina, for example, there are also no mechanisms to ensure a quality database of (e)migration due to politically

motivated speculations about its extent (see Čičić et al., 2019, and *Migracioni profil*, 2019). According to the Ministry of Human Rights and Refugees and the Ministry of Security of Bosnia and Herzegovina, the number of emigrants born in Bosnia and Herzegovina and residing in other countries is 1,691,350, and according to the World Bank, this number is 1,638,113, since they only take into account the first generation of migrants (in Čičić et al., 2019). The Ministry of Security estimates that the total number of BiH emigrants and their descendants is around two million (*Migracioni profil*, 2019).

As for labour migration trends from North African countries, Europe has been the main destination for emigration from Morocco and Tunisia (Cillo, 2020). France, Germany and Belgium have been the main destinations since the end of WW2, and Spain and Italy since the 1990s (Khachani, 2019; De Bel-Air, 2016a, 2016b). As for Italy, in 2018 the immigrant population with Moroccan and Tunisian citizenship residing in Italy included 422,980 and 95,071 persons<sup>4</sup>, respectively (Idos & Confronti, 2019).

A similar situation to that in Bosnia and Herzegovina occurs in Ukraine, where the official statistics on emigration are not available (Kall et al., 2020), although Ukraine has long been a country of emigration. Mass migration from Ukraine in recent years came as a response to the social and economic crisis following the military conflict with Russia and unfinished political transformation. Poland has only recently become the main receiving country for Ukrainian migrants, as the wage differences increased and the quality of life worsened in Ukraine. Ukraine itself is thus also facing demographic challenges, with a decrease in the size of working-age population and shortages on the local labour market, particularly in the Western part of the country (Jaroszewicz & Małynowska, 2018). Employment agencies, travel agencies or middlemen have created the migration industry, facilitating the flows of employees and helping them to fulfil the formalities related to entry and employment. Apart from Poland, other important destinations for recent Ukrainian labour migrants are Russia, Czech Republic, Italy, and Belarus, with construction as a major employment sector for both temporary and permanent Ukrainian migrants (IOM, 2016, data for 2014-2015).

The third countries in the selected regional flows also demonstrate a **growing** trend of **outgoing** migration. For instance, in Bosnia and Herzegovina the available statistics show that the number of residence permits increased by 45% between 2018 and 2017 and by 37% between 2017 and 2016, which indicates a strongly growing emigration trend. Most of these permits were issued in Germany, Croatia, Slovenia, and Austria (Čičić et al., 2019). Interestingly, 42.6% of residence permits were issued for a limited period of 3 to 12 months, and less than 10% of those who leave deregister their residence in Bosnia and Herzegovina, which suggests a considerable share of emigration is circular/temporary (most probably also posting). The increase in the number of permits can also be linked to the relatively easier mobility for BiH citizens to the EU enabled by the visa facilitation agreement between BiH and the EU, i.e. *the Agreement between the European Community and*

4 In 2018 the immigrant population with foreign citizenship also included 1,206,938 Romanians, 441,027 Albanians, 299,823 Chinese and 239,424 Ukrainians (Idos & Confronti, 2019).

*Bosnia and Herzegovina on the facilitation of the issuance of visas*<sup>5</sup> since 2007 and the eventual removal of the visas for the Schengen area since 2010.

In Morocco and Tunisia, the situation is slightly different. The introduction of increasingly restrictive migration policies is also influencing emigration from these countries to Europe. Despite the strong migratory pressure from North Africa, since the 2008 global economic crisis and the 2011 North African uprisings, the EU and the main immigration countries – including Italy – have adopted restrictive migration policies. For this reason, during the last decade emigration from Morocco and Tunisia has occurred mainly through family reunification, asylum seeking, entries for students, seasonal workers and highly skilled workers<sup>6</sup> (Cillo, 2020; European Commission, 2019b, 2019c).

As to the **reasons** for outgoing migration, the third countries under study also display similar trends. Firstly, in the case of BiH as well as Ukraine, Morocco and Tunisia, economic reasons are among the most important for emigration, but it is also increasingly caused by the general climate of insecurity and political tensions in the countries of origin (Cillo, 2020; Danaj et al. 2020; Kall et al., 2020). In Bosnia and Herzegovina, a study on emigration intentions in 2019 found that the respondents perceived unemployment, nepotism, corruption, poor living standards, and political issues as the main problems in the country. Institutional discrimination of ethnic minorities is also a highly relevant reason for migration in post-conflict BiH (Efendic et al. in Čičić et al., 2019). Similarly, Moroccan, Tunisian and Italian trade unionists have pointed out that emigration from Morocco and Tunisia is linked to a number of structural push factors, which include the high unemployment rate (especially among young people), poor socio-economic conditions that lead to people seeking better conditions abroad, and in the Tunisian case the political instability that followed the Jasmine Revolution (2010/11) (Cillo, 2020).

**Bilateral agreements** are also important tools facilitating outgoing migration in all the third countries. In Bosnia and Herzegovina, labour emigration is facilitated by public agencies, such as the Labour and Employment Agency of Bosnia and Herzegovina, in cooperation with the employment services of both entities and the Brčko district, which has signed bilateral agreements with Germany, Slovenia, Serbia and Qatar, and therefore acts as an intermediary for the employment of BiH citizens to these countries. The agreement with Germany is specific to the health sector and applies only to individuals who have completed their secondary education, passed a professional exam, and have a B1 level of German (Danaj et al., 2020). In contrast, for Morocco and Tunisia the role of bilateral agreements is not as important in recruiting foreign labour<sup>7</sup>, since only Morocco and Italy have stipulated a bilateral labour agreement and the number of authorised legal entries

5 <https://www.auswaertiges-amt.de/blob/286858/7d400ce193ce935890fd6e3037b52708/eu-bih-abkommen-data.pdf>

6 In the Tunisian case Italy also recorded a growth of unauthorised entries by sea (2018: 5,000 persons; see Idos and Confronti, 2019, p. 133).

7 Belgium stipulated bilateral labour agreements with Morocco in 1964 and Tunisia in 1969. These agreements ceased in 1974, with the stop to immigration introduced after the oil crisis and the adoption of policies for highly skilled immigration.

has been reduced after the economic crisis<sup>8</sup>. However, the restrictive migration policies introduced during the last decade have also had an impact on legal entries allowed by this bilateral agreement, because the release of work permits is subject to the provisions of the annual “Flow Decree” issued each year by the Ministry of Labour and Social Policies, which sharply reduced the entries for work purposes<sup>9</sup>. In 2012, Poland and Ukraine signed an agreement on social security provision, applying to contract workers as well the self-employed (and their families), who are mandatorily covered by social insurance in Poland and Ukraine. This agreement makes it possible to, among other things, add up insurance periods in the two countries (on the basis of which various entitlements and benefits will be calculated) and avoid double payment of insurance for the same work (European Migration Network, undated).

### *Labour migration trends in sending countries*

The **sending** countries of Slovenia, Estonia, Poland and Italy have generally only in the last decade become a pool for sending a significant amount of third country workers to receiving countries via the use of posting. For instance, Slovenia has recently become a destination country, especially for TCN workers from several Western Balkan countries (especially Bosnia and Herzegovina and Serbia, but also Kosovo, North Macedonia and Croatia), while outgoing migration is mostly towards the EU countries of Germany and Austria and there is also return migration to Serbia, Croatia and Bosnia and Herzegovina (Danaj et al., 2020). The extensive labour migration from the Western Balkans to Slovenia is a result of historical reasons, geographical proximity, and the comparatively better economic situation of the receiving country (Danaj et al., 2020). After joining the EU, Slovenia grew economically and received more migrant workers from the region, a trend that declined during the economic crisis of 2009 and restarted in 2015 (Danaj et al., 2020). The Slovenian government supported the recruitment of workers from the region by signing a bilateral agreement on the employment of workers with Bosnia and Herzegovina<sup>10</sup> (March 2013) and later with Serbia<sup>11</sup> (September 2019).<sup>12</sup>

Workers from Bosnia and Herzegovina are recruited via both formal channels (e.g. through employment services) and informal channels (e.g. through individual workers, personal acquaintances or family ties). While most workers from Bosnia and Herzegovina go to Germany, Austria, Croatia and Serbia, a considerable number also go to Slovenia, as it was easier to obtain residence and work permits

8 Bilateral labour agreement between the government of the Italian Republic and the government of the Kingdom of Morocco, 21 November 2005 [https://www.lavoro.gov.it/temi-e-priorita/immigrazione/focus-on/accordi-bilaterali/Documents/MA\\_AccordoBilateraleMarocco.pdf](https://www.lavoro.gov.it/temi-e-priorita/immigrazione/focus-on/accordi-bilaterali/Documents/MA_AccordoBilateraleMarocco.pdf)

9 In 2018 the Annual Flow Decree authorised 30,850 entries from the 32 non-EU countries with which Italy has stipulated bilateral agreements (<https://www.interno.gov.it/it/notizie/decreto-flussi-2018-ingresso-30850-lavoratori-non-comunitari>).

10 <https://www.uradni-list.si/1/objava.jsp?sop=2012-02-0086>

11 <https://www.uradni-list.si/glasilo-uradni-list-rs/vsebina/2019-02-0033?sop=2019-02-0033>

12 Conditions for their recruitment include registration with the Employment Office in the country of origin, a justifiable demand for labour outside the domestic market, a one-year contract with a Slovenian employer, which upon completion gives them unrestricted access to the Slovenian, and eventually EU, labour market.

there in comparison to, for instance, Germany, where procedures at the embassy are supposedly much slower. The swifter procedures for Slovenia were used as a pull factor that has over time developed into a sort of a business model, in which Slovenian companies recruit workers from the former Yugoslav republics (not only from Bosnia and Herzegovina, but lately also from Kosovo) in order to send them to other EU countries, often through posting (Danaj et al., 2020).

While Italy has become a significant country of immigration in recent decades, the 2008 economic crisis also caused a sharp increase of unemployment in the Italian construction industry. This situation pushed both Italian and immigrant workers who have long resided in Italy to accept more flexible forms of work, such as being employed as posted workers, in order not to lose their jobs (Cillo, 2020). On the other hand, this composition reflects the specific racial stratification that emerged since the 1980s within the Italian labour market, including the construction sector. This industry, indeed, has been one of the main employment sectors for male immigration from North Africa (Egypt, Tunisia, Morocco) and Eastern Europe (Albania, Romania, Moldova, countries of the former Yugoslavia) (Cillo, 2020).

Unlike Slovenia but like Italy, Poland has historically been an important country of emigration including large outflows following the country's EU accession in 2004 (GUS, 2017). What is crucial when analysing the posting of TCNs is that Poland has, like Slovenia, recently become a country of immigration, with mass inflows of temporary and circular character. Like in Slovenia, the embeddedness into regional migration flows, geographical proximity and historical links to the sending countries are also important (Kall et al., 2020). In 2006, Poland introduced new regulations which continue to give access to the Polish labour market for a period of six months (out of 12 months) based on a statement from an employer wishing to hire a foreigner (without the need to obtain a work permit). The regulations were designed for nationals of six countries<sup>13</sup>, but have been predominantly used by Ukrainian nationals, especially since the 2014 military conflict in Ukraine.

According to the OECD, Poland also ranked as a top destination for temporary labour migrants in the world in 2017 (OECD, 2019). Data for 2016 show that over a tenth of the related statements registered were by companies operating in the construction sector (Górny et al., 2018). Finally, it is worth adding here that in 2012 Poland and Ukraine signed an agreement on social security provision, applied to contract workers as well as the self-employed (and their families), who are mandatorily covered by social insurance in Poland and Ukraine.

### *Labour migration trends in receiving countries*

The selected **receiving** countries of posted workers are also important receiving countries for immigrants. Austria seems to be predominantly a receiving country for both EU and TCN workers, mostly coming from its neighbouring states of Hungary and Germany, and also from the region of South-East Europe (Serbia, Croatia and Romania) (Danaj et al., 2020). Despite a restrictive labour migration regime, since 2011 immigration from Central and Eastern Europe to Austria has

<sup>13</sup> Including Armenia, Belarus, Russia, Ukraine, Georgia and Moldova.

doubled, if we consider long-term and temporary migration (Fuchs et al., 2018). Nonetheless, TCN labour migration that aims to fill labour shortages is supported by the Austrian government. For example, Austria included several construction sector occupations, such as technicians, roofers, concrete constructors, carpenters and tilers, in a list of occupations facing shortages to increase migration from non-EU countries in 2018 (European Commission, 2019a). The significant differences in wage levels between Austria and new EU Member States, as well as non-EU countries in the Western Balkans, create strong incentives for labour migration, even if immigrants are not always paid the rates of Austrian collective agreements (Gagawczuk, 2019a; Krings, 2019).

**Finland** receives also both EU and TCN migrants and its immigrant population, including the workforce with foreign citizenship, is continuously increasing. In 2018, the Finnish government also approved a migration policy programme, aiming to further promote labour migration, as labour shortages in different sectors are seen as a problem (Ministry of the Interior, 2018). The biggest groups moving to Finland were Iraqis, Estonians and Russians. In 2017, the Finnish Immigration Service handled 15,509 first/extended residence permit applications for work, of which 90% were granted (Ministry of the Interior, 2018).

In Estonia, the law also provides a possibility to use a short-term employment scheme for TCN migrants (working up to 365 days during a 455 day period), and the number of workers using it has been increasing, reaching 21,757 in 2018, up from only 8,376 in 2017 (Karm, 2019). It offers a quicker and simpler way for employers to recruit TCNs as it is not taken into account when calculating Estonia's annual immigration quota (0.1% of the population). These TCNs must be paid at least the Estonian national average wage, with some exceptions such as seasonal work (ERR, 2018; Karm, 2019). This means that using this way of hiring construction employees is potentially more expensive than hiring them through some other CEE country, where only the national minimum pay could be mandatory. Furthermore, hiring TCNs through some other country and sending them to work in Estonia as posted workers can also be financially beneficial for Estonian companies, as this way workers would be entitled to only the Estonian national minimum wage. This helps to explain why Estonia has also become a receiving country of (TCN) posted workers.

Since the Second World War, **Belgium** has been a country of immigration, particularly from Southern Europe and North Africa and Sub-Saharan Africa. Since the 2000s, there has been a diversification of immigration, with an increase in female immigration and that from Eastern Europe (Martiniello et al., 2013). Regarding immigration of TCNs, Belgium has introduced restrictive migration policies aimed at encouraging high-skilled immigration (Mussche and Lens, 2018), which has meant that in 2018 immigrants from third countries made up about 33% of 1,259,091 foreign citizens with a residence card or a residence permit (Myria, 2019, p. 32). For TCNs, family reasons are the main reason for staying (42%), following by international protection (16%), studies (15%) and paid activities (13%) (Myria, 2019, p. 37).

## 4.2.2 Posting trends and characteristics

As noted in all three regional reports, construction is the sector where the use of posting as a means of recruiting workers is most widespread (Cillo, 2020; Danaj et al., 2020; Kall et al., 2020). This holds both for the posting of workers from EU member states as well as for posting of TCNs who are posted through an EU country to another country. Many workers from third countries might also be posted, at some point in their working life, and sometimes immediately, although their posting is not conducted directly from their country of origin but can be traced in the overall data of workers posted to and from the different EU Member States. Posting might be an attractive option not only for employers, but also for TCNs in terms of comparatively higher wages than those received in the country of labour migration (e.g. Slovenia, Italy, and Poland).

### *Posting of workers in Austria and Slovenia*

The number of posted workers received in Slovenia is much smaller than those sent from Slovenia to other EU countries; for example, in 2018, the number of incoming posted workers was 9,173. In contrast to 2017, when Slovenia issued the highest number of portable documents A1 forms, also referred to as PDs A1 for outgoing posted workers<sup>14</sup> (almost 191,000), in 2018 only 127,059 PDs A1 were issued, or 12.4 % of the employed population in Slovenia (De Wispelaere et al., 2020: 20, 21), which in relative terms still makes it one of the main sending countries. The sudden decrease between 2017 and 2018 could be ascribed to regulatory changes such as the new law on transnational provision of services (i.e. posting of workers) that came into force in January 2018. It seems that stricter conditions for issuing PDs A1 make Slovenian employers more cautious in deciding whether or not to post workers abroad (Danaj et al. 2020). However, the negative trend was short-lived, as in 2019 the number of issued PDs A1 again rose to 146,157.<sup>15</sup> Slovenia is among those Member States that send more than 40,000 PDs A1 to a single country. In 2019, the main countries of destination for posted workers were Germany, with over 59% of posted workers, Austria, Belgium, Croatia, and Italy. The main countries of origin of posted workers that Slovenia received in 2018 were Croatia, Germany, and Austria (De Wispelaere et al., 2020: 23-24). Data provided by the Health Insurance Institute of Slovenia (ZZZS) indicates that the total number of TCN posted workers in 2019 was around 25,200,<sup>16</sup> out of whom more than 50% were from BiH (almost 17,000), 6,181 from Serbia, and around 2,000 from Kosovo. The rest were mostly from North Macedonia and Montenegro. As in the

14 According to Article 19 of the Implementing Regulation (EC) No 987/2009) a certificate, also known as the portable document A1 form, is provided by the Member State where an employer is registered to at the request of that employer or a person employed by them, which establishes that the holder is properly affiliated with the social security system of the Member State which has issued the certificate. PDs A1 are used for various cases: pursuing activities in another Member State on the basis of Article 12; pursuing activities in two or more Member States on the basis of Article 13. Most of the data on posting are estimates based on the number of PDs A1 issued by the sending countries (for more see De Wispelaere et al., 2020).

15 E-mail correspondence with Health Insurance Institute, March 26, 2020.

16 E-mail correspondence with Health Insurance Institute, March 26, 2020.

other two regional flows, the dominant posting sector for Slovenia is construction. In 2018, 59.4% of the workers in the Slovenian construction sector were posted (De Wispelaere et al., 2020: 34), while only 70% of those employed in construction were Slovenian citizens.<sup>17</sup> The ratio changed in 2019, as 62% of those employed in the sector were Slovenian citizens, and 38% foreign citizens,<sup>18</sup> of whom 22% were from Bosnia and Herzegovina, 8% from Kosovo, 3% from North Macedonia, and 6% other nationalities.<sup>19</sup> The share of TCN construction workers that are posted is estimated between 30-50% of the total number of the outgoing posted workers in the sector.<sup>20</sup>

Posting to Austria increased consistently from 2010 (59,642) to 2017 (141,046)<sup>21</sup>. From 2017 to 2018, however, the number of posted workers to Austria decreased to 119,907. Posting from Austria occurs at much lower levels but follows the same upward trajectory, from 25,957 in 2010 to 88,117 in 2018. Most posted workers come from Germany (60,753) followed by Slovenia (17,405), Slovakia (9,645) and Italy (7,193). Posting from Austria primarily occurs to Germany (26,108), Italy (3,638), Switzerland (3,274) and France (2,561). The little data available indicates that most posting to and from Austria occurs in construction: 45.6% of workers posted from Austria in 2018 and 64.3% of those posted to Austria in 2017 (De Wispelaere & Pacolet, 2019). However, the real share is likely to be even higher (Danaj et al., 2020). Posted workers thus play a significant role in the Austrian construction sector, and posting is becoming increasingly important as a form of labour migration. While foreign labour has always played an important role in the Austrian construction industry, between 2011 and 2016 the number of migrants directly employed by Austrian construction companies increased by 20%, while the number of construction workers posted to Austria doubled (Krings, 2019: 29). The ZKO<sup>22</sup> figures differ from the PD A1 figures, as there were 657,289 ZKO3 notifications in 2017 according to data provided by the Austrian financial police, while the number of PDs A1 reported was 141,046. The ZKO3 figures for 2018 and 2019 have been lower, 206,209 and 212,233 respectively, which makes 2017 a particularly high traffic year for Austria's incoming posted workers. ZKO3 data also clearly shows that most TCN posted workers to Austria come from Bosnia and Herzegovina, with 38,107 workers posted to Austria in 2017, 3,176 in 2018, and 6,138 in 2019. Other relatively important third country nationalities posted to Austria are Serbian, Kosovar, and North Macedonian workers, but the figures are much smaller than for BiH workers.

17 <https://www.stat.si/StatWeb/en/News/Index/8278>

18 <https://www.stat.si/StatWeb/en/News/Index/8004>

19 <https://www.stat.si/StatWeb/en/News/Index/8004>

20 E-mail correspondence with Health Insurance Institute, March 26, 2020.

21 Unless indicated otherwise, all numbers are from De Wispelaere et al., 2020.

22 Apart from the PD A1 forms, Austria also collects national posting data based on the number of posting notifications (so-called ZKO4 forms for the transport sector and ZKO3 forms for all other sectors) submitted to the Austrian Financial Police by employers who intend to post workers to Austria in accordance with Article 19 Paragraph 3 of the Austrian Act to Fight Wage and Social Dumping (LSD-BG).

### *Posting of workers in Belgium and Italy*

As Mussche and Lens (2018) pointed out – and this is no particularity of the Belgian case but a general characteristic of migration policies across the EU – over the years the posting of TCNs has become a way of overcoming the restrictions imposed on labour migration by Belgian legislation, which incentivises the entry of a highly skilled workforce. For this reason, “the profile of third country nationals [posted from EU28 Member States to Belgium] is very different from that of third country nationals coming to work in Belgium under the cover of a work permit. In fact, work permits mainly cover exceptional categories (highly qualified people and managers)” (MYRIA, 2019, p. 97).

Indeed, in 2018, “more than 90% of TCNs posted from EU28 countries entered Belgium as employees rather than as self-employed workers” (Mussche & Lens, 2018). Additionally, the sectorial distribution shows that among TCN posted workers, 50% are employed in the construction sector, 15% in the transport sector, 7% in the metallurgy sector and 3% in the maintenance of electrical installations (MYRIA, 2019, p. 97).

In recent years Italy has become one of the main sending countries, doubling the number of outgoing posted workers since 2015 (2015: 83,277 PDs A1; 2018: 167,264<sup>23</sup>) (De Wispelaere & Pacolet, 2016b, 2019).<sup>24</sup> There is no statistical data on sectors where the postings take place, as the Italian Ministry of Labour has not yet published the data broken down on an annual basis; however, the indications are that the construction sector is strongly involved in posting (Cillo, 2020; DeWispelaere & Pacolet, 2019).

The recruitment of workforce for posting involves workers with different migration status and includes mainly Italian workers and immigrant workers from North Africa and Eastern European countries (EU and non-EU) who have long resided in Italy. To a lesser extent, Italian companies also employ workers specifically recruited for posting from other EU Member States (especially Eastern European countries) and third countries, thus transforming Italy into a “transit country” (Cillo, 2020).

According to statistical studies published by the European Commission, in 2018 Belgium ranked third for incoming postings (156,695 PDs A1), following Germany (428,935 PDs A1) and France (262,126 PDs A1)<sup>25</sup> (De Wispelaere & Pacolet, 2019). Yet, if we consider statistics obtained from databases of the LIMOSA registration system<sup>26</sup>, Belgium has recorded 249,755 individual posted workers, registering

23 In 2018 Italy issued 148,863 PDs A1 according to Article 12 and 18,401 PDs A1 according to Article 13 (De Wispelaere & Pacolet, 2019).

24 The main receiving countries are France (37,088 PDs A1), Switzerland (36,414 PDs A1), Germany (18,070 PDs A1), Spain (10,483 PDs A1), Austria (7,193 PDs A1), and Belgium (6,016 PDs A1) (De Wispelaere & Pacolet, 2019).

25 This data considers only PDs A1 issued by competent Member States according to Article 12 of the Basic Regulation, which includes employed and self-employed persons posted to one Member State

26 Data published by the European Commission is based on PDs A1 issued by sending countries. The LIMOSA data is based on a mandatory registration system of incoming posted workers introduced in 2007, which makes it possible to identify the number of unique persons posted to Belgium. As highlighted by the European Commission, “The figures [provided at European level] may underestimate the actual number of posted workers. From a receiving perspective, data from national compulsory registration systems show a relevant gap between EU and national figures, with the latter being up to five times higher

a marked and constant increase, which has almost tripled the total number of individual posted workers since 2009 (83,958) (Idea & Ecorys, 2011; De Wispelaere et al., 2020). Belgium receives posted workers mainly from neighbouring countries (France, Germany, Luxembourg, Netherlands) and the main sending countries (Poland, Portugal, Slovenia, Italy and Romania) (De Wispelaere & Pacolet, 2019; Myria, 2019).

As for the sectorial distribution, Belgian stakeholders reported that the construction industry is the sector that uses mostly posted workers (Cillo, 2020). Indeed, the latest available data relating to distribution by sectors show that in 2015 61.9% of such workers were employed in the construction sector (De Wispelaere & Pacolet, 2017)<sup>27</sup>.

Over the years, Belgium has also experienced an increase in the posting of workers from third countries (cf. Table 4). In 2018, “LIMOSA registered 28,000 third-country nationals, 20,000 (72%) of whom were posted to Belgium from other EU member states, i.e. without a Belgian work permit” (MYRIA, 2019, p. 94). The main sending countries are Poland, Slovenia, Portugal, Germany, Italy and the Netherlands, while the main countries of origin of TCNs are Ukraine, Turkey, Bosnia and Herzegovina, Brazil, Kosovo and Morocco (Mussche & Lens, 2018; MYRIA, 2019) (cf. Table 5). Italy is included in the top 10 member states that send posted workers to Belgium, and is among the countries that send posted workers from third countries, in particular from Kosovo and Morocco (De Wispelaere & Pacolet, 2019; Mussche & Lens, 2018; MYRIA, 2019).

### *Posting of workers in Estonia, Poland and Finland*

As regards the second analysed sending country, Poland is the most significant member state regarding the number of PDs A1 issued. In 2018, Poland issued 238,525 PDs A1 under Article 12 of the Basic Regulation. Among these, 120,540 PDs A1 referred to postings from Poland to Germany, 2,990 from Poland to Finland, and 208 from Poland to Estonia. Poland also remains a receiving country for posted workers, with a total 26,714 PD A1 (with the largest number of 12,757 PDs A1 referring to postings from Germany to Poland). Among the 1.1 million PDs A1 issued to persons covered by Article 13 Poland has issued a third (351,000 PDs A1) (De Wispelaere et al., 2020). For several years now, Finland has been a receiving country of a large number of posted workers relative to the small size of its economy, especially in the construction sector. While a few years ago Estonia was mainly a sending state in terms of posted workers, currently it plays a dual role

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in the case of Denmark” (European Commission, 2016, p. 57). A counterproof that the statistics relating to A1 PDs underestimate the extent of the posting of workers is obtained if we consider the number of A1 PDs registered by the LIMOSA system: “The same person can come to Belgium for several short-term projects. The 230,000 workers posted in 2018 correspond to around 847,000 effective declarations, and the average duration of their service is around 107 days” (MYRIA, 2019, p. 94). Moreover, it must be taken into consideration that the LIMOSA system provides underestimated data as it collects an “incomplete picture of the number of posted self-employed persons because there is only a notification requirement for 3 ‘high-risk sectors’: construction, meat and cleaning” (De Wispelaere et al., 2020, p. 6).

27 In 2015 130,597 individual posted workers out of 210,815 were employed in the construction sector (De Wispelaere & Pacolet, 2017).

of being both a sending and receiving country, although sending still dominates. The lack of reliable numbers is due to the fact that even if companies register that they are using posted workers (and not all of them do so), neither in Estonia nor in Finland is the company hiring posted workers required to report the nationality of their workers.

Furthermore, there are several schemes to enter the country for the TCNs, including the short-term employment option. In Estonia, a TCN who is a posted worker should be registered in two different employment registers: with the Police and Border Guard Board (PBGB) before the commencement of employment and with the labour inspectorate. In practice, it seems that there are discrepancies between these numbers, suggesting that not all relevant registrations are made. If we nevertheless look at these 'imperfect' statistics, the Estonian PBGB reported 21,757 short-term employment registrations in 2018 (mostly Ukrainians, Belarusians and Russians) out of which 614 were posted workers (Karm, 2019). Tuovinen (2020, p. 65) highlights that precise information about foreign workers is also lacking in Finland, as there is no central authority collecting and integrating the data. Furthermore, because the cooperation between the Finnish and Estonian inspectorates is already quite extensive and smooth, some Estonian companies set up branches in Latvia or Poland to circumvent the enforcement authorities by sending Ukrainian workers to Finland.<sup>28</sup>

Ukraine has also become an important source of posted workers to the EU Member States (Mussche & Lens, 2018), and again the sector which receives the most posted workers from Ukraine is construction.

To summarise, posting of TCNs seems to happen for several reasons. These include the labour market disparities between the sending and receiving countries (as highlighted in the previous section), established migration routes and an ever growing migration industry, but also attempts by some companies to try to gain a competitive advantage by avoiding inspections and opting out of more expensive and difficult ways of hiring migrants. Restrictive migration policies that favour the entry of predominantly 'highly-skilled' workers, despite significant needs for the labour force in other sectors of the labour market, have also caused an expansion of temporary forms of labour migration, among them also the posting of workers. In all the analysed regional flows, construction is the sector most affected by the use of the posting scheme.

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28 There is a bilateral agreement between the Estonian labour inspectorate (LI) and the Regional State Administrative Agency Southern Finland (AVI), that includes two meetings annually, exchange of information about legislation and companies (with a focus on posting), exchange of inspectors, and joint inspections. The Estonian LI also has a trilateral agreement with Latvia and Lithuania, which involves one meeting annually to discuss common problems in the labour market, and exchange the information on legislation. It also has a bilateral agreement with Poland, which involves one meeting every two years, with a focus on posting (Kall, 2018). There have also been inspector exchanges between Finland and Sweden and Finland and Germany and Estonian and Finnish LIs have taken part in different (EU-funded) projects – all of these activities help to build personal relations and more efficient communication (Alho, 2018; Kall, 2018). These kinds of cooperation practices have not yet taken place with the Ukrainian inspectorate.

### 4.3 Labour rights, violations and representation of posted workers who are third country nationals

This section of the Con3Post comparative report discusses labour rights, violations and representation of third country nationals as posted workers focusing on labour rights violations of TCN's workers in construction, and on channels of information for TCN posted workers in the 11 countries included in the project. It also provides basic information on regulatory, collective and workplace collective representation. Additionally, the section includes a comparative insight on relevant national competent authorities and their role in addressing posting issues in seven EU member states, and discusses the relevant legislative frameworks in place.

#### *Labour rights violations with regard to posted TCN workers*

Posted workers in the construction sector who are TCNs can be more exposed to labour rights violations than their EU counterparts, due to their uncertain legal status and multiple layers of vulnerabilities that they experience. As Con3Post regional reports and previous research (Danaj & Zólyomi, 2018, p. 35) reveal, posted TCN workers are increasingly exposed to irregular employment, various forms of labour exploitation and violations of their rights, which have severe implications not only for their social and economic positions, but also for their safety and health. Violations of labour rights of TCN posted workers already occur regularly in their countries of origin – which might influence their decision to migrate to another country. Additionally, their attitudes towards institutions that provide collective protection and how they apply and understand measures for occupational safety and health at work in the countries to which they are posted, might be shaped by their often unfavourable experiences in these domains in their home countries. Our research shows that a high degree of informality in employment relations and a high share of undeclared work in Bosnia and Herzegovina, Morocco, Tunisia and Ukraine, are also putting workers in vulnerable and precarious situations in their own countries.

In Tunisia, high rates of shadow economy participation and anti-union discrimination are the main reasons behind worker's vulnerability. The underground economy has grown as a consequence of the country's economic, social and political instability following the Jasmine Revolutions and constitutes a structural feature of various sectors, such as agriculture, textiles, tourism and construction, which employ the largest number of undeclared workers. These workers usually do not have job alternatives and are obliged to work in indecent conditions, without social protection or health insurance. Moreover, as highlighted by Trabelssi (2014), "the informal economy also results in considerable financial losses for social security funds that are now facing structural deficits that must be covered by the national community working mainly in the structured and formal sectors".

In Morocco the informal sector constitutes a structural part of the economy, which employs around 2.4 million workers operating in non-agricultural sectors (DTDA, 2018) and involves 31% of the value of the construction sector (CGEM, 2018). Even

in the case of Moroccan workers, undeclared work is often the only alternative to unemployment, and it entails job insecurity, low wages, and a lack of social rights, including those of union organisation (CGEM, 2018; DTDA, 2018).

In Ukraine, construction remains a sector with persistently high levels of informal employment. In 2018, 32% of construction workers were employed informally, and it is estimated that between 85 and 90% of all employees receive part or whole of their wages as 'wages in envelopes', which is particularly the case in the construction sector (Santos, 2020). This means that the officially published data on the average monthly wages does not reflect the actual ones.<sup>29</sup>

The situation is quite similar in Bosnia and Herzegovina. In 2009, a third to half of all employment in BiH was believed to be informal, although only around 5% of overall payroll contributions in the country are lost in total through informal employment, as many informal workers also receive social security benefits (ILO, 2011; Schneider, Buehn & Montenegro, 2010). Informal employment is more widespread in non-urban areas, and around 40% of all construction workers work informally, while semi-informal salary schemes are also common in this sector. Forms of informal employment include: working while receiving unemployment benefits, working informally while not receiving any form of social protection, and informal networks of formal workers who work informally on mainly smaller and private construction sites (for example, the small housing and reconstruction market) (ILO, 2011). Although there is no more recent data, the participants in the Con3Post research believe these issues continue to persist to the present day. Workers in BiH are often unaware of the implications and possible consequences of working informally, and they have a weak bargaining position in relation to their employers.

While the informal economy and undeclared work in sending countries (Slovenia, Poland and Italy in this case)<sup>30</sup> are not as widespread as in the third countries included in the report, multiple irregularities are identified in terms of the implementation of the legal framework for posted workers who are TCNs.<sup>31</sup> National labour authorities in sending countries, especially labour inspectorates, regularly report on breaches of posted workers' rights. Control activities are carried out while following the requests from foreign competent authorities (via the Internal Market Information (IMI) system) or are the result of complaints lodged by posted workers. The latter is far less common for reasons that will be addressed in the next sub-chapter of the report.

29 Nevertheless, over the last five years pay and conditions for construction workers have improved, as also noted by the stakeholders. In particular, the wage differences in the construction in Ukraine and Poland are narrowing (while the costs of migration, including family separation and higher living costs in Poland, remain constant).

30 As Slovenia, Italy and Poland are sending and receiving countries of posted workers, the data collected in the research shows that irregularities are documented in both parts of the posting process. Since a detailed discussion on their role as receiving countries is rather out of the scope of this report, we are going to focus on countries' role as sending countries.

31 The data collected in the Con3Post research also included EU citizens who are posted workers. and in many cases it was difficult to extract the data that would only contain TCNs. There are significant similarities between the two groups, but we were also able to identify important specificities of TCNs as posted workers.

The main violations of workers' rights identified in the sending countries by the regional reports include:

- non-payment of remuneration for work and other work-related receivables (PL, SI),
- failure to ensure safe and hygienic working conditions (PL),
- irregularities of the employment contract (double employment contracts or missing mandatory components) or the documentation necessary for posting (PDs A1) (IT, SI, PL),
- violations regarding social security contributions and tax payments in the sending country (IT).<sup>32</sup>

Violations regarding salaries:

- double pay slips (SI),
- disregard of minimum wages and collective agreements (IT), payment according to the minimum standards of the sending country (IT, SI, PL),
- non-payment for overtime, night work and holiday employment (IT),
- wage deductions for accommodation and travel (IT),
- restitution of a part of the salary to the employer (IT).

Many violations are related to the legislation on working hours, which include: working at night and on non-weekdays; overtime beyond the limits permitted by law; double shifts; no breaks; no holidays; and working six or seven days a week (Cillo, 2020). In Slovenia, the violations of workers' rights also include inadequate lodging provided by the employer (Danaj et al., 2020).

In sending countries like Slovenia, Italy and Poland a particular challenge remains letterbox companies, who manage to avoid inspections by regularly changing their seats and/or appointing virtual representatives. In Slovenia, especially in those cases when representatives of letterbox companies are foreign nationals, it is difficult for domestic enforcement agencies to conduct proceedings against them. Polish labour inspectors also highlighted the challenge of controlling letterbox companies, as their yearly reports document several cases where inspection activities could not be carried out due to lack of contact with posting companies (PIP, 2019). Italian stakeholders also report that in some cases of violations regarding social security

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32 A similar situation, with widespread irregularities and some cases of extreme exploitation, has also been observed for postings of TCNs to other Central and Northern European countries via Italy. For example, a Swiss journalist referred to a case which occurred between 2017 and 2018 which involved dozens of Albanians, Moroccans and Italians employed as posted workers by an Italian company, which was the main contractor in the construction of a railway tunnel in Canton Ticino (Switzerland). These workers habitually received a payslip based on Italian payroll items. By using the item "allowance for travelling abroad", the Italian company was able to pay (and hide) overtime hours, which amounted to up to 120 hours per month, and to illegally deduct a part of workers' salary through the recovery of false tax credits advanced by the company (Cillo, 2020).

contributions and tax payment in the sending country, these practices are related to the systematic use of letterbox companies.<sup>33</sup>

Researchers who focus on the role of Italy as the sending country, and the role of Morocco and Tunisia as countries of origin for TCNs who are posted workers, report on the issue of the links between Italian sending companies and organised crime. Specific methods of recruiting and controlling the workforce through gangmasters have emerged in some cases of serious exploitation of TCN posted workers sent via Italy to Central and Northern European countries. In fact, some of the companies that send Italian, EU and TCN posted workers to Denmark and Switzerland are highly specialised firms, which have participated in the construction of the railway infrastructure in Italy. These companies have been able to win tenders at the EU and international level by offering lower bids and shorter lead times than international competitors by leveraging on the extreme profitability and flexibility allowed by a system of recruitment and transnational posting based on the gangmaster system. These companies use a pool of gangmasters, of Italian and immigrant origin, to recruit the workforce according to the needs of the production cycle and to control them both inside and outside the workplace in order to avoid their contact with trade unionists and journalists (Cillo, 2020). After being convicted by the Italian judicial system for links with organised crime, the companies have been excluded from the “white list” of companies that can participate in public contracts in Italy<sup>34</sup> (for more information see Cillo, 2020), but they can continue to offer biddings in other EU countries.

In case of Slovenia, the representatives of the Slovenian trade unions and NGOs pinpoint yet another issue of exploitation in posting of workers who are TCNs. As stipulated in the bilateral agreements between Slovenia and Serbia<sup>35</sup> and Slovenia and Bosnia and Herzegovina<sup>36</sup> on employment of Serbian and BiH citizens, respectively, foreign workers need to conclude a minimum one-year employment contract with their first employer. Slovenian unions and NGOs are therefore openly opposing the working permit condition of a one-year commitment to the same employer, as they have recorded violations of workers’ rights during that year. Workers become highly dependent and therefore compliant with the employer, as any form of resistance is threatened by the interruption of the contract and the loss of the combined working and residence permit.<sup>37</sup>

33 For example, the labour inspectorate and the fiscal police discovered a network of letterbox companies in the Province of Venice, linked to an important Italian company operating in Belgium and Austria, after receiving in 2016 a report, sent by Belgian labour inspectors via IMI, regarding a number of violations committed by this company while working as subcontractor on a building site in Charleroi (Cillo, 2020). This company and its network of letterbox companies employed both Italian and immigrant workers from Albania, Egypt, India, Kosovo and Romania, who started to protest and occupied a crane after not receiving their wages for several months (ibid.).

34 Companies registered on the white list must comply with a series of obligations such as: financial traceability of the contract, single bank account, obligation to report intimidation and extortion requests, transparency in hiring staff.

35 <http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO7993>

36 <http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO6526#>

37 Nonetheless, contrary to the belief that TCN workers use posting via Slovenia as a springboard to the larger EU market (IRSD, 2018), the representative of the Employment Service of Slovenian stated in our research that TCNs prefer working as posted workers via Slovenian employers, despite the violations

In the case of violations (especially with reference to wages), posted workers from Poland seek help from different institutions (as discussed in the next sub-chapter) and often file claims with Polish courts. Posted TCNs, on the other hand, file claims less frequently, as they are less familiar with the Polish judicial system, and going to court remains a difficult, lengthy and expensive option. What proves to be more effective in the construction sector, according to the research participants, are direct measures and tools used by construction workers, such as work stoppages and barricades on construction sites, which could also be useful for media coverage and public relations (Kall et al., 2020).

On the other side of the posting process, posted TCN workers in receiving countries, like Austria, Finland, Estonia and Belgium, are also exposed to labour rights violations. These refer mainly to working hours, social contributions and wages.

In Austria, violations of labour rights of workers who are TCNs include disregard of the restrictions on maximum work hours and/or work hours that are not fully paid, e.g. full-time workers are declared as part-time. Allowances, supplements and special payments like holiday payments or sick pay are sometimes omitted or partially paid. Posted construction workers are entitled to holiday benefits under the collective agreement for the construction sector but often do not claim them, either because they are unaware of this, or because the employers do not declare them as skilled construction workers and do not pay the contributions to BUAK. In addition, some employers charge posted workers high rents for accommodation or other expense fees to reduce the effective wage they are paid (Schmatz & Wetzel, 2014). Austrian collective agreements stipulate surcharges of up to 30% for work in certain areas, which posted workers often do not receive, and in other cases they are falsely classified as unskilled to lower their pay (Krings, 2019; see also Gagawczuk, 2019a).

Fake postings, i.e. the registration of local workers in another EU country with lower social security contributions, e.g. Slovenia, and their subsequent 'posting' to Austria is another problematic practice (Gagawczuk, 2019a; Haidinger, 2018b; Krings, 2019). The workers never leave Austria, but on paper are employed in Slovenia and posted to Austria. Fake postings also occur in the field of TCN workers. Stakeholders in Austria report on an entire 'posting industry' consisting of letterbox companies and specialised consultancies in Slovenia which help Austrian construction companies to reduce costs by paying only the lower Slovenian social contributions for the workforce they employ. These firms provide 'full service', which includes starting the company and providing all the required documents (Danaj et al., 2020). According to Con3Post stakeholders, fake postings increase the vulnerability of posted workers in particular when posting occurs through letterbox companies, especially when they go bankrupt and fail to honour their obligations, such as unpaid wages. Even when chain liability laws are in place, long subcontracting chains make it difficult for workers to claim their rights because they can make it very hard to identify the contracting company at the end of the

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that occur. Posted work is still more favourable to them in comparison to being directly employed by Austrian or any other EU employer, as they can work more hours, earn more, and do not have to deal with arranging travel and accommodation.

chain (ibid.).

Irregularities of the employment contract or the documentation necessary for posting – such as the PDs A1, the mandatory registration of posted workers to the LIMOSA system, and the mandatory declaration of new employees through the DIMONA system – are among the frequent violations detected by Belgian labour inspectorates. Moreover, there are also cases of undeclared work in which TCN posted workers, with a regular residence permit in Italy, were sent to Belgium without any employment contract. Sometimes these irregularities are combined with more serious violations of Belgian labour legislation.<sup>38</sup>

As the number of posted workers is increasing in Estonia, so is the supervision over posting companies (generally, it does not differ from the supervision of local companies). The Estonian labour inspectorate (LI) report from 2019 indicates that some posting companies still fail to send the posting notification to LI, and a new scheme of hiring TCN posted workers has been noted, but no other kinds of frequent violations related to posted (TCN) workers are highlighted (OWE, 2019). Nevertheless, the most frequent problems in the Estonian working environment include insufficient training, such as lack of OSH instructions, proper safety equipment and risk analysis (OWE, 2019). In Finland, the main problems related to posting revolve around tax avoidance by posting companies on the one hand, and posted workers having worse working conditions than they are entitled to on the other (Tuovinen, 2020, pp. 68-69). The research data shows that the main problems involve posted TCNs not receiving the wage they are entitled to due to lack of knowledge, willingness to work at a lower rate and/or employer misconduct (Kall et al., 2020).

### *Collective representation of TCN posted workers*

In all Con3Post countries, support for (posted) workers who need help is provided by the trade unions, in some of the countries also by NGOs. To understand the situation in sending and receiving countries of the posting flows in question, we first need to consider the trade union membership and the level of trust in trade

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38 One of the most serious cases of exploitation of TCN posted workers sent to Belgium without any contract involved an Italian company in a building site in Antwerp. As reported by a Belgian labour inspector this Italian company CCC worked as subcontractor for the Belgian company BBB that in turn worked for the Belgian main contractor AAA. The Italian company CCC, after sending 12 Moroccan and Egyptian posted workers to Belgium, stopped paying their salaries for many months because it did not receive payments from the BBB company. So, on 5 October 2018, seven workers occupied a crane to get their wages and came down only after trade unions and the federal police negotiated the payment with the main contractor AAA. AAA then removed the Belgian company BBB from its subcontracting chain and paid the sum directly to the Italian company, which finally gave the wages to the workers. Belgian labour inspectors asked the collaboration of the Italian labour inspectorates through the IMI system and discovered that five of those workers were working for the Belgian company BBB and were staying illegally in Belgium, while two of the seven employees of the Italian company CCC had been sent to Belgium without any contracts. After that, “Belgian labour inspectors prepared a criminal report against the Italian company for obstruction of the investigation and undeclared work for two workers and sent it to the labour prosecution office. Moreover, the Belgian company BBB got a criminal report for: human trafficking with the aggravating circumstance of participation in a criminal organisation; no or no correct DIMONA declaration on the starting date of employment; employment of a foreign national without a residence permit; employment of a foreign national not admitted or authorised to stay in Belgium; not paying the employee’s wages (in time)” (Cillo, 2020: 41).

union organisations in the countries where posted workers come from. Namely, our research shows that posted workers from third countries like Morocco, Tunisia, Ukraine and BiH most often do not approach union representatives in sending and receiving EU countries and usually do not seek help or report violations until it is really necessary or after accidents or violations have already occurred. Beside the temporary nature of their work and language barriers, one of the main reasons for low reliance on trade unions in sending and receiving countries is that in all countries of origin included in the research trust in trade unions, and consequently trade union membership, is low. For instance, the position of trade unions in Bosnia and Herzegovina could help us understand why some of the migrant/posted workers are reluctant to seek union assistance, have little confidence in the work of trade unions and do not to join them. In addition, most posting recruitment is done via networks of trust, which means that unless the employer breaks the trust, workers would not go to the authorities and/or unions in the sending country.

Many union representatives in BiH describe the state of the labour market as a struggle to maintain the mere right to work (Demir, 2011). This attitude is combined with a general low trust in unions, which are often perceived as incompetent organisations that tend to be corrupt, weak, politically biased, with no financial and professional capacities, and not supported by any political forces in the country (Demir, 2011; Kečo, 2018). Therefore, trade union density is, according to estimates, around 50%, although accurate data are not available, since there exist many companies where workers have not received salaries for months and years, and therefore payment of union membership fee is not an accurate predictor of trade union membership. In construction, 30% of the formal workers are unionised, although 75% to 80% of construction workers make use of union structures and services without contributing to the union on a regular basis. Similarly, about 15% of employers are organised in the construction sector, but only 30 to 40% of these pay regular membership fees (Kečo, 2018).

Similar to BiH, despite the fact that there are more than one hundred trade unions in Ukraine, experts agree that their position in social dialogue for the protection of workers is weak and inadequate (Fedyuk & Volodko, 2018). At the same time, there is a low level of trust in such organisations in Ukrainian society and a high level of corruption, which means that workers often do not report their problems or solve them in informal ways (e.g., by leaving work). Regardless of the general vulnerable situation of workers in Ukraine, efforts are being made to regulate the situation of those in the construction sector.<sup>39</sup>

Similar to the situations in BiH and Ukraine, trade union membership in Tunisia and Morocco is low. In Morocco, trade union membership is around 15%. The existing legislation prohibits anti-union discrimination, but trade union freedoms

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39 For example, in 2017 'the National collective agreement in the construction and building materials sectors' was signed between the Ministry for Regional Development, Construction, Housing and Communal Services of Ukraine and PROFBUD - Construction and Building Materials Industry Workers' Union of Ukraine as an introduction of EU and ILO legislation on the protection of workers. This new regulation aimed at improving the working conditions of 650,000 construction workers, including through the introduction of salary increases since 2017 (<https://www.bwint.org/cms/news-72/profbud-signs-new-national-collective-agreement-in-ukrainian-construction-sector-793>)

are heavily curtailed in practice and in various cases the defence of workers who need help has been carried out by civil society associations, such as the Moroccan Human Rights Association (Association Marocaine des Droits Humains, AMDH).<sup>40</sup> The three main unions are: the Moroccan Labour Union (UMT), the General Union of Workers of Morocco (UGTA) and Democratic Confederation of Labour (CDT). The collective bargaining system is based on two levels, which include the industry-level bargaining and the company-level negotiations, although bargaining at company level occurs in very few cases (OCDE, 2018).

In Tunisia, trade union membership is very low, because of the size of the shadow economy and above all because the law permits anti-union discrimination and imposes restrictions on union rights<sup>41</sup>. Moreover, in the case of Tunisia, the defence of workers who need help has been carried out in various cases by human rights organisations, like the Tunisian League of Human Rights (Ligue Tunisienne des Droits de l'Homme, LTDH). Regarding trade unions, the three main unions are: the Tunisian General Labour Union (UGTT), the General Confederation of Tunisian Workers (CGTT) and the Tunisian Labour Union (UTT). Collective bargaining in the private sector has been established since 1973 and is based on a tripartite system. The collective bargaining system is based on two levels, which include the industry-level bargaining and the company-level negotiations, although bargaining at company level occurs in very few cases (OCDE, 2018).<sup>42</sup>

As our research shows, such attitudes and understanding of collective representation provided by the trade unions do not change after TCNs become part of the EU labour force. In the sending countries (such as Slovenia, Poland and Italy) and receiving countries (like Belgium, Austria, Estonia and Finland) workers in the construction sector can actively seek information and legal support from the trade unions. They can also access information on websites in different languages. Due to the temporary nature of their work that is usually carried out abroad, posted workers who are TCNs are generally not members of any trade union in the sending or receiving countries. Moreover, low trust and low membership were identified as key features of the worker-trade union relationship. Nevertheless, different trade unions and especially NGOs also offer help to non-members in need.

In Poland, the "Budowlani" Trade Union<sup>43</sup>, which unites over 10,000 workers throughout the country (construction and building material workers, housing cooperative members, foresters, environment protection workers, woodworkers, furniture industry workers and others) focuses on posted Polish workers (for example, it has prepared an information flyer in Polish available on its website). It is only recently that the union started to monitor the situation of TCNs posted by Polish companies. In order to protect the rights and interests of economic migrants, the Intercompany Trade Union of Ukrainian Employees was established

40 <https://survey.ituc-csi.org/Morocco.html?lang=en>

41 <https://survey.ituc-csi.org/Tunisia.html?lang=en#tabs-2>

42 Moroccan and Tunisian trade unions are members of larger umbrella organisations, such as the International Trade Union Confederation and the International Confederation of Arab Trade Unions.

43 The "Budowlani" union is a member of the All-Poland Alliance of Trade Unions (OPZZ), the International Organisation of Woodworkers and Construction Workers (BWI), and a member of the European Federation of Building and Woodworkers (EFBWW).

in May 2017 under the umbrella of the All-Poland Alliance of Trade Unions (OPZZ), which coordinated and supported the process of its creation. Moreover, OPZZ (one of the three national trade union organisations in Poland) has made some of the general information on its website available in Ukrainian and Russian. Some basic information in Russian is also available on the website of The Workers' Initiative Union (OZZ Inicjatywa Pracownicza), which is the grassroots, self-governing trade union operating in several regions of Poland. It is worth mentioning that trade union membership in Poland currently only covers 17% of those employed on the basis of employment contracts, and 11% of all those in employment.<sup>44</sup> Collective bargaining coverage is also low, estimated to be at 30%.<sup>45</sup>

In Slovenia, several trade unions and NGOs provide workers' protection and collective representation. The Association of Free Trade Unions of Slovenia – Trade Union of Workers in the Building Sector collectively represents domestic and foreign construction workers at the policy level, as well as by providing information and offering free legal advice to its members. In addition, its officers are involved in transnational projects and networks on posting, e.g. the Fair Working Conditions network. The Independent Trade Union of Slovenia, established in 2016, is also an eager and progressive actor in protecting workers' rights in Slovenia by providing information and legal counselling. However, the most active in workers' protection and collective representation in Slovenia is the Counselling Office for workers, which is dedicated to advocating, protecting, promoting and developing the labour, social and status rights of workers and other vulnerable groups, with particular attention to respect for the rights of posted workers. Since its foundation in 2016, this NGO has helped many Slovenian and TCN posted workers who were left in Germany or Belgium by their Slovenian employers, without payment and without any money to return to Slovenia or to their home countries. In Slovenia foreign workers are also under-represented in unions, and even the Counselling Office tends to be approached only when workers are already in dire circumstances.

In Italy, trade union membership covers 34.4% of employed persons, while collective bargaining covers 80% (2018, OECD database). The three main trade unions, to which sectoral unions are affiliated, are the Italian General Confederation of Labour (CGIL), the Italian Confederation of Workers' Unions (CISL) and the Italian Labour Union (UIL). They participate and negotiate collective agreements with employers' associations on two different levels: industry-level bargaining and company-level negotiations. Moreover, the second level bargaining also includes territorial/regional collective agreements that are negotiated for certain sectors, such as construction, tourism, crafts, and agriculture. At the workplace level, the union representation is based on Unitary Union Representatives (RSU) that are elected by all the workers at a company who must choose among the candidates put up by trade unions<sup>46</sup>. Since the early 2000s there has been growing

44 <https://www.etui.org/Covid-Social-Impact/Poland/Industrial-relations-in-Poland-background-summary>

45 <https://www.etui.org/Covid-Social-Impact/Poland/Industrial-relations-in-Poland-background-summary>

46 In some companies, there is also the RSA (Company Union Representation), the union representative structure introduced by the 1970 Workers' Statute and substituted by the RSU structure after the 1993

integration of immigrant workers in trade unions, both in terms of numbers and of participation in trade union activities. In 2018, the three main trade unions had about one million members with foreign citizenship<sup>47</sup>, out of a total of 2.5 million of employed workers with foreign citizenship and out of 11.3 million members (of which 6.5 million active workers) (Idos & Confronti, 2019: 306). All three main Italian trade unions pursue an active affiliation policy among immigrant workers, which is partly reflected in the representative bodies. At the territorial and sector level, there are numerous trade union representatives of immigrant origin in order to facilitate contact with immigrant and posted workers.

In the receiving countries included in Con3Post research, the construction sector is covered by trade unions, except Estonia, where there is no sectoral level union in the country. In all the countries collective agreements are in place, while representation of TCNs is low (Danaj et al., 2020; Cillo, 2020; Kall et al., 2020).

In Finland, the Construction Trade Union Rakennusliitto (RL) negotiates legally comprehensive sector-level collective bargaining agreements with employers and monitors the fulfilment of those agreements (including with regard to posted workers) through its network of shop stewards. Nevertheless, even the RL finds posting to be a challenge, and particularly so the posting of TCNs. The union's main aim is to inform all the workers about the working conditions set in the collective agreement and in the legislation, using site visits and shop-stewards in place at some sites, but also through websites and information leaflets. Informing workers about their rights and employers about their obligations is crucial for a well-functioning and fair system of posting (Ruotsalainen et al., 2018).

In Estonia and Finland claiming unpaid wages or resolving other labour rights violations is a civil matter. In Estonia, workers have to take the matter to court themselves. In Finland, the union can make the claim on behalf of the worker or group of workers, if they are union members. While it is rarely the case that posted workers are union members, Finnish unions have nonetheless been known to take on posted workers' cases, allowing the workers to join the union ex post facto to be able to make the claim (normally, new union members are not able to access its legal services immediately). However, with a few notable exceptions, where unions have indeed represented posted workers before the court, the violations of posted workers' rights rarely end up in Finnish courts (Tuovinen, 2020). In Estonia, posted workers can also complain to the Labour Dispute Committee, which is much faster in dealing with labour rights violations than courts, and some posted TCNs have already used the option. Although this might be difficult because of language issues and lack of awareness of local regulations, in Estonia an NGO has supported some Ukrainian posted workers in claims that have been partially satisfied.

Belgium is one of the EU countries with the highest trade union membership and collective bargaining coverage, with 50.3% and 96% of employed persons, respectively (2018, OECD database). The three main trade unions, to which sectoral unions are affiliated, are: the Confederation of Christian Trade Unions of Belgium (CSC), the General Federation of Labour of Belgium (FGTB), the Central General

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agreement between the three main unions and the employers' association Confindustria.

47 In this case the definition of "foreign citizenship" includes workers both from EU and non-EU countries.

of Liberal Unions of Belgium (CGSLB). They participate and negotiate collective agreements with employers' associations on three different levels: the central level bargaining, which produces an intersectoral collective agreement covering the whole of the private sector; the industry-level bargaining, covering specific industrial sectors; and the company-level negotiations. At the workplace level, union representation is based on works councils<sup>48</sup> and trade union delegations<sup>49</sup>. While "the role of the works council is essentially to be informed about a range of economic and financial issues and to be informed and consulted about employment and personnel issues"<sup>50</sup>, trade union delegations are the recognised partner for the-company level negotiations and control the application of collective agreements and labour law. Belgian unions pursue an active affiliation policy among immigrant workers, involving them in trade union activities and developing actions with activists in migrant groups and associations. They inform immigrant workers about their rights and Belgian labour legislation, and they also provide information services for work permits, extension of residence permits, diploma equivalence, validation of skills, etc. As for posted workers, Belgian trade unions provide information regarding labour rights through flyers, awareness campaigns, specific websites and provide support and legal advice in the case of disputes.

When it comes to disputes with their employers, workers posted to Austria do not have the same legal counselling that is guaranteed by the Chamber of Employees (Arbeiterkammer) to all individuals employed in Austria. Nonetheless, the Chamber usually provides counselling to posted workers involved in labour disputes (Gagawczuk, 2019b). The construction trade union, GBH, offers legal protection to its members as well. However, only members who have paid union dues for at least six months are eligible for this service. As such, posted workers are unlikely to qualify. Union representation is therefore offered to posted workers at the policy level. In addition, Austrian trade unions and the Chamber of Employees support undocumented foreign workers through the counselling and information service UNDOK (Anlaufstelle zur gewerkschaftlichen Unterstützung UNDOKumentiert Arbeitender). There is no hard data on the number of third country nationals who are members of Austrian trade unions. According to one of their representatives, the construction sector union, GBH, has tried to expand its membership by actively and successfully recruiting construction workers living in Austria's neighbouring countries of Hungary and Slovenia. However, this effort seems to be directed mostly at permanent citizens of Hungary and Slovenia. Workers posted to Austria, in contrast, only rarely join Austrian unions (Hollan & Danaj, 2018). It should therefore be expected that only very few TCNs are union members.

The enforcement of labour rights for TCN posted workers is difficult in Austria for several reasons (Danaj et al., 2020). Firstly, subcontracting is intentionally used by some Austrian employers to evade legal risks regarding the employment of non-EU workers. Irregular employment of TCN workers comes with stringent penalties,

48 Works councils' members are elected in all workplaces with more than 100 employees and represent the whole workforce.

49 Trade union delegations are elected by all the workers of the company, who must choose among the candidates put up by trade unions. Alternatively, they are simply appointed by the union.

50 ETUI, <https://www.worker-participation.eu/National-Industrial-Relations/Countries/Belgium>

such as the exclusion from public contracts. That is why, as a representative of the financial police explained, you only find third country nationals employed at the subcontractor level. Secondly, most posted workers do not come forward in reporting any violation, because they still earn comparatively more than in their country of origin and are often pressured to sign waivers relieving their employers of all wrongdoings. Thirdly, even when they do file lawsuits against their employers they are put under significant pressure and even threatened by their employers to withdraw their claims. In addition, it rarely happens that employers are found guilty and forced to compensate underpaid workers (Gagawczuk, 2019b; Haidinger, 2018a; Krings, 2019, Danaj et al., 2020). Even when cases are won, the penalties for companies are very low (Gagawczuk, 2019b). The recuperation of unpaid wages in cases of bankruptcy is also problematic. Posted workers are protected by insolvency funds in the sending country. These funds, however, often only cover payments in line with average, if not minimum, domestic wages of the sending country, which are usually much lower than in the receiving country. This means that in the case of bankruptcy of their employer, posted workers may only receive part of the wages owed to them (Gagawczuk, 2019b: 108).

### *Channels of information for TCN posted workers*

Research on labour violations in the case of TCNs as posted workers indicates that they are partially a result of the lack of information. Basic information on the terms and conditions of employment of posted workers are published on national websites on the posting of workers in all Con3Post sending and receiving countries, as this is the obligation of all EU Member States. According to our research, trade unions and several NGOs are key information providers to posted TCNs, in Estonia and Finland labour inspectors also provide information to workers. Still, language barriers and cultural differences are among the key obstacles that need to be overcome to build trust and communicate with TCN posted workers in sending and receiving countries (Kall et al., 2020).

Many migrants and prospective migrants, especially from Ukraine or BiH, rely on informal channels of information (friends or family networks in the destination country). Experts have pointed out how Ukrainian labour migrants may be unaware of what the posting of workers means. This lack of awareness may also involve lack of knowledge on what requirements must be met, what consequences may result from illegal employment in another member state with a Polish visa (see also Keryk, 2018), and, finally, how the posting of workers differs from a business trip. In Ukraine, both formal and informal private labour market intermediaries play an increasingly important role in informing workers about potential employment opportunities abroad. Although there has been some success, it seems that unions and state actors in the receiving/mediating countries need to put even more effort in building trust with TCNs and informing them in a language they understand (despite the low trust in formal institutions in Ukraine). However, the quality of information obtained by employees in agencies operating locally in Ukraine

remains an issue.<sup>51</sup>

The most pressing need highlighted in the case of posted migrant workers from BiH to Austria via Slovenia is to inform workers before they migrate by raising awareness on possible abuses through the media, relevant stakeholders, or embassies. In Bosnia and Herzegovina, employment services and their migration centres provide information on life and work abroad in local languages. Different online information and employment platforms<sup>52</sup> or employment agencies that connect foreign employers (e.g. Slovenian companies) and job candidates in Serbia, BiH and other states, as well as job fairs, such as those organised by the Employment Service of Slovenia in Bosnia and Serbia, have also provided some information. Slovenian companies established in these third countries also provide some information, but their position as recruiters might influence the type of information they share with potential employees. Slovenia has made efforts to inform workers not only in their countries of origin but also in Slovenia.<sup>53</sup> Info Points for Foreigners were established by the Employment Service of Slovenia (in 2010 and again in September 2019).<sup>54</sup> Information on employment, workers' rights and living conditions in Slovenia is also made available by them online, but only in Slovenian. In Austria, the main source of information is the national website on posting ([Entsendeplattform.at](https://entsendeplattform.at) or [postingofworkers.at](https://postingofworkers.at)) that provides information in several EU languages on labour and posting law, applicable minimum wages and collective agreements. Between April 2016 and November 2018, the website received approximately 7,000 visitors per month (Murr, 2019), although there are some concerns that the website is being used mainly by employers (Haidinger, 2018a), and it does not cover the languages of third country nationals like Bosnians, Albanians or Serbs. National embassies are also involved: those of Slovenia provide information in the countries of origin, whereas the Romanian Embassy in Austria has been cooperating with the Austrian construction union, GBH, to provide information to Romanian workers before they move or are posted to Austria.

Finally, workers can also get information from labour inspectors and representatives of NGOs/trade unions, who also act in an advisory capacity. Trade unions in Slovenia have tried to do this by talking to workers in front of Slovenian embassies, as well as through their own information dissemination campaigns in Slovenia. The Austrian trade union for construction workers, GBH, actively tries to inform posted workers, including TCNs, about their rights. They have established one

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51 In this context, the Con3Post research participants discussed an important initiative developed by the Polish-Ukrainian Chamber of Commerce called 'Partnership and Employment', under which in cities across Ukraine local experts explain the procedures to potential labour migrants, warn about potential violations and discuss how to access support. However, these informational actions have had limited effects (Kall et al., 2020).

52 [Mojedelo.com](https://mojedelo.com) at <http://sajamzaposljava.com/>

53 The national website on posting of workers <http://www.napotenidelavci.si/en/> is mainly used by employers, but much useful information is also available for workers.

54 The Info Point for Foreigners arose out of the need to provide migrant/posted workers with information at the onset of the economic crisis in Slovenia, during which these workers were also extremely affected and exposed to violations of labour legislation. The basic principle of the Info Point was that workers should receive information, if possible, in a language they understand and consultations were also provided on site, for example in collective accommodations and at work (e.g. construction sites) (Danaj et al., 2020).

office on the Austrian-Slovenian border and one on the Austrian-Hungarian border in the *Burgenland* region, which provide information in Slovenian and Hungarian, respectively. Over the last few years, the Slovenian GBH office has increasingly provided information services to individuals from BiH and Croatia (Danaj et al., 2020). GBH also cooperates with BUAK in informing posted workers about their rights. BUAK has the responsibility to inform construction workers quarterly about the entitlements they have accrued<sup>55</sup>. Occasionally, BUAK attaches information material provided by the social partners to these letters. There was one case when BUAK and the regional office of GBH in Styria provided targeted information that encouraged Slovenian construction workers registered with BUAK to review their contracts to ensure they were paid adequately, but the initiative had limited results (Danaj et al., 2020).

NGOs have played an important role in both Slovenia and Austria in providing information and support to various categories of labour migrants. In Slovenia, the Counselling Office for Workers, which started as an office for migrants, also serves as an information centre. In Austria, UNDOK operates a hotline and in-person counselling in several languages on employment and social matters for undocumented and other irregular migrant workers<sup>56</sup>. UNDOK does not specifically focus on posted workers but does support TCN posted workers who may have problems with their employer. MEN VIA,<sup>57</sup> on the other hand, provides information and support to victims of human trafficking and forced labour, in various languages including Bosnian. Other NGOs in Austria reach out to immigrant workers through social and cultural communities established in Austria, such as the Filipino community church.<sup>58</sup>

In Poland language issues also persist with reference to the channels of information for TCNs. General information on posting is available in Polish<sup>59</sup> and English<sup>60</sup> on the website for entrepreneurs ('Business in Poland'), which is supervised by the Ministry of Economic Development. An important development in this respect is the helpline for foreigners, which was launched by the NLI Counselling Centre in 2018. The helpline provides advice in Ukrainian and Russian on the legal aspects of employment of foreigners and, as was noted by the FGIs' participants, it has contributed to an increase in the number of complaints lodged by foreigners (Kall et al., 2020). A popular source of information among Ukrainian workers is YouTube, where they can find videos about working conditions in Poland shot by migrants

55 § 24 of the Bauarbeiter-, Urlaubs- und Abfertigungsgesetz (BUAG).

56 <https://undok.at/de/ueber-uns/>

57 <http://www.men-center.at/via.html>

58 However, there were no similar examples of outreach via ethnic or religious communities to TCN nationals posted to the Austrian construction industry. Successful outreach campaigns have been conducted in the agricultural industry where union members and other volunteers went into fields to proactively inform informally employed harvest workers about their rights. The campaign also included large billboards along the roads leading to the fields with information on the minimum wages applicable (Danaj et al., 2020).

59 <https://www.biznes.gov.pl/pl/firma/cudzoziemcy/chce-delegowac-pracownikow-do-polski/delegowanie-pracownikow-w-ramach-swiadczenia-uslug-na-terytorium-polski-informacje-ogolne41>

60 <https://www.biznes.gov.pl/en/firma/doing-business-in-poland/posting-of-workers-to-poland/posting-of-workers-in-the-framework-of-the-provision-of-services-in-poland-general-information/posting-of-workers-in-the-framework-of-the-provision-of-services-in-the-territory-of-poland-general-information>

and professional PR agencies cooperating with Polish employers.

In Estonia, the Police and Border Guard Board provides information sessions about the rules and regulations to employers employing foreign labour. During these sessions PBGB also highlights to these employers the need to introduce the very basic rules of society to their employees who might come from a rather different cultural background. In some cases, employers might also intimidate workers so they do not interact with locals, especially the authorities. Considering the specific type of communities posted TCNs develop in the receiving country, different methods for providing them with information might work. In Estonia and Finland, it seems that these workers often live in closed communities, and thus making contact and building trust with the leader of that community might help: that person would be a trusted authority within the community and could inform all the others as well. In Estonia, an NGO has done outreach work towards Ukrainians working there and has managed to build trust and raise these workers' awareness about Estonian rules and regulations. What is important is that it has managed to decrease the initial scepticism that Ukrainians, living mostly in separate communities isolated from the Estonian society, felt towards Estonian authorities. As a result, Ukrainians are now more willing to turn to the labour inspectorate with problems than two years ago. The Finnish LI highlights that they could use such 'success stories' as well, and they should be more active on social media.

During the inspections at construction sites, in both Estonia and Finland, inspectors distribute small information flyers in multiple languages to both workers and employers. In Estonia, both migration advisors and labour rights/OSH advisors provide consultations via phone, email and also Skype. In Finland, the union also informs workers about their rights during site visits, and on some construction sites the union has a representative and (Finnish) union members who also keep an eye on the situation. Construction workers usually participate in the initial training/induction session that is mainly dedicated to OSH, but – depending on the shop steward – employment rights can be included as well. The Finnish stakeholders agreed that more content on labour rights should be included in induction sessions. The union also checks accounts to see, for example, if they match with what the workers say, and with the amounts in the employers' subcontracts. On bigger sites there might also be a room with trade union materials. RL also cooperates with the authorities.

Belgian and Italian trade unions also provide support for posted workers, including TCNs, via numerous means. As for the Belgian case, they inform incoming posted workers about their rights and duties and the existing sectoral agreements through multilingual publications (flyers, posters, etc.), which are also available online. In some cases, trade unions have introduced specific services for cross-border workers and workers from the new EU Member States provided by union officers of immigrant origin to overcome the obstacles created by language barriers. This is the case of the construction union affiliated to FGTB in Charleroi, where unionists of Italian origin have provided support to TCN posted workers employed by Italian companies, and the case of a project aimed at supporting posted workers from Poland organised in Antwerp since 2008 by the local headquarters of the

construction union CSC (Cillo, 2020). Moreover, in Belgium and Italy unions provide specific services aimed at new immigrants using union staff of immigrant origin, who can communicate more easily with immigrants from third countries, such as Morocco and Tunisia.

Belgian and Italian unions also provide legal advice and legal support in court, at individual and collective levels. However, as reported by a Belgian trade unionist, compared to the total number of violations found in the construction sector, the number of cases for which a labour dispute is initiated is definitely lower, since posted workers usually ask for union support only in the case of serious problems, like unpaid wages and work accidents, and often are not able to provide physical proof of violations (ibid.).

A further area of intervention is collective bargaining at sectoral and company levels. Over the past few years trade unions have increasingly focused on the issue of subcontracting, recognising its strong links with the diffusion of the posting of workers, and have obtained important achievements: “since the collective agreement of 2015, shop stewards in the construction industry have the right to have information about subcontracting and outsourcing contracts from their main employer and, in that sense, also the right to check this and have discussions, go and meet their colleagues, even of subcontracted companies” (Cillo, 2020).

The support activities for posted workers also include transnational cooperation. Trade unions of receiving countries regularly collaborate with trade unions of the sending countries to support posted workers in their countries of employment. Trade unions are also members of umbrella organisations where they cooperate with the unions of other EU Member States (e.g. the European Federation of Building and Woodworkers; European Trade Union Confederation) and the unions of third countries (Building and Wood Workers’ International). Moreover, many trade unions in Con3Post sending and receiving countries are involved in EU-funded projects focused on the posting of workers in the construction industry.<sup>61</sup> Despite these many formal channels, informal information-sharing through relatives, friends and fellow countrymen remains the more efficient way, as many workers may not have access to the internet or the digital skills needed to find useful and reliable information (Danaj et al., 2020). The need for more systemic information dissemination measures was highlighted in all three regional flows.

### *National competent authorities and their role in addressing the posting issues*

Analysis of institutions and agencies involved in the monitoring and protection of TCN’s posted workers in construction sector or posted workers in general shows that there exists a complex network of national competent authorities in each

<sup>61</sup> The project “ECMIN 2.0 - Workers’ Information and Portal Website on Applicable Working Conditions”, coordinated by EFBWW, developed a website which shares information on working conditions and labour legislation of the receiving countries in 30 languages. The project Reder Network involved trade unions, labour inspectorates and migrant associations of nine countries (France, Belgium, Bulgaria, Germany, Italy, Poland, Portugal, Romania and Spain) and provided information to more than 50,000 workers, solving 120 cases.

country.

At the sending and receiving part of a TCN's posting the related national authorities usually involve labour inspectorates (in all countries), financial police (Austria), police and border guard (Finland, Estonia and Poland) or Ministry of Interior (Slovenia), and other specific institutions and agencies. The employment policy regulating such postings is primarily the responsibility of national ministries of labour (in Slovenia, Italy, Austria, Poland, Belgium, Finland, and in the case of Estonia this area is covered by the Ministry of Social Affairs), and the implementing authorities are always the labour inspectorates, which have national, regional or provincial and sometimes local structures monitoring employment in the country and investigating reported irregularities and violations of posted workers' rights. Labour Inspectorates also serve as a liaison office for the implementation of the posting directive and are the main user of the IMI system. National labour inspectorates do not have the authority to impose sanctions on national employers posting workers abroad if they violate the law in the receiving country. They are responsible for monitoring and control of posting in their own country, and at the same time they are the key correspondent to foreign institutions with regard to information and evidence regarding violations of the labour rights of posted workers from their own country. At the receiving end of the posting process, Austrian, Finish, Estonian and Belgian labour inspectorates monitor foreign posting companies and national companies that use posted workers. Among their tasks are fighting organised fraud, enforcement of OSH regulations and regulations on working time and rest periods, collaboration and exchange of information with other public bodies and with foreign labour inspectorates, providing information to workers and employers. Regarding the posting of workers, they have "to ensure the application of minimum rates of pay and with respect to working time; to guarantee minimum employment standards to foreign workers; to raise awareness, and reduce the exploitation of foreign workers; to tackle cross-border social fraud, to reduce unfair competition" (Cillo, 2020).

The Belgian labour inspectorate has the longest tradition and abundant experience in monitoring labour violations of posted workers. They have created nine "posting teams" at the provincial level<sup>62</sup> (five in Flanders, three in Wallonia, one in Brussels), which currently employ nine chief-inspectors and 37 inspectors (approximately 10% of the total number of inspectors employed by the Belgian labour inspectorate). As reported by a Belgian labour inspector, "the posting teams have: to monitor foreign companies that send posted workers to Belgium (and Belgian companies that use posting companies); to fight organised social fraud; to support, collaborate and exchange information with the other posting teams, with foreign labour inspectorates, with traditional directions and with specialised posting teams of the National Social Security Office (NOSS and NOSS-SE). Regarding the posting of workers, they have: to ensure the application of minimum rates of pay and with respect to working time; to guarantee minimum employment standards to foreign workers; to raise awareness, and reduce the exploitation of foreign workers; to

<sup>62</sup> The first ones were created in 2006 in Flanders and in 2008 in Wallonia and Brussels.

tackle cross-border social fraud, to reduce unfair competition” (Cillo, 2020).

Labour inspectorates from all Con3Post countries collaborate closely with social insurance institutions, tax offices, and other public administration bodies and enforcement agencies. As posted TCNs are primarily immigrants in the sending countries, they need to fulfil immigration regulations, obtain a visa, work and residence permits. Therefore, institutions issuing those permits, or monitoring the compliance with the immigrant law and tackling the irregular work, are also involved in the posting of TCNs (border guards as in the case in Poland, or Ministry of Interior and Ministry of Public Administration in the case of Slovenia, or the Carabinieri Department for Labour Protection in Italy). In Italy the financial police is also involved in posting, dealing with financial crime, tax evasion, money laundering and illegal immigration. In Austria, the financial police controls workplaces to ensure that foreign and posted workers are registered, that their wages and employment conditions comply with the legal requirements, and it controls the social security status of such workers (Haidinger, 2018a; BMF, 2020). As of 2017, the financial police had 450 inspectors, but at least 600 inspectors would be required for them to fulfil their mandate (Haidinger, 2018a). Other administration and enforcement bodies that work closely with labour inspectorates are, for example, in the case of Austria, BUAK that administers holiday and severance payments as well as other benefits for construction workers, and carries out inspections of construction sites to enforce the equal payment of benefits, and the Competence Centre against Wage and Social Dumping (LSDB) that supports investigations by the financial police against fake posting by working with the social insurance funds of the sending countries, and also keeps the register of firms which have violated the law against wage and social dumping.

In Belgium, Research and Social Information Service (Service de Recherche et d'Information Sociale) oversees specific tasks regarding the fight against social fraud and undeclared work and provides support to “cellules d'arrondissement” (district cells) dealing with social fraud. The district cell is chaired by the work auditor and is made up of delegates from several enforcement and monitoring institutions.

### *Relevant legislative framework in place*

As already discussed, TCNs who are posted from one EU Member State to another have already experienced less favourable economic and working conditions in their home countries due to the unstable economic and political situations there. Difficult circumstances in BiH, Ukraine, and also Tunisia and Morocco are also mirrored in the legislation of these countries.

In BiH, the very complex government structure and the overlapping competencies of agencies and different levels of government make drafting and enforcement of coherent and targeted policies highly challenging, costly, non-efficient and non-effective, as well as burdened with different negative trends and decision-making bottlenecks (Kačapor-Džihić & Oruč, 2012; see also ILO, 2011). As regards Ukraine, in the second half of 2019 the government proposed an amendment to the Code

of Labour (1971) liberalising the employment law and reducing the degree of employee protection. The proposed changes included abolition of the weekly 40-hour working time limit and introduction of employment contracts for a specified time period. In general, the Ukrainian labour market is primarily characterised by “labour law that is not implemented in practice / not working” (Fedyuk & Volodko, 2018, 9).

In the Con3Post sending and receiving countries there are different levels of protection of workers’ rights. Although Italy, Belgium, Austria, Finland, Estonia, Slovenia, and Poland have transposed the Posting of Workers Directives (Directive 96/71/EC and enforcement Directive 2014/67/EU) in their national legislations, and implemented many individual laws concerning the posting of workers, violations of labour right still exists and are a challenge to policymakers and enforcement institutions in all of these countries. With the exception of Belgium and Estonia, the sending and receiving countries included in the Con3Post research had still not transposed the revised Directive (EU) 2018/957 at the time of writing this report.

In some sending countries, the laws regulating the posting of workers are based solely on the provisions implementing European directives and regulations, and the legislative process in this case mostly consists of a mechanical duplication of standards contained in the relevant EU directives and a minimalist approach to the protection of rights of posted workers (Otto, 2020, p. 182), as is the case in Poland. In 2018, the Slovenian government accepted an umbrella act on posting called the Transnational Provision of Services Act, covering the majority of regulations in the area of posting. Nevertheless, several other national laws need to be considered when posted workers are TCNs (bilateral agreements with countries of origin, e.g. BiH and Serbia, the Employment, Self-employment and Work of Foreigners Act, which stipulates the conditions required for the foreign worker to obtain a single work and residency permit, mandatory for signing the employment contract).

In contrast, the Belgian legislation has applied a broad protection level for labour rights with regard to the provisions of Directive 96/71/EC, including the national legislation and collective agreements, which are universally binding by law. As for temporary workers, complete legislation is applied (Pallini & Pedersini, 2010) and temporary workers enjoy the same rights as same-level permanent employees of the company using temporary workers’ agencies. Temporary work may only be used when it is necessary to “ensure the temporary replacement of a permanent worker; to respond to a temporary increase in work; to perform exceptional work”<sup>63</sup> (WEC Europe & UNI Europa, 2011). In the construction sector, contracting companies have an obligation for joint social responsibility with regard to the wages of all workers and in the case of missing remuneration.

In Estonia and in Finland, EU directives regarding posting of workers have been fairly directly implemented into law, and so posted workers fall under most rules and regulations applicable to local workers (including remuneration, working time, or OSH). In the Finnish construction sector the generally applicable collective agreement also applies to posted workers, in addition to employment legislation, so

63 Loi du 24 juillet 1987 sur le travail temporaire, le travail intérimaire et la mise de travailleurs à la disposition d'utilisateurs (<http://www.emploi.belgique.be/defaultTab.aspx?id=38257>).

in theory TCN posted workers should be entitled to the same employment conditions as locals. Furthermore, in Finland the Act on the Contractor's Obligations and Liability when Work is Contracted Out (1233/2006) provides additional regulations for subcontracting, which is highly relevant as subcontracting is common in the construction sector.<sup>64</sup>

Austria also has a complex and advanced system of worker protection. As a corporatist country, collective agreements play a central role, and in construction alone there are 19 different collective agreements. Each collective agreement includes definitions of occupations and tasks (e.g. apprentices, unskilled workers, skilled workers) and the minimum hourly and monthly wage to be paid for each occupation, the level of benefits such as holiday pay, weekly and monthly work hours and overtime rules (WKÖ, 2019)<sup>65</sup>. Much of the regulatory framework is geared towards preventing wage and social dumping, i.e. the undercutting of Austrian wages and social security systems through the employment of workers at conditions below the standards set by Austrian laws and collective agreements. In particular, the adoption of the Law Against Wage and Social Dumping (Lohn- und Sozialdumping-Bekämpfungsgesetz – LSD-BG) in 2011 specified the equal payment rule for domestic workers and posted workers (Krings, 2019: 33). An update in the national anti-dumping law, in force since 2017, enables posted workers to sue the contracting party of their employer for unpaid wages (Gagawczuk, 2019b). In practice, it has been very difficult for workers to effectively use this mechanism, because it is often very difficult for workers to identify the contractor who hired their firm, they have a short period of eight weeks to make the claim, and they have language barriers and lack knowledge of the Austrian legal system.

#### 4.4 Social welfare, occupational safety and health and vulnerabilities of posted workers

Posted workers employed in hazardous sectors, such as the construction industry, usually experience multifaceted vulnerabilities, which range from the precarity related to their status of temporary worker in the receiving country, to irregularities regarding the contractual conditions imposed by their employers, to the infringement of existing regulations on working and living conditions (Cremers, 2011; Danaj & Zólyomi, 2018; Wagner & Lillie, 2014).

The findings of the Con3Post research have confirmed that these vulnerabilities also affect the conditions of TCN posted workers sent by Italian, Slovenian and Polish construction companies to other EU Member States, in this respect to Belgium, Austria, Finland and Estonia. Many vulnerabilities of TCNs as posted workers are connected to their increased exposure to irregular employment,

<sup>64</sup> It includes provisions stating that the contractor has to request and the subcontractor has to provide information on registration with tax authorities and in the trade register, and provide proof of employees having pension insurance and information about healthcare provisions and accident insurance (Tuovinen, 2020).

<sup>65</sup> [https://www.wko.at/service/kollektivvertrag/baugewerbe-bauindustrie-kv-angestellte-2019.html#heading\\_8\\_Beschaefigungsgruppeneinteilung](https://www.wko.at/service/kollektivvertrag/baugewerbe-bauindustrie-kv-angestellte-2019.html#heading_8_Beschaefigungsgruppeneinteilung)

subsequently non-payment of social contributions and health insurance, increased labour exploitation with long working hours in dangerous circumstances, and comprehensive violations of their rights due to lack of information and existing language barriers. Con3Post analysis also showed that all the above mentioned conditions have severe implications for their occupational safety and health, and therefore add to the already identified vulnerabilities of posted workers who are TCNs.

In many cases immigrant workers employed as posted workers are more vulnerable to forms of extreme exploitation due to their precarious migration status (in Italy, Slovenia and Poland), and the fact that Italian and Slovenian legislation on labour migration links the validity of the residence permit to the employment contract and the access to social rights to the migration status (Danaj et al., 2020; Cillo, 2020). In fact, as pointed out by trade unionists in Con3Post countries of origin and sending countries, the uncertainty of the migratory status pushes many TCN posted workers to accept worse working conditions and postpone the request for assistance from trade unions or labour inspectors until the situation becomes truly unsustainable (Danaj et al., 2020; Kall et al., 2020; Cillo, 2020). Moreover, in the case of posted workers who have immigrated and have been employed in Italy for a long time, it should be taken into account that they might have already suffered multiple discriminations in the Italian labour market and that, even when they have a more stable migration status, they can still be in a vulnerable socio-economic position that influences the conditions under which they are employed as posted workers (Cillo, 2020).

Irregular payment of social contributions for TCN workers was reported as highly problematic by stakeholders in all sending countries, underlining in particular the unemployment benefits (Slovenia) and contributions for pension insurance (Poland). In Poland and Slovenia, stakeholders have referred to such practices as becoming a “business model”. By paying TCN posted workers the minimum wage of the sending country and paying the rest as other revenues (e.g. per diem) or not at all, unemployment benefits are then calculated on the minimum wage, which means it is much lower than it should be. No or insufficient healthcare insurance coverage is also common, but unfortunately only tends to be uncovered in worst-case scenarios such as accidents or illness. Representatives of trade unions and NGOs working in the area of posting reported on several cases of injured TCN posted workers with no insurance being unlawfully removed from the accident site, so that they would not be reported as workplace accidents, or cases of TCN posted workers with huge hospital bills to pay, because their insurance was insufficient or the employer refused to take responsibility for the costs of medical treatment (Danaj et al., 2020). In some cases of working accidents, even those with severe grievances, the TCN posted worker was simply sent abroad, back to the sending country, without adequate compensation to solve the matter privately (Kall et al., 2020).

As for the OSH-related vulnerabilities, stakeholders reported problems related to language barriers and to different perceptions of OSH risks among people with different socio-cultural backgrounds, and also highlighted that exploitative

working conditions and unsuitable accommodation combine and contribute to further reinforce OSH risks for TCN posted workers (in the case all three observed regional flows). Previous research on OSH-related vulnerabilities of posted workers shows that TCNs who are posted workers are usually less equipped and trained than workers from EU Member States, and because they do not receive any OSH training prior to being posted or at the beginning of their posting assignment, they are more prone to accidents and injuries (Vah Jevšnik 2018: 12, 21). Language barriers while posted also mean that they do not understand OSH instructions at the construction site, and are not able to access information on the local healthcare system. Likewise, they are in no position to report any violations of their rights to the labour inspectorate in the receiving country.

In the case of workers from Ukraine and BiH, research shows that workers have limited or poor OSH skills, and awareness of their importance is low before they are employed in EU countries and remains so after their posting. Even after they have started working for a Slovenian or Polish employer, they are not familiar with how to use the equipment or how to ensure safety at work. There are even cases when they sign that they have been trained on OSH when in reality no training has been provided. Slovenian labour inspectors also reported on OSH trainings conducted superficially or only on paper and cheap and fast medical examinations for posted workers. Many TCNs are also posted to other EU Member States immediately after they sign the employment contract without any proper knowledge or awareness of the importance of OSH training. Moreover, Bosnian workers frequently sign contracts they do not understand, although they might not comply with Slovenian labour legislation because of the language barriers (Rogelja and Mlekuž, 2018: 114). In receiving countries, like Estonia and Finland, posted workers are generally in a worse position regarding knowledge and conditions of OSH and work equipment than local workers. The vulnerability of posted TCNs, however, seems to be even higher, also due to the lack of relevant language skills. Furthermore, the complex transnational employment chains common in the construction sector make posted TCNs especially vulnerable to OSH, including work accidents, as it is difficult to track down the company who is responsible for certain issues. The work accidents of posted TCNs in Estonia and Finland are also becoming more frequent.<sup>66</sup> More generally, it is difficult to obtain a negligence fee from a company in situations when the firm's representatives are absent from the construction site and the company is actually a letterbox company. The general pattern seems to be that if an investigation actually begins, posted TCNs who have had accidents are just

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66 Estonian and Finnish inspectorates highlighted a recent work accident case where Ukrainian workers were hired by a Polish company and sent to Estonia. Then the workers were sent to Finland through an Estonian company, although the owners of the two companies were the same. When there was a serious accident at the site in Finland, the Polish company denied all responsibility and disappeared. The main contractor (who was not legally liable) paid a compensation fee to the worker after the accident (to prevent damage to the company's reputation) and sent the worker back to Poland.

Another example was presented by the Estonian LI representative and involved an accident at an Estonian construction site where a foreign worker had his fingers cut off. He was taken to hospital by an ambulance and received first aid, but declined to name his employer. The worker himself was not registered in any Estonian system and disappeared after leaving the hospital.

paid some kind of compensation and sent away. Determining responsibility is therefore a major problem when dealing with accidents involving posted workers. Good cooperation between labour inspectorates of sending countries and labour inspectorates in other EU Member States, usually receiving countries, is of special importance for exchanging information on employers, and thus enabling enforcement institutions to impose penalties on violators of posted workers' rights (Danaj et al., 2020; Kall et al., 2020).

Long working time was reported as a specific condition TCNs agree to when they are posted, which increases their chances of exhaustion and accidents at work in a dangerous sector like construction. They are also provided with bad living conditions and/or inadequate accommodation in remote places, preventing any social connection to the local society. TCNs are also likely to work when ill or lightly injured, as they need money and want to finish their work. Representatives of employers' associations stated that presenteeism is characteristic of the construction sector in Slovenia, as many workers stay at work even if they are injured or ill (Danaj et al., 2020).

From the perspective of Austria as the receiving country the situation of TCN posted workers is seen slightly differently. According to representatives of BUAK, financial police and GBH, there are no differences between Austrian workers and TCN workers when it comes to OSH in the narrow sense of preventing serious accidents. They explained that using TCN workers for more dangerous tasks would not be practical. As one of them put it: "This is not how work sites operate". Furthermore, workplace safety provisions (wearing helmets, putting guardrails in place to prevent falls, etc.) could not be applied for one group and not for others at the same workplace. However, it was mentioned that TCN workers may pay for their own safety equipment because they do not know that the employer is obliged to provide it. However, similar to the other two regional flows, crowded and unhealthy housing as well as excessive working hours were reported as problems (Danaj et al., 2020).

A lack of information on local procedures, language barriers and strong economic dependence on their work income add to the vulnerability of such workers and make it more difficult for them to refuse dangerous activities, such as working overly long hours, or to reporting injuries when they occur. TCNs tend to be even more vulnerable because they often depend on work visas issued by the sending countries. Losing their employment can result in the automatic loss of the visa and their right to stay in the European Union.<sup>67</sup>

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67 For example, Hollan and Danaj (2018a) recount the case of a Bosnian construction worker posted to Austria who was severely injured at work. He was hospitalised and underwent surgery in Austria. After leaving the hospital, he remained unable to work and in need of additional medical support. At this point, his employer started trying to convince him that medical care in Slovenia is superior and to persuade him through a middleman to sign a form stating that he wished no further medical treatment in Austria. The worker declined but later found out that such a request had been made to his health insurance provider by his employer without his knowledge. This created a problematic situation for this worker, because remaining in Austria provided him with access to sickness benefits that he was financially dependent on. However, his continuing stay in Austria was dependent on a work visa provided by the Slovenian company he was involved with. As such, he felt vulnerable with regard to legally challenging his employer over the issue of healthcare coverage.

Similarly, posted workers often do not receive health benefits in case of illness. The representative of Austrian BUAK explained it in the following words: “The only thing we notice is that workers who become ill – ill, not because of an accident – that they are simply deregistered [from BUAK] and no longer receive their wages. So, going on holidays means being deregistered and falling ill means being deregistered.” Previous findings from Slovakia suggest that long subcontracting chains further increase the vulnerability of posted workers, especially when letterbox companies are involved, as in the case of Romanian and Bulgarian truck drivers in Belgium. Working for letterbox companies from Slovakia they have not received the terms promised, and in case of injury drivers have found themselves with unpaid medical bills (Hollan & Danaj, 2018b: 12). Subcontracting is used to reduce costs and thus naturally increases the cost pressure for the companies and workers at the end of the contracting chain. As a consequence of such cost pressures, these companies tend to pay less attention to OSH training and may not provide all the necessary safety equipment. Belgian stakeholders stated that in a number of cases both sending and receiving companies cut investments in OSH (preventive measures, information...), thus exercising unfair competition against companies seeking to comply with all health and safety regulations (Cillo, 2020).

To conclude, despite the mechanisms for control and enforcement of national/EU standards, the vulnerability of TCN posted workers persists due to the cloaking effect of the posting employment characterised by subcontracting, cross-border mobility and temporary service provision. TCNs are often vulnerable as they are involved in a complex chain of companies and it might be difficult for them to understand who their real employer is, what kind of employment relationship they have, which country they get social security coverage from and whether it is duly paid (or paid at all), as well as what to do in case of work accidents and occupational diseases. They sometimes do not receive proper OSH training (in a language they would understand), and might be working in more dangerous conditions than local workers (posted workers might also be accustomed to the relatively poor OSH environment characteristic of their country of origin). If they are posted by letterbox companies, then ultimately they might not receive their wages and social security coverage at all. In the case of work accidents, the injured posted TCNs were often just paid some kind of compensation (e.g., by the main contractor) and/or sent away, usually back to the sending country. Some measures that could improve the situation from the posted TCNs’ perspective include being offered a proper induction session in a language they are familiar with, and improved transnational cooperation of authorities in restricting the use of letterbox companies and other illegal corporate practices (Kall et al., 2020).

## 4.5 Managing transnational workplaces

Transnational workplaces provide a challenge to all parties involved in the process of posting in Con3Post receiving countries. What is more, a characteristic feature of the construction sector after 2008 economic crisis is that it predominantly consists

of small companies and only a limited number of large players. The research results show that the management of transnational workplaces presents many difficulties related to the fragmentation of both the organisation of work and the workforce, which have rapidly increased because of the rising use of subcontracting and the diffusion of recruitment practices based on the posting of workers. The issue of transnational workplaces and their management was specifically addressed in the context of receiving countries, where posted workers from different countries and with different cultural and ethnic backgrounds not only come into contact, but also have to adapt to the local language, rules and work regime. Additionally, long subcontracting chains and the presence of different companies on the same construction site pose a monitoring challenge to the responsible authorities, limit representation of workers and omit channels of information.

One of the main challenges in managing transnational workplaces is related to language barriers, which in our research was highlighted in Belgium, Finland and Austria. The workforce employed in the Belgian construction industry has been of multinational origin since the end of WW2, as a result of the introduction of bilateral agreements with Southern Europe and North African countries. However, as reported by a representative of a Belgian employers' association, the situation has become even more complicated with the increasing use of postings, in particular regarding OSH issues. The management of health and safety challenges in the workplace is influenced not only by language barriers, but also by the different "culture" of OSH risks among posted workers. As highlighted by a Belgian labour inspector, although there is a common legislative framework at the European level, in the various countries there are different practices and habits, such as not using protective clothing or helmets. The main Belgian contractors have tried to overcome this obstacle by "using security boards with only pictographs. No texts. So, you can use it for different people who are talking different languages" (Cillo, 2020).

The primary concerns with regard to the management of transnational workplaces reported in Austria relate to language barriers and contentious relations between TCN posted workers and officials from enforcement agencies. Representatives of BUAK, the financial police and the GBH union stated that construction foremen are struggling with the challenges arising from managing transnational workplaces. Language barriers caused by the lack of German language skills among many workers and the lack of a common language on site in general make it difficult for foremen, supervisors and other workers to communicate daily needs or inform on occupational safety. Language barriers therefore influence coordination among the various companies operating on the construction site, thus impacting on work performance and quality. In fact, in many cases posted workers do not know the locally spoken languages, and often do not understand English, so it becomes necessary that the employer of the sending company or the team leader speak these languages to transmit information and orders to posted workers.<sup>68</sup>

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68 Representative of the Belgian employers' association explained the issue in these words: "When you work with same language speaking people, it's easier because people can tell others what one person told. Here, the Portuguese cannot speak with the Polish or the Bulgarian. And sometimes you think it's a

In a previous study on language barriers as regards occupational safety in transnational workplaces (Hollan & Danaj, 2018a), it was reported that due to language barriers it was uncertain if posted workers had received the appropriate OSH training and information. Language barriers were also a challenge for labour inspectors and representatives of other enforcement agencies with regard to monitoring and controlling the working terms and conditions of posted workers in Austrian workplaces. General efforts were made through a national website on posting that provides information in seven languages, including German, or with flyers and posters in the main languages where posted workers came from. In the workplace, the assistance of one person or worker that served as an interpreter to other posted workers was employed by managers and other supervisors in daily communication, and language smartphone apps were even used by inspectors during their field inspections (ibid).

Furthermore, language barriers also strongly influence the activities of trade unions and labour inspectorates. Trade unions try to overcome this obstacle by employing union officials of immigrant origin, who speak the same languages as the posted workers, as in Finland and Belgium. This approach is in most cases not possible for labour inspectors, and they need to find alternatives. In most cases they use translated forms that workers can complete in their own language (in Belgium, Estonia and Finland). In other cases, labour inspectors are supported by external interpreters provided by other public authorities (Belgium). As for the fragmentation of work organisation, due to the presence of a large, diverse and fragmented group of subcontractors, it emerged that big construction companies in particular “have started to hire more white collars as construction site managers in order to have special skills to manage different nationalities and different people on the working sites” (Cillo, 2020).

Another issue with regard to transnational workplaces was highlighted in Con3Post research. The presence of long subcontracting chains with many companies involved represents a specific challenge, as it favours the spread of social dumping and unfair competition, such as the employment of undeclared workers or social fraud (Cillo, 2020). In the Belgian case, social partners tried to find a solution by introducing “ConstruBadge”, a special badge issued by the Belgian occupational welfare fund of construction industry “Constructiv”, which is used for the visual identification of workers employed in the private and public sectors. A similar approach was adopted in Finland (Cillo, 2020; Kall et al., 2020). Furthermore, shop-stewards are often crucial in monitoring the entire chain on some Finnish and Belgian construction sites with extensive networks of subcontractors.

Authors of the regional study focused on Bosnian workers posted to Austria via Slovenia report on another challenge in posting of TCNs (Danaj et al., 2020). Representatives of BUAK and the financial police expressed concern over the increasing levels of aggression from construction workers towards officials from their enforcement agencies. A representative of the financial police recounted one case when one of their employees was attacked by a construction worker

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Bulgarian, but it is a Slovenian... Portuguese and Brazilian is quite similar. But other side of Europe, it's not so easy” (Cillo, 2020: 45).

with a hammer. Some stakeholders link the rising number of such occurrences to the different work cultures of the workers from third countries. They argued that in some other countries enforcement institutions that monitor and control workplaces – such as is the case of BUAK, the labour inspectorate or the financial police in the Austrian context – are perceived differently, and the relations between construction workers and these institutions are more antagonistic. It is uncertain how widespread these instances of aggression are among TCN construction workers, and whether it is TCN posted workers or TCN workers recruited differently who show such attitudes. Further research is thus necessary to examine the scale of the problem, the circumstances under which foreign construction workers react in this way in transnational workplaces in Austria, and their motives for doing so.

## 5 CONCLUSIONS AND FORWARD-LOOKING PERSPECTIVES

In this report we investigated the main characteristics of the trend of posting of TCNs to work in the EU construction sector. The report focused on a comparison between three regional posting flows, each of them observing the mobility and posting dynamics between the EU-sending, EU-receiving and third countries. The first regional flow addressed the dynamics between Slovenia, Austria and Bosnia and Herzegovina; the second flow between Italy, Belgium, Tunisia and Morocco; and the third flow between Poland, Finland, Estonia and Ukraine. The main areas of the study included: 1. regional and EU labour market dynamics (labour and skills shortages and the dynamics of supply and demand); 2. labour migration and mobility trends (labour migration policies, recruitment strategies and posting practices of TCNs); 3. labour rights, violations and representation of posted workers who are TCNs (access to information, main violations, and protection mechanisms); 4. social welfare and OSH vulnerabilities of posted workers, who are TCNs; and 5. managing transnational workplaces (management challenges and practices in the receiving countries). The findings indicate that the similarities between the three regional flows are significant. Moreover, the comparison between the EU-sending, EU-receiving and third countries covered by the research also reveal a number of parallels in all main areas of the study.

Our research shows that the third countries are lagging behind the EU countries in terms of economic development and employment conditions, which is a strong incentive for labour migration to the EU. For example, economic development in Bosnia and Herzegovina has been halted by political instability and tensions among the various levels of informal employment relations. As a result, BiH is having a worrying and growing number of citizens emigrating abroad, thus further increasing labour shortages. The construction sector seems to be particularly affected by informal work and labour skill shortages, despite some modest efforts to incentivise workers to remain at home, such as increased wages or apprenticeships for young workers (Danaj et al. 2020). The Slovenian labour market in particular attracts many Bosnian workers, as Slovenia remains one of the preferred countries of destination for these. This is due to historical and language connections, strong social networks, and bilateral labour mobility agreements that facilitate cross-border mobility between the two countries. In the Slovenian construction sector there is a high demand for workers for a variety of reasons, one of them being that Slovenian companies have become quite active in the wider European markets providing services through posting. Meanwhile, Austria has experienced the most robust growth and has a fairly strong labour market with low unemployment and the highest wages of the three, as well as a high demand for new projects that require a workforce (ibid.).

The same dynamics can be observed in other posting flows. Belgium, with high wages and high demand for workers in construction, receives posted workers from a number of EU-sending countries, including Italy, many of whom are TCNs (Cillo 2020). In the past few years, Italian companies have increasingly been able to offer low costs and greater flexibility by using a large reserve of skilled and unskilled workers who lost their jobs due to the 2008 economic crisis and are willing to accept worse conditions and salaries. Many of those workers are immigrants from Morocco and Tunisia who were working in the Italian construction sector before the economic crisis and are now being posted to high-paying EU countries (ibid.). Labour shortages in the construction sector were noted in all countries of the third posting flow, i.e. Finland, Estonia, Poland and Ukraine. However, the real extent of those shortages is difficult to assess because research shows that local workers might not always be offered employment due to higher labour costs (Kall et al. 2020). There is also lack of data on posted TCNs on the construction sites in Estonia and Finland, but stakeholders highlighted the fact that the phenomenon is becoming increasingly common. Again, as in other posting flows, the already established migration routes play a role in directing the migration and posting dynamics. For example, in Ukraine employment agencies, travel agencies and middlemen have created a migration industry, facilitating the flow of migrant workers, helping them to meet the requirements related to the entry and employment in Poland and some other EU countries (ibid.).

This finding provides an answer to an important question of why third country nationals use the posting route to work in a high-paying EU country and do not apply for a work permit in the country they would like to work in. Our research shows that posting via an intermediary country can often be an easy opportunity for TCNs to work in high-paying EU countries (Danaj and Geyer 2020). Direct migration often remains a long and bureaucratic process with an uncertain outcome. Migrants do not know if their visa application will be successful and, if so, if they will find employment once they arrive. As a result, more expedient ways are sought (ibid.). Findings from the focus groups with Slovenian and Bosnian stakeholders, for example, show that posting presents a more certain and trouble-free option than regular migration. Slovenia as the sending country plays its part in providing posting as a favourable option. Applying for a work permit in Slovenia, as described above, is much easier because of the bilateral agreement between the two countries which has made procedures less demanding and thus allows for the permits to be granted more quickly (Danaj et al., 2020, p. 26). Over the years Slovenia has also seen growing numbers of consultants, law firms and letterbox companies which specialise in facilitating the posting of workers, often TCNs, from Slovenia to other EU countries, like Austria. The same companies actively recruit workers directly from the Western Balkans and handle the processing of their paperwork. Apart from the bureaucracies of migration, posting companies also take care of the whole process of posting, i.e. get the service contracts the posted workers will work on, assist in finding or provide transportation between the sending country and the receiving country, and between the place of accommodation and the workplace, assist in finding or provide accommodation, process the paperwork

for the posted workers, and so on. Therefore, posted workers do not need to take care of these aspects on their own, while they have the opportunity to earn more than in their home and sending countries in a shorter time (Danaj & Geyer 2020). The informal channels of recruitment are also an important factor to consider. Given the historical connection between Slovenia and Bosnia and Herzegovina and a sizeable Bosnian diaspora in Slovenia, social networks remain strong and recruitment may be based on unconditional trust based on shared ethnicity.

Although statistical data is not available to corroborate our findings, stakeholders have increasingly pointed out that many labour rights violations have been noticed when it comes to the posting of TCNs (Danaj et al., 2020; Cillo 2020; Kall et al., 2020). Our findings show that irregular and exploitative employment practices are often transferred from the country of origin to the sending and receiving EU countries. Despite the mechanisms for control and enforcement of national/EU standards, the vulnerability of TCN posted workers persists due to the cloaking effect of the posting employment characterised by subcontracting, cross-border mobility and temporary service provision (Danaj et al., 2020). In the first posting flow we noticed some occurrences of irregular contracts and salaries, e.g. Bosnian workers are paid Slovenian minimum wage and their contributions and health insurance are unpaid or irregularly paid. The workers do receive support from Slovenian trade unions, enforcement agencies and NGOs, but the short-staffed enforcement and protection organisations are outmatched by the increasing flows of a posting industry and letterbox companies. Contractual irregularities with TCN workers are reported in Austria as well. The main forms are irregular reporting of working hours, irregular reporting of workers' profession, skill level and/or sector, unpaid/irregularly paid contributions and health insurance. A posting industry aimed at profit maximisation is noticed in Austria too, with Austrian companies establishing firms in Slovenia with the purpose of posting their workers back to Austria at lower cost (ibid.).

Similar violations were observed in the second and third posting flows. There are alarming reports of gangmasters being involved in the case of postings from Italy to Central and Northern European countries, which allows for greater profitability and a closer control of the workers, both inside and outside the workplace (Cillo, 2020). Italian and Belgian trade unions have been voicing their concerns over the matter, and are active in providing information and support to posted workers in their own languages. In both countries, unions provide specific services aimed at new immigrants through union staff of immigrant origin, who can communicate more easily with immigrants from third countries, like Tunisia and Morocco (ibid.). The main violations reported in Poland, Finland and Estonia include lack of proper registration in the receiving countries, problems related to work permits and/or employment contracts, and insufficient training at the worksite (Kall et al., 2020). Posting from Poland is used primarily to cut down costs and increase profits (due to the low minimum wage), but research shows that making the posting chain intentionally longer and more complex also makes it harder to track – which is why some employers intentionally use the opportunity to recruit from third countries. In addition, since the cooperation between the Finnish and Estonian inspectorates

is extensive, some Estonian companies set up branches in Latvia or Poland to circumvent the enforcement authorities when they post Ukrainian workers to Finland (ibid.). Trade unions and state agencies are active in supporting posted workers, but TCNs in particular are not willing to cooperate with them. Very similar to the recruitment and migration of Bosnian workers, prospective migrants from Ukraine also tend to rely on friends or family networks in the destination country for gaining access to information and jobs.

Posted TCNs are vulnerable for a variety of reasons. They are often involved in a complex chain of companies, which makes it challenging to understand who the real employer is, what kind of employment relationship they have, how the social security coverage functions (and how to check if and where they are registered), how to voice their concerns and grievances, how to react in case of work accidents and the development of occupational diseases. The occupational safety and health (OSH) of posted workers is a particularly pressing issue that requires further attention. We found that TCN posted workers are exposed to high OSH risks on construction sites and are commonly abandoned to their fate in the case of injury and especially illness. Danaj et al. (2020) noted that OSH risks are multiple and start from the complete lack of training to superficial training and medical tests performed in the third country, to a lack of equipment and protective gear they sometimes have to pay for themselves, as well language barriers to understanding warning signs and information, and poor and crowded accommodation. The risk of abandonment in case of injury and illness starts from the fact that some employers do not pay social contributions regularly or at all, do not provide sufficient health insurance, and when there are accidents do not report them as workplace accidents. There is a lot of pressure put on incapacitated workers to not seek medical care, especially long-term care, in the receiving country, and efforts are made to return them firstly to the sending country and eventually to their country of origin, where due to no employment history and lack of health insurance they do not receive any financial support or long-term care. This finding was corroborated by Kall et al. (2020), who noted that in Finland and Estonia injured TCN posted workers are often paid some form of compensation (e.g. by the main contractor) and sent away. In Italy, many immigrant workers employed as posted workers are more vulnerable to forms of extreme exploitation due to their precarious migration status and the fact that Italian legislation on labour migration links the validity of the residence permit to an employment contract, and the access to social rights to one's migration status. In fact, the uncertainty of this status pushes many TCN posted workers to accept worse working conditions and postpone any request for assistance from trade unions or labour inspectors until a situation becomes truly unsustainable (Cillo, 2020).

Challenges related to the management of transnational workplaces where TCN posted workers provide services are manifold. They affect employers, workers and enforcement agencies in a myriad of ways. Research shows that the main challenge is overcoming the language barrier in order to establish efficient communication among workers, between posted workers and their foremen/site managers, and between posted workers and inspection agencies that inspect

transnational construction sites. Different levels of particular skills were also reported as a problem on construction sites, as well as different (sometimes culturally conditioned) understanding of the importance of OSH and compliance with OSH regulations. A particular issue that was brought up in Austria was aggression towards employees of enforcement agencies. The negative reactions of posted TCN workers can be explained as a result of the antagonistic experience those workers might have had with authorities in their countries of origin (Danaj et. al, 2020), as well as the fear of being made redundant by their employers for causing trouble and so losing the residency rights. In this respect, there is a need to establish better relations with the workforce, through information campaigns and other activities that will help familiarise the workers with the enforcement agencies. At the same time, institutions should transform or clarify their position from punitive organisations to enforcers of workers' rights, in order to be able to obtain their collaboration (ibid.)

## 5.1 Findings from the foresight workshops

Nine foresight workshops were conducted during the joint visit events. They were based on a pre-prepared matrix that guided the participants when developing future scenarios. The workshops were attended by stakeholders with specific expertise on posting of workers and/or labour migration and labour market dynamics, especially in the construction sector. They were invited to share their expert opinions on how the situation in their country could evolve by 2035 by taking into consideration the interplay of four possible circumstances: there will be skill shortages, there will be no skill shortages, migrant labour will be in supply, migrant labour will not be in supply (see Figure 1). These circumstances were then combined, and the participants were asked to consider the most likely scenario. In this report, we present their findings. It should be noted that the outcomes depend strongly on the composition of the panel and should not be viewed as projections of future events. Instead they provide interesting forward-looking insights that are a result of an intense creative process of the participating stakeholders.

### **Bosnia and Herzegovina – Slovenia – Austria**

In two of the three scenarios elaborated, i.e. in BiH and Slovenia, the participants think that there will be skill shortages but not labour migrants in supply, whereas in Austria they think that there will be shortages but also migrant labour in supply. So, the situation in BiH in 2035 will continue to be one where people will emigrate, while the country will try to attract immigrants to respond to the increasing demands of the labour market without managing, also due to a growing anti-immigrant sentiment. In Slovenia, too, the anti-immigrant sentiment is considered to be growing, while the labour demand in the country will continue to increase as more and more people will leave and workers from the neighbouring countries will not want to come, thus leading the authorities to look for solutions in more distant countries, such as China. The Austrian scenario, on the other hand, is

moderately positive, as the growth, the demand and the supply are considered to continue in similar fashion to the present. What concerns the participants is the risk of social dumping, which they fear might grow if measures to prevent it are not strengthened in the present time. In other words, these scenarios mirror to some degree the current situation in each of the national labour markets, but also highlight some of the concerns for the future (Danaj et al., 2020)

### **Morocco and Tunisia, Italy, Belgium**

During the foresight workshop for Belgium, stakeholders developed as the most plausible scenario the one in which there will be skill and labour shortages, but not migrant labour in supply. The participants gave particular relevance to already existing trends and developed a scenario quite similar to the current situation, albeit it was considered plausible that in the next 15 years working conditions of posted workers and domestic labour force there will significantly worsen. This foresight discussion has been particularly useful because it facilitated to develop detailed policy recommendations, especially at workplace and industry level. During the foresight workshop for Italy, stakeholders developed as the most plausible scenario the one in which there will be migrant labour in supply and skill and labour shortages. The participants discussed about several economic, social and political factors that will affect the labour market dynamics at national, regional and international level in the next 15 years. Also, in this case participants hypothesised a deterioration of the working conditions, but they also open the door to the possibility that in some countries posted workers will organise spontaneous struggles and trade unions will be able to unionise a part of them. During the foresight workshop for the situation in Morocco and Tunisia in 2035, stakeholders developed as the most plausible scenario the one in which both countries will have migrant labour in supply and skill and labour shortages. The discussion focused on the hypothesis of a radical change in the role of Morocco and Tunisia with regard to the transnational labour market and the current mobility regime and emphasised how the most recent economic development trends in the mining and construction sectors could contribute to attracting immigration from sub-Saharan Africa and Europe (Cillo, 2020).

### **Ukraine – Poland – Finland and Estonia**

In all the three foresight workshops participants chose the scenario where the country under consideration will be experiencing skill and labour shortages on the one hand and migrant labour will be in supply, on the other hand.

The foresight exercises were useful in that they pointed to the complex web of issues that posting of workers will be entangled in. The participants referred to a broad range of political, social, economic, cultural and technological factors which will affect the future of posting of workers in the construction sector in the next 15 years. What is more, the participants discussed possible developments at a range of levels, including global, regional, EU, national, local and sectoral situation. Further, they pointed to macro-(country), meso-(associations, trade unions, and enterprises) and micro-(workers) scales describing the future processes in the most

probable scenarios. The nature of the discussion in each case really depended on the participants. Talking about the future can be heavily influenced by the current issues, and so the discussion can get fairly practical and political. For example, in the Finnish workshop, quite a heated debate developed between participants about how beneficial the migrant labour is to the country's social security system (Kall et al., 2020).

## 6 POLICY RECOMMENDATIONS

The last chapter proposes general policy recommendations that are based on the synthesis of research results of the three regional reports, that provide more country-specific recommendations (Cillo, 2020; Danaj et al. 2020; Kall, 2020). The recommendations are proposed at the national and regional levels; industry and workplace levels and the EU level.

At the **national and regional** levels the main recommendations concern the following aspects of the posting arrangements:

### *Labour market dynamics and labour migration and mobility policies*

- *Sending countries* need to create a *stimulating* social, economic and cultural environment for the retention of their workforces, by implementing *development strategies* across local, regional and national levels that would also address urban and rural disparities. At the same time, it is recommended that they provide clear, reliable and accurate *information* on *migration* and posting to other nations. Furthermore, as the posting of workers is viewed in the context of a mismatch between education and skills and the lack of the economic development, there is a need for a *multisectoral* approach to the issue that will include stakeholders from the areas of education, social partners and policymakers.
- It is recommended that sending and receiving country governments reconsider selected aspects of their *restrictive migration policies* for TCNs, in particular the link between the duration of the residence permit and the employment contract, in order to mitigate possible blackmail linked to migration status.
- Migration and posting *data collection*, reliability and availability need to be improved. Collecting information about the citizenship of the posted workers as a general practice to gain a better understanding of the extent and characteristics of the posting of TCNs might be useful. Furthermore, *emigration* related *data collection* should be *improved* especially in the sending countries in order to obtain a clearer picture on the extent and characteristics of TCNs' emigration, posting and return migration.
- *EU rules on TCN posting* should be effectively applied. This might include, for example introducing regulations indicating how long a foreigner must be employed by an employer before they can be posted to another Member State in order to prevent abuses of the posting arrangement.
- While the analysis has shown that labour shortages in construction are a structural feature of most national economies under study, it is recommended that governments introduce *migration policies that favour the facilitation of obtaining legal residence and employment status of TCNs*, even in the case of low-skilled professions. This measure could *limit the social dumping effect* deriving from the increasing use of postings and to improve posted workers' conditions

by limiting the precarity connected to their mobile status.

*Social welfare, vulnerabilities and occupational safety & health of posted workers*

- Posted workers should be provided with clear, reliable and accurate information on their migration/posting arrangements prior to departure. This information should be easily accessible and organised in a systematic way. This could be done, for example, at embassies, job fairs, physical and online information points, etc. However, also informal and personal information channels should be taken into account when devising information strategies.
- In order to diminish the language barriers faced by TCN posted workers, it is recommended that all the involved stakeholders intensify their efforts to *inform* posted workers about their rights and responsibilities in *several languages*. It is also recommended to also extend multilingual information to *TCN posted workers*. The information about the posting arrangement and other aspects of everyday life, employment documents and job training should also be provided in the language of TCNs' country of origin, at least initially. It is also recommended that the *threshold* for TCNs to *contact* authorities and ask for adequate information and help before, during and/or after their work abroad is lowered.

**At the *workplace level*:**

- Initiating regulations and practices that prioritise *enforcing* and *implementing* the labour *rights* of the posted TCNs is needed. Specifically, the results show that while rules and regulations might be in place, they might not be applied in the workplace. For this reason, closer monitoring and control practices need to be applied in all the studied countries.
- Posted TCNs need to have the right and real possibility to *access information* about their rights, counselling, and assistance in pursuing cases where they have been mistreated without the fear of being deported from the country. It is also recommended to recruit *supervisors* with specific intercultural and communicational skills for the *management of transnational workplaces*.
- In order to encourage posted workers to report violations, it is recommended that trade unions or the paritarian social funds of the construction industry create a *fund to support workers who lose their jobs* in the event of a complaint or labour dispute (BEL/ITA). Also, cross-country civil lawsuits should enable for better exchange of information, and *increased insolvency* protection should be introduced to make sure workers receive their wages. Higher penalties need to be introduced for employers that are underpaying their workers.

*Labour rights and representation of posted workers who are TCNs*

- *Labour inspection services need to be strengthened* both in terms of the human resources, language training as well as the state financial input into other

aspects of their operation. Mobile inspection units that could cover larger areas in a particular country and not only those linked to a particular geographical place should be further promoted, and more inspections should generally be performed. Also, *multidisciplinary taskforces* dealing with the posting of workers from a sending, third and receiving perspective could be created. Setting up *transnational taskforces of labour inspectors* specialised in posting issues could be useful in this respect. It is also recommended that *transnational cooperation* among *justice authorities* is promoted. It is of great importance to increase the strength and geographical scope of such activities, for example, to also include representatives of third-country trade unions, labour inspectorates and other stakeholders in this cooperation.

- It is advised that site-level *cooperation* is improved, including fast and effective *data sharing* between social partners and state actors to improve the monitoring of the violations in the sector and to detect unlawful practices. Also, the use of ‘shop stewards’ that could be an important link between workers and company management is to be promoted.
- *Legislative and organisational changes* at national levels aimed at reducing the scale of irregularities related to the posting of workers, i.e. by checking the minimum wage declared in the documents submitted to social insurance institutions need to be created.
- More effective *monitoring* and *punitive enforcement* tools for dealing with TCN posting should be made available. This includes, for instance, ensuring that labour inspectors have enough resources and effective measures to use their statutory competence to control the extent to which an employer posting workers complies with occupational health and safety regulations (PL).

*At the **industry level**:*

- Improved monitoring of contractual arrangements is recommended due to the temporary and mobile nature of work in the construction sector, in particular in ensuring that workers are formally employed and are working according to the employment standards in the receiving country.
- Measures for the revitalisation and improvement of the perceived social status of the construction sector should be performed in sending, but also in third and receiving countries. Measures to improve its reputation in the wider society might include efficient apprenticeship systems and/or incentives for sectoral workers to remain in their home country rather than to seek employment abroad. In this respect, it is of great importance that the social responsibility of employers in the construction sector is also increased through, for instance, the promotion of best practices and/or issuing certificates to ‘trustworthy employers’.
- In relation to the management of transnational workplaces, it is important to *familiarise workers* with existing rules and enforcement agencies through information campaigns and other activities, while **at the workplace level**, institutions should highlight their role not as punitive organisations, but instead

as ones helping workers better enforce their rights. More awareness raising campaigns for workers are also recommended at local, national and regional levels.

- In the case of fake postings, procedures for the verification and nullification of PD A1 forms should be *simplified*, which will also require improved transnational stakeholder cooperation. Better exchange of information between social insurance providers is also necessary.
- Cross-border trade union membership recognition is recommended; as this will help workers better enforce their rights in transnational workplaces. Increased union membership should also be promoted both in sending and receiving countries.

**At the European level:**

- With regard to the cases of sending *companies linked with organised crime*, it is recommended to introduce *whitelists* that could be consulted at the *European level*.
- With regard to the subcontracting system, it is recommended the EU introduces a common legislation that *limits the number of subcontracting levels* and that provides a more *extended chain liability regulation*;
- The IMI system should be extended to allow also for the exchange of social security information. Efforts should be also made to include stakeholders (e.g. inspectors) of the sending countries in the system. It is recommended that the European Labour Authority also launches further channels of cooperation with third countries. A discussion about a common European system for registering posted workers should be promoted.

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