



Country Report

EEPOW Posting of Workers in Eastern Europe
(Agreement No. VS/2017/0349)

Work Package 3: RESEARCH

COUNTRY Report for Montenegro

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ZRC SAZU

November 2018



With financial support from the EASI
Programme of the European Union

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EXECUTIVE SUMMARY

- Montenegro has gained independence in 2006 and the status of an EU candidate country in 2009. The issue of aligning legislation with EU requirements pertains not only to the existing institutional capacities for this process, but also to the needs and requirements for the successful transposition of EU legislation into national law.
- Secondly, Montenegro as a country of the Western Balkans is strongly embedded into regional migration and mobility networks. While the country has historically experienced mass emigration, it occupies a rather particular position in relation to the other countries of the Western Balkans. It is faced with considerable labour shortages in particular sectors of the economy, such as construction, tourism and agriculture. In this respect, immigration into the country is also an issue of considerable importance. The mismatch between the labour market needs and skills available in Montenegro further contributes to such a state.
- The country report for Montenegro tackles a largely unexplored area in the region, namely the possibilities for the transposition as well as the implementation of the Posting of Workers Directive into national law. In this respect, the wider country context pertaining to the socio-economic and labour market trends is first presented. More specifically, drawing on a review of secondary sources (national and comparative reports, scientific and professional articles), on semi-structured interviews with stakeholders in the area of posting and labour mobility and on the group discussion at the national workshop on posting of workers from and to Montenegro, the existing institutional capacities, resources, stakeholder cooperation and coordination regarding the Posting of Workers Directive are presented.
- The collected material shows that stakeholders are generally aware of the process of posting of workers but are less acquainted with the legal implications of posting (the content of the Directive) and with the terminological issues that concern the posting of workers within the EU. A lack of coordination mechanisms on a national, and particularly on a transnational level (cross-country exchange of information, coordination and cooperation) was identified. Stakeholders, especially private employment agencies, were generally unaware of standard grievance procedures in cases of transnational violations of workers' rights. These were tackled sporadically rather than systematically. Consequently, the interviewees emphasised the need for training activities on this issue contributing not only to more efficient coordination mechanisms and improved human resources in institutions and organisations, but also to improved governance through a better delivery of services pertaining to posting and labour mobility. The lack of reliable, timely and accurate data, particularly on emigration, was also stressed and the lack of monitoring mechanisms on a national as well as transnational level was observed. The interviewees also reflected on the inflexible and lengthy procedures when trying to either send workers abroad or attract foreign workers to Montenegro.
- Although interinstitutional cooperation was generally evaluated in a positive manner, the need to include particularly stakeholders from trade unions and NGOs into public policy deliberations was recognised also by public officials. Finally, the particular position of Montenegro as a country attracting a large number of labour migrants is to be stressed. As such, the issue of postings to, not only from, Montenegro is expected to receive significant policy and public attention in the future.

1 INTRODUCTION

1.1 OVERVIEW OF THE COUNTRY CONTEXT

Montenegro, a newly-independent state that has gained independence only in 2006, has acquired the status of an EU candidate in 2009. With strong historical, cultural and economic links within the region of the Western Balkans, the country remains highly embedded in regional networks of cooperation, migration and mobility. Such a development is characteristic particularly in the area of immigration to Montenegro, where foreigners from the former Yugoslav republics prevail. Montenegro also enjoys quite a particular position among the countries of the Western Balkans. Although emigration from its territory (particularly to countries of ‘Western Europe’) has traditionally represented an important dimension influencing its socio-economic development, the country is, contrary to most of its neighbours, also facing significant labour shortages particularly in the sectors of tourism and other service activities, and construction. In addition, depopulation of the rural (predominantly Northern) areas, the consequent processes of population ageing, a significant mismatch between labour market needs and skills, high youth unemployment despite moderate levels of overall unemployment, and regional inequalities and imbalances are occurring, as is the case in all the countries of the Western Balkans. Such developments are among the issues that set the scene for the country report presented below.

1.2 AIMS OF THE STUDY AND METHOD

The aim of the study was to identify the existing capacities of the relevant stakeholders in both the transposition as well as the implementation of the Posting of Workers Directive.

The data for this report were compiled through two main approaches. Firstly, secondary sources such as existing publications, articles and reports on labour mobility, migration, the labour market and the EU accession process in Montenegro were consulted. Secondly, semi-structured interviews were conducted with representatives of national policy-makers and professionals working in the area of labour mobility and/or migration. The findings of the group discussion during the national workshop for Montenegro are also included in the report.

1.3 MAIN FINDINGS

With regard to the knowledge about and the transposition of the Posting of Workers Directive into national law, the main finding of both the interviews as well as the national workshop was that knowledge about the Directive among the stakeholders, especially those not coming from public authorities, was generally limited and the terminology related to the procedure of posting was generally not recognised as posting but rather as labour mobility and/or migration. Although national interagency cooperation was generally identified as solid and constructive, the need to establish better links and cooperation between stakeholders with regard to adoption but especially the implementation of acts and procedures, was identified. The need to get to know about and exchange experience with EU countries that have more extensive experience with the posting of workers was emphasised, although various training and exchange activities in the area of employment and mobility are taking place with the involvement of the EU

countries as well. Additionally, interviewees stressed the urgent need for information sharing, exchange and training not only in relation to posting but also pertaining to the broader issue of labour mobility and migration. The general low mobility of the population of Montenegro, especially individuals coming from the Southern and Central areas, was generally mentioned by the interviewees as contributing to lower levels of international mobility. However, there exists a great propensity for internal migration among the population coming from the Northern part of the country. A significant mismatch between the skills of the workers and needs on the labour market was also recognised, contributing to significant shortages in some sectors of the economy, particularly tourism and construction. In this respect, some interviewees viewed postings to Montenegro as a possible ‘correction’ of such trends since at the moment, such shortages are usually filled by (mostly) seasonal workers from neighbouring countries. More information on posting and other working arrangements was also recognised among the stakeholders as one of the most important measures to prevent violations of workers’ rights when working abroad. This could contribute also to a better delivery of services of public institutions to citizens. In this regard, monitoring and improved collection of data on posting as well as migration and labour mobility trends was emphasised as of paramount importance.

1.4 STRUCTURE OF THE COUNTRY REPORT

The report is structured into four main parts. In the first part, the general socio-economic country context, especially the labour market trends, trends in labour migration and mobility and developments pertaining to the transposition of EU law, are presented. Then, the methodological premises and the main aims and the approach of the study are discussed. In the central part, relying both on secondary sources as well as findings of the semi-structured interviews with stakeholders and the national workshop on the posting of workers, the main findings of the country study regarding the legislative framework, institutional arrangement, inter-agency cooperation, issues of human resources, capacities and information exchange and sharing, stakeholder engagement as well as public governance are presented. In the conclusions, the findings are synthesised and finally, policy recommendations in selected areas are provided.

2 COUNTRY CONTEXT

2.1 SOCIO-ECONOMIC OVERVIEW

Despite the progress achieved on the labour market in Montenegro over the last several years (especially in terms of the falling unemployment rate, currently at 18,42%) there are still several serious deficiencies, such as a relatively low level of labour force participation, especially among females, a high incidence of long-term unemployment and a mismatch between labour supply and labour demand. All of these challenges could be attributed to varying factors, such as job losses due to restructuring and entry barriers to the labour market, in particular the high level of employment protection and the fiscal burden imposed on labour. An issue of high concern is also the prevalence of undeclared work. For instance, the 2007 report of the Justice, Freedom and Security Directorate of the European Commission notes that a high number of foreigners in Montenegro are working illegally. Among these, Albanians were predominantly working as workers in agriculture, persons from Ukraine and Romania in the construction sector and persons from Bosnia and Herzegovina and Macedonia in different sectors, including tourism (EC in IOM, 2007). The understaffing of the Labour Inspectorate is an issue here, since most violations are recorded in the hotel sector and the trade and construction sectors that are also sectors employing a high number of foreigners (EUROFOUND, 2013). In 2016, according to the UNDP (2016) report on the state of the informal economy in the country, every third person in Montenegro was fully or partly informally hired and the findings of their survey corroborated earlier studies that the sector of ‘other services’, trade, agriculture, tourism and construction were the sectors most affected by informal employment. However, a lack of consistent sources of data on the undeclared economy is apparent (Katnic and Williams, 2018). According to the ILO (in Bertelsmann Stiftung, 2018) in addition to informal employment, informal business – when the entire economic activity of an entity is unregistered – is also among the most frequent manifestations of the informal economy in Montenegro.

The mismatch between employers’ needs and workers’ skills, one of the main problems of the labour market in Montenegro, is a consequence of an increasingly service-oriented economy which requires a broader skills’ base as opposed to occupation-specific skills that are increasingly restrictive to labour market mobility and a changing economy (ETF in IOM, 2007; Unija poslodavaca Crne Gore, 2014). Skills shortages have been identified particularly in tourism, catering, construction and trade sectors that face particular difficulties in attracting the interest of the unemployed (IOM in IOM, 2007; Institute for Strategic Studies and Prognoses, 2016), which is also corroborated by our interviewees. In this respect, the IOM (2007: 29) has described the labour market in Montenegro as characterised by a “culture of low mobility” and a lack of readiness or ability to relocate in response to existing labour market opportunities). Low mobility of the workforce together with poor distribution of job opportunities leads to difficulties in absorbing the unemployed.”

To better understand the socio-economic development in the country, the large regional discrepancies as regards social and economic progress levels are to be mentioned. The Strategy of Regional Development is focused on a coordinated approach to the issue in order to enable a more balanced development of the country and to narrow the gap between its regions. For the Northern region, which is facing the most socio-economic development constraints, the priorities are, among others, the development of human potential, the development of the

business environment and an increase in competitiveness through a sustainable use of economic, rural and cultural resources (Migration Profile, 2013).

Despite the generally perceived low mobility of the population of Montenegro by the interviewees as well as the general public and policy stakeholders, there exist strong internal migration flows. In this respect, one of the most characteristic developments in the last two decades has been the strong internal migration of the population of Montenegro, but predominantly from the North of the country to central and Southern (coastal) areas, from rural to predominantly urban areas. Among the main reasons for such migration, better conditions for business and life have been identified (Migration Profile, 2013). Bulatović and Rajović (2018: 143) view this phenomenon as a “response to territorial imbalances, particularly in the levels of the demand for and supply of labour, which results in gaps in wages and in unemployment rates”. Lower population density, longer travel distances for service users as well as providers and a lack of economies of scale for healthcare service providers, are among the main challenges that rural residents face. Movements from rural areas result in a speedy reduction in the number of farmers and their socio-cultural transformation towards a more urbanised lifestyle as well as in a turning-away from agriculture as a source of income. Internal migrants in Montenegro settle in urban regions particularly for reasons of employment, predominantly in the tourism and construction sectors. Such migration patterns have continued the trend of population ageing in the North of the country (Šarović, 2012; Migration Profile, 2013; Rajović and Bulatović, 2016).

In addition to such internal migration patterns, Montenegro has also been a typical emigration country throughout the 20th century. The first wave of migration after World War II was directed to Serbia. Especially in the period from 1965 to 1973, emigration was jointly organised by the Federal State Agency of the SFRY and the main receiving countries in the framework of the guest-worker agreements were Germany, Austria, France and Switzerland (Migration Profile, 2013). In this respect, Montenegro is no exception among the countries of former Yugoslavia where institutionalised and to a large degree state-sponsored and/or facilitated guest-worker emigration was among the main patterns of emigration.

Emigration continues to the present day and can be viewed, particularly in the more rural areas in the North of the country, as an important depopulation factor (Lukic et al., 2012).

Among the specific features of the current Montenegrin labour market is the oversupply with mariners and other maritime professionals who are educated in Montenegro but cannot find a job due to decreasing local demand, and who take up employment abroad on foreign ships (Grečić and Kaludjerović, 2012).

According to the data from the last census (2011) that pertain to citizens of Montenegro living abroad, 35,689 Montenegrin citizens reside abroad for more than a year. In the estimates provided by the Government of Montenegro, the number of expatriates and migrants from Montenegro worldwide is about 200,000 which is consistent with the estimated size of the Montenegrin Diaspora by the IOM (Migration Profile, 2013). However, this number would even be larger if also Montenegrins by ancestry were taken into account. The exact number of Montenegrin immigrants and their descendants around the world is unknown, but the Ministry of Foreign Affairs estimates their number is equal to the number of people living in Montenegro (Migration Profile, 2013), i.e. around 600,000.

The origin of emigrants from Montenegro is generally in accordance with the above-described pattern of internal migration: the largest number of Montenegrin citizens abroad moved out of

the Northern region of Montenegro. In the North, the increase in the proportion of people emigrating has been significantly higher than in the other regions of Montenegro, where a more moderate increase in the proportion of emigrants has been noted over the last three decades (Migration Profile, 2013).

With regard to immigration, the majority of immigrants were recorded in the 1990s, from 1990 to 1999; almost 42,000 people immigrated to Montenegro. This immigration can be attributed to the war events in former Yugoslavia and the consequent political and social disintegration as well as to the economic restructuring in the country that were similar to the developments in other countries of the Western Balkans (Lukic et al., 2012; Migration Profile, 2013). Particularly the displaced individuals from Kosovo, especially the Roma population, still live in very difficult economic and social conditions; there are also displaced individuals from Croatia and Bosnia and Herzegovina residing in the country (Jaigma, 2011). Data from the 2011 census demonstrate that 70% of immigrants in Montenegro have Montenegrin citizenship and that 86.2% come from the countries of former Yugoslavia. This number reflects the strong involvement of Montenegro, as well as of all the other former Yugoslav republics, into mutually dependent migration networks and processes (Institute for Strategic Studies and Prognoses, 2016). The joint analysis of the IOM and Regional Cooperation Council in 2015 (IOM and RCC, 2015) has found that out of the total number of work permits issued in the SEE region in 2013, the majority (62%) was issued in Montenegro, proving the importance of Montenegro as the main employer of migrant labour within the region. Family reasons were noted as the most common reason for moving to Montenegro, followed by war in the area of former residence, economic reasons and education/schooling. Among these immigrants, 51% are women, with men moving for economic reasons more often than women (Migration Profile, 2013). Especially for migration within the region of the Western Balkans, the majority of immigrants to Montenegro are young; approximately 60-65% of all immigrants from the region in recent years are in the 24-49 years age group. The majority of migrants from the region are unqualified or lowly-qualified individuals; however, there is also an increasing trend of persons whose work is related to scientific and technical activities (Institute for Strategic Studies and Prognoses, 2016).

However, Montenegro is, quite contrary to other countries in the region, among the countries where the importance of seasonal work, especially in the service sector (tourism) and construction, is of paramount importance for the functioning of the labour markets. Most of the seasonal work is done between spring and late autumn, and seasonal workers conclude a fixed-term employment contract for the duration of the season (Strban, 2010). Placement in seasonal work is treated as one of the active employment measures, with special training for chefs and waiters in preparation for seasonal work thereby reducing, at least temporarily, the unemployment rate (Strban, 2010). However, the domestic labour is unable to respond to the demands on the labour market and in this respect, foreign workers are of crucial importance. The influx of foreign workers is highest in the tourism sector, especially in the coastal municipalities of Budva, Kotor and Herceg Novi. In general, most work permits are issued to citizens of the neighbouring countries (especially Serbia and Bosnia and Herzegovina) as well as to citizens of the Russian Federation. Most of the permits are of seasonal nature, for work in construction, tourism and trade (Migration Profile, 2013). This development thus concerns both regular and irregular migrant workers and in the words of Lukic et al. (2012: 16) “responds to labour market shortages resulting from both a revival and a restructuring of the economy”.

2.2 EU INTEGRATION PROCESS

Ever since Montenegro gained independence in 2006, the EU accession has been a political priority (IOM, 2007). In 2008, the country applied for EU membership and in 2010, the Commission issued a favourable opinion on Montenegro's application identifying 7 key priorities that would need to be addressed for negotiations to begin, and the Council granted it candidate status. In December 2011, the Council launched the accession process and the accession negotiations with Montenegro started on 29 June 2012. In its Montenegro 2018 report (European Commission, 2018), the Commission has emphasised the need to strengthen transparency, stakeholders' participation and the government's capacity to implement reforms. Among the issues connected to migration, the Commission has pointed to the need of strengthening its capacities to cope with migration-related pressures. The EC estimates that Montenegro has some level of preparation in the area of freedom of movement for workers, but it needs to strengthen its capacities to prepare for the coordination of social security systems ensuring non-discrimination, although some social security bilateral agreements have been signed. In the field of providing services, Montenegro remains moderately prepared, although some progress was made in this area. The issue of mismatch between the education system and the labour market remains an issue of concern also for the EC (European Commission, 2018).

The European Commission in February 2018 set an indicative deadline of 2025 for admission of Montenegro into the EU (European Commission, 2018). According to the report prepared on the basis of the Bertelsmann Stiftung Transformation Index (Bertelsmann Stiftung, 2018), which assesses the transformation toward democracy and a market economy as well as the quality of political management, Montenegro is deep into the negotiation process with the EU and is adapting its legislation to the EU acquis, but the implementation of legislation remains limited due to a lack of political will and a continuous lack of administrative capacities.

3 METHODOLOGY

3.1 DATA COLLECTION

The data for this report were compiled through two main approaches. Firstly, secondary sources from existing publications, articles and reports on labour mobility, migration, the labour market and the EU accession process in Montenegro (for instance, national and international organisations' reports, legislative acts and scientific articles) were consulted. This review focuses in more detail also on the legislative framework of labour and mobility legislation in the country. Secondly, semi-structured interviews (10 in total, but altogether 15 people participated in the interviews, since some interviews were conducted as group interviews) were conducted with representatives of national policy-makers and other professionals working in the area of labour mobility:

- Ministry of Labour and Social Welfare, (3, joint interview);
- Employment Agency of Montenegro (2);
- non-governmental organisation (2, joint interview);
- representatives of national employer organisations (2, joint interview);
- private employment agencies (4)
- agency for professional rehabilitation (1).

The fieldwork phase took place in May 2018. The group discussion at the national workshop served as an additional source of information for the study.

3.2 ANALYTIC FRAMEWORK

The approach chosen for the country case-studies was, in accordance with the objective of the EEPOW project: to identify the existing capacities of the relevant stakeholders for the transposition and the implementation of the Posting of Workers Directive and to identify the factors that could contribute to this process in a positive manner. Although the approach was directed mainly at identifying issues connected to the Directive, the aim was also to enable the stakeholders to reflect on the matters connected to labour mobility and migration in general. In this respect, the focus is also on country-specific capacities and needs on the labour market in a wider context.

In accordance with the EEPOW research design, the main research questions are:

- which are the current institutional capacities for implementing the Directive;
- which institutional needs should be addressed in order to support its implementation;
- how such needs should be addressed.

3.3 CHALLENGES AND LIMITATIONS

There were no major challenges and obstacles associated with the gathering of material. Contact to the interviewees was facilitated by the Employment Agency of Montenegro, which is a partner in the EEPOW project. During the writing of this report, intensive legislative changes were taking place in the area of the implementation of the Posting Directive and these have been included in the Results section.

4 RESULTS

4.1 LEGAL FRAMEWORK

The legislative framework regulating the work of foreigners in Montenegro is mainly part of the Law on Foreigners from 2018 that provides the framework for determining the number of work permits for foreigners on an annual basis (previously, the Law on the Employment and Work of Foreigners regulated these issues) (Institute for Strategic Studies and Prognoses, 2016; Zakon o strancima 01-205/2, 2018). Quotas are distributed for the purpose of seasonal work, for posted workers that perform cross-border services in Montenegro and for professional training and education (Zakon o strancima 01-205/2, 2018). The number of quota workers determined for 2018 is 23,185. Until the end of October 2018, 22,062 work permits for foreigners were issued (13,502 within the quota and 8,560 outside the quota). As the data on quotas for 2017 demonstrate, 76.3% of the used quotas were within the construction sector, services for providing accommodation and foods, trade and other service activities (CdM, 2018). The Law on Foreigners understands posted foreigners as individuals in an employment relation with the employer outside the territory of Montenegro who performs certain services on the territory of Montenegro. According to the same Law, posted foreigners can perform services if they have been employed with a company for at least one year. Posted foreigners can be issued with more work permits, but altogether not for longer than three months per calendar year. In exceptional cases, this period can be prolonged for objective reasons or if the performed services are of special interest for Montenegro (Zakon o strancima 01-205/2, 2018).

As the representatives of the Ministry of Labour and Social Welfare stated during the interview in May 2018, the Law on the Protection of Posted Citizens of Montenegro working abroad, transposing the Posting of Workers Directive into the legislation of Montenegro, was to be adopted in autumn 2018. At the time of the interview, a working group for the adoption of the Law consisting of representatives of social partners (employers, trade unions), the relevant ministries and the NGO sector was under formation. During the interview, the representatives of the Ministry expressed the need for more information from other EU countries in both transposing as well as implementing the Posting of Workers Directive. Since, according to the representatives of the Ministry, Montenegro is not generally recognised as a country of emigration, it does not have significant experience in the area of posting at the moment. Despite this, during the interview, the transposition of the Directive into national law and the adoption of the new legislative framework were recognised as fundamental for the state of Montenegro. The proposed text of the Law on the Protection of Posted Citizens of Montenegro working abroad, was sent to the European Commission for suggestions at the end of 2018, but the Ministry of Labour and Social Welfare has not yet received comments to the proposed version (e-mail correspondence with the Ministry of Labour and Social Welfare, April, 2019).

The Law on Protection of Rights of the Citizens of Montenegro working abroad was passed in 2004, while the new Law on Intermediaries in Employment and Rights during Periods of Unemployment that has also not been passed yet, arises from the need to harmonise the legislation with the EU regulations, especially the Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services. Some of the regulations, such as the role of

intermediaries in employing Montenegrin citizens abroad, will also be transposed into the new Law on Intermediaries in Employment and Rights during Periods of Unemployment. At the time of writing this report, the Ministry of Labour and Social Welfare has presented the first draft of the Law on the Protection of Posted Citizens of Montenegro working abroad. Consultations with relevant stakeholders took place throughout October and November 2018. At the time of writing this report, it is unclear which acts are to be included in the revisions adopted by the Government.

4.2 INSTITUTIONAL ARRANGEMENT

In the area of labour governance, the Ministry of Labour and Social Welfare is responsible for the overall coordination of the implementation of the National Strategies for Employment and Human Resources Development. The Employment Agency for Montenegro is responsible for the planning and implementation of these strategies at the national level. The Ministry of Labour and Social Welfare is responsible also for the implementation of the overall social protection system through its implementing institutions such as the Centres for Social Welfare, residential institutions for residential care, the Pension and Disability Insurance Fund, the Health Insurance Fund and the Employment Agency of Montenegro (Migration Profile, 2013).

The basic finding stemming from the interviews and the workshop is that posting of workers in the framework of the provision of services is a relatively unfamiliar policy area for many stakeholders. Regarding terminology, some of the interviewees referred to postings as detached work or they referred to examples of postings without being aware that postings in the legal sense were taking place. Representatives of the competent authorities as well as private employment agencies are aware of the complexities related to the transposition and implementation of the Posting Directive, but they report lack of in-depth knowledge and training on how to respond to specific issues they will encounter in the field in the practical implementation of the legal arrangements. Among the reasons for such a need could be the fact that the legal framework regarding labour mobility and migration has largely been aligned with EU regulations in recent years and important changes have occurred in this area.

From 2009, the Law on Employment and Work of Foreigners prescribed the conditions under which a foreigner may be employed or work in Montenegro such as having a work permit, an approval for permanent or temporary residence and a concluded contract of employment or a contract for the performance of services. The National Employment Agency was in charge of issuing the work permit, the Ministry of the Interior was in charge of issuing a residence permit and the tax administration was where a foreign worker applied for compulsory insurance. It was observed that despite the established legislative framework for keeping records on labour mobility, the records of these institutions were neither aligned or consistent, nor was there enough data exchange since each institution only provided information within its jurisdiction (Institute for Strategic Studies and Prognoses, 2016). As of 2018, the Law on Foreigners abolished work permits as a condition for EU nationals and their family members to undertake work in Montenegro and in accordance with the EU practice, a single procedure for both residence and work permits was established. The Ministry of the Interior is now in charge of issuing all necessary documents for foreign workers (residence and work permits).

The representative of EURES pointed out that it is of paramount importance to provide comprehensive, accurate information on posting to both stakeholders and posted workers themselves, in order to prevent the spread of misinformation and violations of labour rights. In

the past few years, there have been examples of such misinformation sharing. The most notable is the case of an NGO which informed people from the northern, economically less prosperous part of Montenegro, that they can apply for an asylum in Germany and receive benefits and free-of-charge accommodation. Such cases, in the opinion of the public authorities, are related also to the lack of timely and efficient cooperation among stakeholders to prevent such abuse. In this respect, the need to inform stakeholders about the conditions and contents of postings was also emphasised. The need for accurate, reliable and clear information was stressed also by the private employment agencies and the representative of the NGO working on the issue of youth employment. In the opinion of the interviewees, the need to provide reliable and clear information goes beyond merely providing information to individuals and stakeholders but extends to the level of the media and other social systems, that are perceived as crucial in terms of not only providing information but also with regard to awareness-raising about rights, responsibilities as well as procedures. As the EURES representative has stated, there seems to be a lack of “basic knowledge and functioning of the labour market”.

There seems to be a common perception among the interviewees and the participants in the national workshop that Montenegrins are in general not interested in emigrating abroad, but there is no empirical data to support this. A lack of accurate, reliable and timely data on this issue was reported in the interviews making it increasingly difficult for organisations and institutions to plan their work. In the words of an NGO representative: “when you don’t operate with data, because the field is not researched, then it is difficult to provide an opinion based on arguments”.

According to the representative of a private employment agency, young people on a daily basis send CVs with a request to work abroad, but since emigration is not monitored, it is not clear how many people actually take up jobs abroad. This was corroborated also by the representatives of the Ministry of Labour and Social Welfare, who stated that monitoring mechanisms in cases of emigration are generally missing. They claimed that they are provided with information sporadically rather than systematically. However, they believe that merely providing information is generally not useful, but rather that more coordinated work and a stricter implementation of the legal framework in this area are needed. They do receive information in cases where violations occur, but due to the lack of coordination, they do not know what happens to these individuals afterwards.

Recruitment of Montenegrin workers to Slovenia was specifically mentioned in relation to posting of workers. The representative of an employment agency explained that on one occasion they facilitated the employment of welders in Slovenia but were not aware that the Slovenian employer was going to post these welders to Germany. This created some confusion; workers were struggling to cope with the situation and after a short period of time they decided to return home. The private employment agency that reported such an experience with its workers did not have precise information and stages how such a case could be handled on an institutional basis. In light of such experiences, the stakeholders call for more knowledge exchange, information-sharing, cooperation between agencies in different countries and training on how to react when they are informed of violations of workers’ rights in countries of the EU. They also expressed concern over specific regulations in place in countries of the EU which they are unfamiliar with and/or are not in place in Montenegro. Specifically, they mentioned the topic of occupational safety and health of workers, which has reportedly been an overlooked and neglected policy area in Montenegro.

4.3 INTER-AGENCY COOPERATION

A representative of the Employment agency stressed that cooperation with competent Ministries is continuously excellent and professional. Cooperation is established also with other Ministries, trade unions, non-governmental organisations and employment agencies.

Representatives of private employment agencies also stressed that cooperation with the Employment Centre, the Ministry of Labour and the Employers' Union is excellent. They positively evaluated their work and complemented their efforts. However, as stated in the previous section, more knowledge and information sharing as well as coordinating efforts are needed. In the words of the EURES representative: "we always have to look at the wider context and include all the relevant stakeholders". In cases of labour law violations at the cross-national level, it was found that these issues were generally being solved on a case-to-case basis and sporadically rather than systematically through established procedures. The representative of the NGO was more critical of cooperation with public authorities. She mentioned the reluctance of the competent ministry to attend consultations and events they are organising and although they were invited to consultation groups, their viewpoints were generally not taken into account.

With regard to interagency cooperation at the government level, the report of the European Foundation for the Improvement of Living and Working Conditions (2013) finds that government departments have only recently begun to increasingly cooperate with one another and with social partners. The government has, for example, combined various inspection bodies in Montenegro into a joint coordinating body, thereby creating synergies and more efficient cooperation. With regard to institutional cooperation with neighbouring countries that are countries of origin of workers coming to Montenegro, the representatives of the public institutions mentioned some degree of institutional cooperation between actors at the same level (e.g. employment agencies). However, the representative of the employment agency, for example, was of the opinion that informal channels of cross-border employment are far more problematic and difficult to control through institutional channels. The representative of the NGO mentioned examples of projects that are currently being implemented to address these intra-regional employment patterns, but she was aware that project-based events and activities were not sufficient.

The same holds true for cooperation with countries of the EU. Most of the information channels, either formal or informal, are established with Germany, which is also one of the most important receiving countries for migrant workers. Although exchange of information and training activities are offered to public institutions on a regular basis, the need for more focused and specialised activities came across in the interviews. The representatives of private employment agencies were in a somewhat different position, since some of them have branches also in countries of the EU or are involved in international cooperation either through projects or through contacts with employment agencies abroad.

In this respect, it is important to stress that in addition to interagency cooperation of public institutions, cooperation between private agencies seems just as important. Namely, the process of recruiting workers from abroad does not involve the Public Employment Agency as it did in the past. Representatives of the employment agencies stated that ever since the law stipulates that employment of foreigners is to be conducted directly by the employer and neither through the Public Employment Agency nor private agencies, there seems to be less control over

employment practices and more violations of workers' rights and undeclared work is also becoming a growing concern.¹

The representative of a private employment agency stated that in order to send workers abroad, they needed to establish contact with the relevant national employment agency abroad, which they viewed as an aggravating circumstance. The representatives of private employment agencies as well as the employer organisation generally viewed the procedures of institutional cooperation as sometimes inflexible and lengthy, although they agreed that in order to address violations, evidence and monitoring were necessary:

"Here in Montenegro we have an enormous number of barriers in employing foreigners, even I do not understand it, but although this may impede my company that employs foreigners in Montenegro, I believe that each country should have such procedures." (private employment agency)

On the other hand, the representative of EURES viewed social networks and often personal acquaintances among stakeholders also as positive in terms of facilitating institutional coordination and cooperation.

A representative of a private employment agency also mentioned that many companies still operate on the basis of nepotism and personal contacts, rather than on the principle of professional cooperation with employment agencies. Some are also quite suspicious and weary of the work of private employment agencies. In this manner, the representative of the national employment agency was of the opinion that it is very important that domestic employers are familiarised with examples of good practice among foreign employers in order to better develop the business culture in Montenegro.

4.4 HUMAN RESOURCES

Data collected with empirical research shows that according to the interviewees, especially the Labour Inspectorate lacks human resources and is not able to monitor or follow all cases of labour violations occurring in the country. Monitoring of seasonal work in tourism and construction is particularly problematic, since a high number of foreign workers is recruited to meet the growing demand for labour in tourism, hospitality and the construction sector. The lack of skilled and trained staff to monitor these violations was generally noted by the interviewees. However, this issue was usually linked to the institutional capacities of labour inspectorates that are, in the opinion of some of our interviewees, understaffed. The official data of the labour inspectorate in Montenegro partly confirm this. According to their representative (Popović, 2018) the standard of the ILO and the EU is one inspector per 10,000 employed people. In the field of working relations and employment, the number in Montenegro is one inspector per 6,079 employed people, but in the field of health and safety at work, the number is significantly lower – one inspector per 18,237 employed persons. To illustrate by concrete numbers, according to the latest report on the activities of the Administration for

1 The representative of a private employment agency stated that their formal inability to recruit workers from abroad actually led to the spread of the grey economy, especially in coastal areas, where employers often want to employ a foreigner rather than a citizen of Montenegro. According to a representative of another private employment agency, with the new provisions they are no longer able to control the ways workers' rights are implemented in practice. As the national workshop has corroborated, numerous violations of workers' rights during seasonal work are among the reasons why the population of Montenegro is reluctant to take on such jobs.

Inspection Affairs for the year 2017 (Uprava za inspekcijske poslove, 2018a) altogether 33 labour inspectors are employed in Montenegro, 25 in the area of labour relations and 8 in the area of health and safety at work.

The European Foundation for the Improvement of Living and Working Conditions (2013) states in its report that since 2012, the Labour Inspectorate began to intensify inspections in coastal areas. The local inspectors increase the amount of inspections and data collected in coastal areas during the peak season. The Employment Agency of Montenegro makes the lists of work permits for foreigners available to inspectors and inspectors work with the local government to access information on employers with temporary seasonal work permits making it an example of good cross-sector collaboration and coordination. For example, according to the Administration for Inspection Affairs (Uprava za inspekcijske poslove, 2018b), in the summer of 2018, 70 inspectors (in all areas of inspection, not only labour inspectorates) performed intensified controls in coastal areas and mountain tourist centres. In their work regarding work relations and workers' protection, they focus mostly on the construction sector, control of employment of foreigners and the legality of employment and work relations (Uprava za inspekcijske poslove, 2017a; Uprava za inspekcijske poslove, 2018b). Intensified control also sporadically takes place in the capital of Podgorica, where the most frequent reported violation was generally undeclared work (Uprava za inspekcijske poslove, 2017b).

The lack of foreign language capacities among stakeholders in labour mobility was not mentioned by the interviewees, with the exception of one interviewee that mentioned the need for Russian-speaking staff. However, the general poor knowledge of the English language among the population of Montenegro was perceived among the factors linked to poorer propensities for labour mobility and migration. In this respect, foreign language capacities of the relevant staff might also merit attention, although this was not specifically mentioned in the interviews.

According to the representative of EURES, workers from over 80 countries work in Montenegro, which is in itself a peculiar phenomenon and requires particular human resources and engagement. However, the majority still comes from the neighbouring countries of the Western Balkans, especially Albania, Serbia, Bosnia and Herzegovina and Macedonia. Due to the fact that foreign workers in Montenegro come from many different countries and the fact that stakeholders are dealing with a diverse population in a linguistic as well as a cultural sense, the representative of the national employment agency stressed that this issue is to be taken into account when devising training programmes for public officials.

Despite the foreign workforce, the demand for workers persists and will probably become a growing concern for the economy. In light of these findings, Montenegro will most likely be interested in utilizing the possibility of posting of workers to the country, not only from the country. This was reported by both public authorities and private employment agencies:

“We need cooks, waiters, bakers, pastry chefs, butchers (...) construction workers, bricklayers, ceramic tile installers, floor layers.” (Employment Agency representative)

“Tourism and construction are key sectors that will continue to expand in the next 15, 20 years. This means that deficit and demand for labour will further increase. I do not see any possibility of Montenegro producing enough staff to meet the demand in those two sectors” (private employment agency).

In the opinion of the representative of an NGO, the NGOs were also generally understaffed and lacked the human resources needed to address the issues concerning labour rights and violations.

4.5 STAKEHOLDER ENGAGEMENT

The report of the European Foundation for the Improvement of Living and Working Conditions (2013) finds that government departments have only recently begun to increasingly cooperate with social partners. As described above, the Law on the Protection of Posted Citizens of Montenegro Working Abroad in the process of adoption and its first draft was presented to the public in 2018, and in late 2018 consultations were taking place with relevant stakeholders, such as trade unions, NGOs, employer and employee organisations, that were included in the process. However, at the time of writing this report, it is yet unknown to which extent their suggestions will be taken into account. According to the representatives of the employer associations they are able to represent the interests of their members (companies) also at the transnational level and their engagement on these issues is sufficient, but they would welcome more flexibility also within relevant national laws and regulations. This is echoed also in their report on informal work from 2014 (Unija poslodavaca Crne Gore, 2014), where they state that employers' associations in Montenegro uniformly agree that work legislation is generally focussed on the protection of the employee at his working place rather than promoting flexibility, new forms of employment and mobility.

In terms of trade unions, Montenegro was actually one of the last former socialist states to experience pluralisation of the trade union scene (EUROFOUND, 2012). Although currently Montenegro has, according to the UN, a well-established legal and institutional basis for the functioning of social dialogue between employers and workers, bipartite and autonomous social dialogue remain weak, especially in the private sector, and many suggestions of the Social Council, a tripartite independent body focused on the freedom of association and collective bargaining, are often not taken into account. Therefore, tripartite dialogue also remains weak (Unija poslodavaca Crne Gore, 2014; Simović-Zvicer, 2017). The trade unions have entered the Social Council with their representative in 2011 (Unija slobodnih sindikata Crne Gore, 2017).

There are no NGOs directly involved in the area of labour mobility abroad, but some are working in the area of workers' rights and youth employment and are thus able to refer to these issues in their work as well. According to the representatives of employers' associations and the NGOs, timely consultations with relevant actors are of utmost importance in this regard.

Another issue that needs attention are foreign investments especially in the tourism and construction sector that inevitably require labour force, which, from the point of view of this study, is important not only in terms of meeting occupational health and safety standards but especially in terms of establishing more efficient mechanisms for improved stakeholder engagement in the area of labour mobility. A Chinese company called CRBC is currently building a motorway in Montenegro and they brought their own workers into the country to ensure a steady supply of workers. According to the reports and findings of various stakeholders based on field observations, the Ministry of Labour and Social Welfare has not found any irregularities at the sites and the company has stated that the strictest safety standards are adhered to. On the other hand, the trade unions have been critical of both the implementation of occupational health and safety procedures as well as the supposed reluctance of the Chinese

company to cooperate with them as one among the stakeholders in the field of protecting workers' rights by not granting them access to the construction sites (Ministry of Labour and Social Welfare, 2018; Vijesti.me, 2016; Vijesti.me, 2017; CdM, 2017; Fos Media, 2017). It seems that clear and established mechanisms to report as well as prevent violations are missing and, for example, trade union influence in this regard is somewhat limited.

The same holds true also for private employment agencies, which, as previously described, also handled cross-country labour violations on a case-by-case basis rather than systematically. Also, to achieve better various stakeholders' engagement in the issues of labour mobility, the improved responses and cross-sectoral collaboration of educational institutions with other stakeholders on the labour market was seen as necessary by some of the interviewees, such as the employers' association and private employment agencies.

4.6 PUBLIC GOVERNANCE

Montenegro ranks higher than the majority of the world's countries on all the dimensions of the Worldwide Governance Indicators compiled by the World Bank (World Bank, 2015). Its scores on government effectiveness (latest figure from 2017, 58.6),² rule of law (53.8), control of corruption (54.3) and regulatory quality (64.9) have generally been increasing steadily, while there are more oscillations for the indicator voice and accountability (50.2) and especially political instability and absence of violence/terrorism (44.8), which has declined quite significantly from 2009 to 2017. In this regard, one of the main indicators of the progress in this area, according to the Public Administration Reform Strategy in Montenegro (2016), will be the improved ranking of Montenegro as regards the Worldwide Governance Indicators.

The lack of coordinating mechanisms at the national but especially the cross-national level to address the issue of posting transnationally, has direct implications for the delivery of services to both citizens as well as foreigners. Not only public officials, but also individuals wanting to either work abroad or work in Montenegro are often uninformed or misinformed about the rules and regulations regarding inter-country mobility. In this manner, not only public institutions but also workers are unable to effectively address their rights. In this respect, the representatives of private as well as national employment agencies stressed the need for offices at the regional level, so that they could provide better service not only to citizens but also to foreigners who wish to work in Montenegro. The representatives of the national employment agency and the NGO addressed the issue through the need to develop one-stop shops where citizens and foreigners could get relevant information on various aspects of everyday life at one place. Accurate and clear information was perceived by most of the interviewees as leading to better outcomes in terms of worker security and protection. However, in the words of the representative of the Ministry of Labour and Social Welfare, "merely providing information is not enough, instead coordination efforts are needed". The representative of an NGO mentioned that at the level of countries of the Western Balkans, a digital platform that will contain condensed information about working in other countries, is currently being developed. She mentioned how it was much more difficult to acquire information for residents in the rural areas, for instance in the north of the country, and in this respect, alternative ways of providing information might need to be developed. A representative of a private employment agency

² Percentile ranks indicate the percentage of countries that rank lower than Montenegro, so higher values indicate better governance scores.

corroborated the need for a locally specific approach to the issue by identifying both local needs and capacities.

Furthermore, the delivery of public services in the management of labour mobility, and more specifically posting, is closely linked to the efficient implementation of legal regulations. What needs to be established, in the opinion of a private employment agency representative, is a system of quality control not only on the labour market but also in the education system where a gap between skills and needs can be identified. The implementation of existing legislation is, as the national workshops as well as the interviews have shown, an issue that needs further improvement. Better cross-sector cooperation could, in turn, also contribute to increased trust of citizens in public institutions.

5 SYNTHESIS AND CONCLUSIONS

The case-study presented above highlights some of the issues connected to the posting of workers and the transposition of the Posting of Workers Directive into national law as well as the broader issue of labour mobility. As demonstrated by the secondary sources as well as the interview material, Montenegro enjoys a peculiar position in the region of the Western Balkans. Although it is also faced with significant emigration, as all the countries in the region, this fact is not recognised as problematic to a degree to which this occurs in other countries of the region, for example Serbia, Albania and Bosnia and Herzegovina. This could be attributed, firstly, to the perceived low mobility of the population of Montenegro among the stakeholders as well as by the general public. This supposedly holds true especially for the Southern and Central areas of the country. Secondly, the literature as well as the interviews confirm that the skills of the population of Montenegro do not correspond to the needs of the labour market. In this respect, particular labour shortages exist especially in tourism and construction. Whether the ‘import’ of the foreign workers in these sectors, largely for seasonal work, reflects not only the needs and shortages on the national labour market, but also the need for cheap, exploitable workers – confirming the fact that migrants do the work that the local population does not want to perform – remains an open question beyond the scope of this study.

Some indications in the interviews as well as the discussion during the national workshop do reveal the problems and violations of these workers’ rights regarding working conditions, accommodation and pay. In this respect, the fact that employment agencies were generally unaware of the institutional mechanisms to prevent cross-border violations of workers’ rights, is quite indicative. Additionally, it seems that labour inspectorates are lacking human resources and are not able to monitor the cases of labour violations in the country, and even much less the issues that foreign workers are faced with. The recent construction of a highway by the Chinese company CRBC and the concurring problems in providing occupational and health-related standards that the trade unions have espoused, provide an example of such deficiencies.

Going to the more specific issue of the transposition and implementation of the Posting of Workers Directive into national law, the report has found that in general concrete knowledge about the content of the Directive and the process of posting workers to the EU is missing, especially among representatives of private employment agencies, while representatives of public institutions are generally more familiar with the content of the Directive. Interviewees and participants in the national workshop referred to posted workers as detached and/or sent workers. Nevertheless, posting from third countries has been described as a problematic phenomenon, although in terminological terms it was not necessarily framed as posting but rather as migration and/or mobility. Importantly, the lack of information on regulations and rights was perceived as detrimental not only for stakeholders, but also for workers, who are often not informed or are misinformed about their rights when working abroad or when coming to work in Montenegro, increasing the likelihood for potential violations. In this respect, the posting of workers poses challenges also in the area of good public governance and the delivery of services to users of particular institutions. Given the labour market shortages and immigration trends to Montenegro, postings not only from but also to Montenegro could present quite a significant challenge in public policy determination procedures.

6 POLICY IMPLICATIONS AND RECOMMENDATIONS

The main policy implication of this case-study concerns the need for more information sharing and exchange not only in the area of transposition and implementation of the Directive into national law, but also in the wider area of labour mobility and migration. Although inter-agency cooperation was generally evaluated in a positive manner, even more efficient coordination mechanisms among the institutions are highly needed. This pertains to the processes of transposing as well as implementing regulations and acts, especially as regards the labour unions and non-governmental organisations. A particular gap was identified in the area of cross-border labour mobility, where coordination mechanisms when violations of workers' rights occurred, were generally found to be sporadic and developed on a case-to-case basis, rather than systematic and operating at the level of public policy. Although the rules and regulations in the area of labour mobility were generally found to be in line with EU standards, enforcement of existing rules and regulations needs to be improved.

The lack of training on these issues was also emphasised especially by the representatives of the public institutions, not only concerning national law, but especially regarding the transnational context and cooperation. Gaining more knowledge on how these issues are dealt with in other European countries, would be very beneficial for representatives of public institutions as well as private employment agencies. However, the nationally specific context and regional particularities should also be taken into consideration.

As a country facing a significant influx of foreign workers, especially of a seasonal nature which could expose workers to even greater vulnerabilities, the human resources accorded to enforcement agencies, especially labour inspectorates, need to be extended. With regard to the lack of human resources as regards both staffing and training of representatives of public institutions, also the topic of occupational health and safety, which, according to some indications, has also been a neglected policy area in Montenegro, is to be put higher on the policy agenda.

The lack of timely, accurate and reliable data, especially regarding migration and mobility from Montenegro, is an additional area that requires improvement. In this respect, monitoring mechanisms and better data-based reviews and analysis regarding labour mobility/migration in general, were emphasised as crucial. On a broader level, the outdated nature of the educational system that should be better adapted to the needs of the labour market and the regional inequalities within the country are issues that would require a systemic approach going beyond the scope of this study. However, these trends point to the possible issues in the implementation of the Directive: for example, northern areas might require a more specific, tailor-made approach to both the process of posting as well as suitable coordination mechanisms. Furthermore, the fact that Montenegro will most likely be a country that will not only post workers to other EU countries, but will also largely receive posted workers, is to be taken into account when devising implementation strategies. In this respect, in the practical implementation of the Directive in the area of work and employment relations, the embeddedness of Montenegro into regional mobility networks should be taken into account and postings from third countries (e.g. from Bosnia and Herzegovina to Montenegro) might merit special attention.

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