



COUNTRY BRIEFING PAPER - BULGARIA

POSTING OF WORKERS AND BULGARIA

The main authorities involved in posting in Bulgaria are:

- **The National Revenue Agency (NRA)**, to whom companies should submit declarations on the workers posted to or from Bulgaria, responsible for issuing the PD A1s.
- **The General Labour Inspectorate Executive Agency** - authority for Working Conditions.
- **The Ministry of Labour and Social Policy**, relevant for the industrial relations, and Labour policy implementation: improving the quality and safety at work by protecting the employment, welfare and social rights of workers and improving the working conditions in businesses, employment issues, pensions, working abroad: social security agreements, employment agreements, social policy, etc.

Posting of workers is a relatively low-key phenomenon in Bulgaria. According to the data reported on portable documents A1¹, 26,315 A1 forms were issued to workers posted from Bulgaria in 2018, 52% of them under article 12 and 46% under article 13 of Regulation (EC) 883/2004. This represents less than 1% of all posting in the EU. Of the 13,731 postings² under article 12, the vast majority (91.5%) were sent to EU-15 countries, mainly Germany (46.5%), Belgium (16%) and France (9.5%). Data on sectors of activity from a sending perspective is not available in Bulgaria.

In terms of workers posted to Bulgaria, the numbers are even lower, with 4,665 A1 forms issued in 2018, mainly from Germany (36.5%), Poland (13.5%), France (10%), Italy (9%), and Spain (7%). Data on sectors of activity from a receiving perspective is not available for the year 2018 in Bulgaria, but in 2017 the majority (54%) of postings were in the services sector, mainly Transportation and storage; information and communication (24.5%), Financial and insurance; Real estate; Professional, scientific and technical activities; Administrative and support service activities (13%) and Education, health and social work, arts and other services (10.5%). 45.5% of postings were made in the industrial sector, including 27% specifically in construction.

Little more data is available on posting in Bulgaria in recent years. According to the data provided by the national declaration tool³, in 2017 only 403 workers were declared as posted to Bulgaria. This low number can be explained partly by the extremely low numbers of workers actually posted to Bulgaria, but it may also not be an honest reflection of the actual state of posting, as in the same year 3,508 A1 forms were issued for incoming workers⁴. With such low numbers, it is difficult to draw any concrete conclusions on sending countries and the main sectors of

¹ De Wispelaere, F., De Smedt, L., and Pacolet, J. (2019). *Posting of workers: Report on A1 Portable Documents issued in 2018*. Brussels: European Commission.

² 10,440 individual workers in all according to article 12.

³ De Wispelaere, F., and Pacolet, J. (2018). *Posting of workers: Collection of data from national declaration tools - Reference year 2017*. Brussels: European Commission.

⁴ This difference can be at least explained by the cumbersome system, as companies cannot declare workers electronically but only by post.

economic activity concerned by incoming posting. The new electronic declaration tool introduced in 2019 may give a better picture in years to come⁵.

DEBATE ON POSTING OF WORKERS

Bulgaria can be considered as a country exporting labour force rather than a host country in terms of posting of workers. This is due to the relatively lower standard of living, which has a dual effect on the workforce. On the one hand, the Bulgarian workers prefer to go abroad, triggered by better working conditions, higher salaries and social benefits. On the other hand, the Bulgarian labour market remains unattractive for foreign workers, which makes it harder for the construction employers to fill the growing skills gaps in the construction sector.

This trend, however, puts at risk the Bulgarian workers abroad. According to a press release by the Bulgarian trade union CITUB⁶, in 2017 around 2 000 Bulgarians, employed in the housekeeping, construction and hospitality sectors, have raised a flag for labour exploitation in Germany. Typical violations included failure to pay the German minimum wage, even in presence of a formal contract stating so, unpaid overtime and weekend work, inadequate coverage of travel costs. In these cases, according the Chief Labor Inspector at the Migration Department of the General Labour Inspectorate Executive Agency⁷, the employers are obliged to provide evidence to the General Labour Inspectorate Executive Agency, certifying the employment relationship, and workers are advised to initiate lawsuits for unpaid wages. However, these post factum measures do not significantly change the negative trend, and it is very hard to overcome these problems, as the host companies bear low responsibility for posted workers (in terms of health and safety and working conditions) and thus, they often prefer foreigners. Inevitably, these practices, observed not only for Bulgarian workers, lead to social dumping in the host countries – a controversial social phenomenon widely discussed both at national and EU level, and that triggered reform in the EU legislation.

Irrespective of the negative impact of the posting on the Bulgarian construction workers, according to interview with representative of the trade union FCIW-PODKREPA⁸, the debate on the posting of workers is, unfortunately, almost absent from the agenda of the discussions between the social partners. The public discussions during the past years were mostly related to the Directive on Posting of Workers and its revisions strengthening the principle of equal treatment. Both trade unions in Bulgaria supported the suggested amendments regarding fair

⁵ See: CMS Law Now (2019), Bulgaria launches national website on workers' postings, 23 April 2019, available at: <https://www.cms-lawnow.com/ealerts/2019/04/bulgaria-launches-national-website-on-workers-postings>.

⁶ Debati.bg (2018), More than 2000 workers have complained against labour exploitation in Germany, 28 March 2018, available at: <https://debati.bg/nad-2000-choveka-se-oplakaha-ot-trudova-eksplotatsia-v-germania/>.

⁷ Debati.bg (2018), Western companies accept posted workers as they bear no liability, 1 April 2018, available at: <https://debati.bg/spetsialno-za-debati-bg-a-petrova-inspektsia-po-truda-zapadnite-firmi-priemat-komandirovani-rabotnitsi-za-da-ne-nosyat-otgovornost-video/>.

⁸ Conducted in September 2019 by phone.

pay and equal treatment of workers, irrespective of whether posted by a service provider or by recruitment agencies^{9,10}.

Bulgaria took an active role in the discussions regarding the proposal to revise Directive 96/71/EC, with support from all political parties in Parliament. The main concern expressed during negotiations was that the principle of equal pay would limit the competitive advantage of service providers from EU-13 countries, thus effectively limiting their access to the single market¹¹.

In the early stages of discussions, Ivailo Kalfin,^[1] Deputy Prime Minister and Minister of Labour and Social Policy of the Republic of Bulgaria, sent a letter to then Commissioner for Employment, Social Affairs, Skills and Labour Mobility Marianne Thyssen, along with ministers from Czech Republic, Estonia, Hungary, Latvia, Lithuania, Romania, Poland and Slovakia), arguing against the revision of the directive. The main arguments of the letter were that:

- it is too soon to revise directive 96/71/EC, first one should wait until the results of the enforcement directive can be seen. Such revision would have the potential to be highly divisive;
- revising the directive could undermine the fundamental principles of the EU, mainly the freedom to provide services;
- differences in pay rates among countries are a legitimate element of competition for service providers and should be safeguarded by EU law.

In April 2016, the Bulgarian Parliament was among those of ten Member States¹² who officially opposed the revision of the directive on the grounds of a breach of the principles of subsidiarity and proportionality, triggering the “yellow card” procedure, which obliged the Commission to re-examine its proposal.

This topic was also discussed between the Bulgarian Prime Minister, the Bulgarian President and the French President Emmanuel Macron during the latter’s visit to Bulgaria in August 2017. Though Bulgaria was originally opposed to revision of the directive, the country eventually voted for the directive in the Council. Aside the topic of transport, the issue of further integration with the Schengen zone was discussed during this meeting, Bulgaria gaining the support by President Macron for the implementation of this process¹³.

Beyond the topic of equal pay, Bulgaria was also dedicated to protecting the interests of Bulgarian hauliers and drivers, notably by asking for transport workers to be excluded from the provisions on posting, except for cabotage operations. This position was accepted widely by all

⁹ CITUB (2017), Federation of Independent Trade Union of Construction insists on fair payment for the Bulgarian posted workers, 24 August 2017, available at: knsb-bg.org.

¹⁰ PODKREPA (2017), Review of the Directive on the Posting of Workers, available at: podkrepa.org

¹¹ European trade union institute (2020), *Posting of workers before national courts*. Brussels: ETUI, p. 23.

¹² Bulgaria, Croatia, the Czech Republic, Denmark, Estonia, Hungary, Latvia, Lithuania, Poland and Romania.

¹³ Surdykowska, B., Owczarek, D. (2018). Posted workers regulations as a cohesion test in the enlarged European Union: divergent interests of trade unions, employers’ organisations and governments. Friedrich-Ebert-Stiftung and Institute of Public Affairs, Bratislava and Warsaw, p. 21.

political parties and was defended particularly by the Bulgarian Hauliers association (SMP), the main organisation of transport companies, which staged a protest to attract the attention of EU leaders and sent a letter to the Minister of Labour and Social Policy¹⁴.

¹⁴ European trade union institute (2020), op. cit., p. 23.