



COUNTRY BRIEFING PAPER - SPAIN

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POSTING OF WORKERS AND SPAIN

Spain was traditionally a 'net receiving country' in terms of posted workers. However, this situation changed with the financial crisis. Since 2011, Spain became a 'net sender country' which issues more Portable Documents (PDs) A1 than it receives.

When looking at the PDs A1 received by Spain, it appears that it was the seventh EU country per number of received posted workers in 2017, with 60,488 workers posted to Spain (3% were self-employment persons). The number of PDs A1 received by Spain dramatically dropped after 2010, as a result of the economic crisis. From 2010 to 2015, the number of PDs A1 received by Spain decreased annually. The decrease was particularly dramatic from 2010 to 2011, when the number of posted workers sent to Spain decreased by 25% (from 63,304 to 47,640). Since 2015, this trend has been reversed and the number of workers posted to Spain is increasing again. From 2016 to 2018 the number of PDs A1 received by Spain increased by 22%. (Pacolet and De Wispelaere, 2014, 2015, 2016, 2018; Pacolet, De Smedt, and De Wispelaere 2019). However, Spain was still a net sender country in 2018. That year the net balance (the number of PDs A1 issued minus the number of PDs A1 received) was equal to 59,731 (Pacolet, De Smedt, and De Wispelaere, 2019).

Most of the workers posted to Spain in 2018 come from Germany (24%), France (20%), Italy (16%) and Portugal (13%) (Pacolet, De Smedt, and Wispelaere, 2019). Posted workers to Spain were employed in the industry sector (58%) and service sector (41%) in 2017 -figures for 2018 are not available for Spain (Pacolet and Wispelaere, 2018). Although detailed data on occupation of posted workers is not available, literature finds that most of the posted workers to Spain are highly qualified professionals (Dodi and Melenciu, 2019). However, there are also posted workers occupied in sectors such as construction, agriculture or road transport, with low educational levels (Meardi, et al., 2012; Riesco-Sant et al., 2018).

With regard to the number of workers posted from Spain to other European countries, Spain was the fourth EU country in terms of sending posted workers in 2018 (123,670), after Germany, Poland and Italy. In terms of employment status, 6% of the persons covered by Article 12 were self-employed in 2017 (Pacolet, De Smedt, and Wispelaere, 2019). The number of PDs A1 issued by Spain has annually increased since 2010. This number increased by 11.5% from 2017 to 2018. From 2010 to 2018 it increased from 40,087 to 123,670. The main countries of destination of workers posted from Spain in 2018 were France (27%), Germany (15%) and Portugal (15%). Information on sectors or economic activities is not available (Pacolet and De Wispelaere, 2014, 2015, 2016, 2018; Pacolet, De Smedt, and De Wispelaere, 2019).

Working conditions of posted workers

Very little evidence exists about the working conditions of posted workers working in Spain or sent from Spain to another European country. Our review of the literature reveals that there is only a small number of studies addressing this specific topic. The bulk of research on posting of workers is made up of law studies analysing several issues such as Spanish transposition of EU regulation, fiscal and social security regulation on posted workers or the impact of legal sentences of the Court of Justice of the European Union (CJEU) (Jiménez-Valladolid et al., 2013; Velázquez, 2017; Lobera, 2015; etc.)

Studies focused on working conditions of posted workers have followed qualitative approaches which rely, in most cases, on semi-structured interviews conducted with posted workers, social partners and labour inspectors (Eurofound, 2017; Dodi and Melenciuc, 2019; Zólyomi and Danaj, 2019). Overall, qualitative research on both workers posted to Spain and workers posted from Spain show results similar to other European countries. They reflect that posted workers are generally exposed to poorer working conditions than native workers. The main problems faced by posted workers are related to circumvention of equal pay and working time rules (longer hours, etc.). Also, problems related to living conditions have been reported, which are linked to poor quality accommodation offered by the sending company. In occasions, cases of companies discounting housing costs from posted workers' salaries have been also reported. Attention should also be drawn to the negative impact on health and safety. Those negative effects on health and safety are related, on the one hand, to the fact that workers spend short period of times in different workplaces and, as a consequence, cannot internalise the organisational culture and workplace routines which reduce risks. On the other hand, this is also a consequence of language barriers (Eurofound, 2017; Dodi and Melenciuc, 2019). The language barriers faced by posted workers also lead to limited access to information about work-related rights, obligations, working conditions and health and safety training, as reported by posted workers from Spain (Zólyomi and Danaj, 2019)

As in other European countries, the topic of working conditions of posted workers has been analysed in relation to fraudulent practices and social dumping. In this case, it appears that this problem is less acute or, at least, less discussed or publicly denounced, than in other European countries, particularly since the onset of the economic crisis, when the number of posted workers sent to Spain decreased substantially (Eurofound, 2016; 2017). However, common fraudulent practices in relation to posting of workers, such as letter-box companies, are also identified, particularly in the transport sector, where trade unions and labour inspectors denounce their existence in countries with lower social security costs such as Portugal (Riesco-Sanz et al., 2018, 2019).

DEBATE ON POSTING OF WORKERS

The topic of posting of workers has attracted very limited attention in the public debate in Spain. In most of the cases, the discussion was, rather, focused on foreign or migrant work, a topic which has received much more attention within policy and social partners' debates.

When Spain entered the EU, it was a lower-labour cost Member State. Accordingly, it was not one of the countries pressuring for higher restrictions to workers' internal mobility. Since 2006, when other Member States with comparatively lower labour costs joined the EU (Romania, etc.), Spain was among the countries that demanded the implementation of several restrictions regarding the domains and the number of possible posted workers from those countries (Wagner, 2015). In this context, it is worth noting that the Spanish government has worked on improving transnational cooperation aiming to enforce regulation on posting through international agreements. As a result, the Spanish Labour and Social Security Inspectorate has concluded bilateral cooperation agreements with both higher-labour costs Member States (France) and lower-labour costs Member States (Portugal, Poland and Romania) (Labour and Social Security Inspectorate, 2018).

In recent years, the topic of posting of workers was only discussed **at policy level** when the Popular Party, at that time in the government, brought to the Spanish Parliament the debate for the validation or amendment of the Royal Decree 9/2017, of the 26th of May (2017), aiming to transpose Directive 2014/67/UE on the enforcement of Directive 96/71/EC¹. On behalf of the Popular Party government, the Royal Decree 9/2017 was presented to the parliament by the Foreign minister, who mainly justified the legal action due to the need to meet European Union commitments. In this sense, it is worth noting that the date to transpose the Directive expired on the 18th of June of 2016 and the European Commission had sent the government a formal requirement on the 16th of February of 2017 (Velázquez, 2017). The main critics expressed by different political parties on the transposition of Directive 2014/67/UE were related to two main issues. First, one critic is related to the inadequacy of the legal instrument used. Several Members of Parliament (MPs) from different political parties (Citizenships and Basque Nationalist Party) highlighted that the topic of posting of workers deserved more parliamentary debate. Accordingly, they claimed that the Directive should have been transposed through a project law (which has to be debated in the Parliament) rather than through a Royal Decree (approved by the government without parliamentary debate). MPs also criticised that the Royal Decree mixed Directives regulating matters of very different natures (financial issues, health, etc.), making difficult its public discussion².

Second, MPs rose the topic of the regulatory gaps favouring social dumping and fraudulent practices. Spanish transposition of Directive 96/71/EC by means of Law 45/1999 already regulated the requirement envisaged in Directive 2014/67/UE related to the obligation for business owners that post workers to Spain to notify the posting to the labour authorities³

¹ BOCG. Congress of Deputies, 130/000015, 22/11/2017:

http://www.congreso.es/portal/page/portal/Congreso/Congreso/Iniciativas?_piref73_214829_5_73_1335437_1335437.next_page=/wc/servidorCGI&CMD=VERLST&BASE=IT12&FMT=INTTX_LSS.fmt&DOCORDER=FIFO&QUERY=%28130%2F000015*.EXPE.%29&DOCS=1-26.

² Ibid.

³ The main innovation introduced in Spanish transposition regarding the administrative requirements relies on the need to designate, following article 9 of Directive 2014/67/UE, a person to liaise with the

(Autonomous Communities). However, Law 45/1999 exempted sending companies of notifying the posting to national authorities (and to apply Spanish rules related to minimum paid annual holidays and minimum rates of pay) if the duration of posting is no longer than 8 days. MPs criticised that transposition of Directive 2014/67/UE has not modified this exception. Due to this, they argue that new mechanisms envisaged to improve enforcement will not be effective to prevent fraud and social dumping. They also highlighted that modifying this exception is particularly important in the transport sector, where posting of workers barely lasts more than 8 days⁴.

With regard to the recent Directive 2018/957 amending Directive 96/71/EC, policy debates have not been held on its transposition yet. In relation to this, the main discussions took place between the previous Popular Party Spanish government and other European governments. According to some media news, the main Popular Party government demand was related to the exclusion of its application to enterprises operating in the international road transport sector until special provisions are introduced for this sector (ABC, 2017, October 30; El País, 2017, October 23). This demand, which was finally included in the Directive 2018/957, was intended to satisfy the road transport employers. The exclusion of the road transport sector from the Directive was problematic for some countries such as France, given some trade unions' demands arguing for its inclusion with a view to avoid social dumping.

For the **Spanish social partners**, the issue of posting of workers has been a marginal topic, particularly at cross-sectoral level. At this level, the main debates have been focused on the transposition of Directive 2014/67/UE on the enforcement of Directive 96/71/EC in 2017. The Trade Union Confederation of Workers (CCOO) criticised the government proposal in a website note⁵. The trade union criticised, first, in line with other political parties, that the government opted for a Royal Decree rather than a Law project. According to the trade union, there was no emergency on this issue which could have justified avoiding its passage as a bill in the Parliament. Second, the union argued that the Royal decree does not fulfil the objectives of the Directive, that is, to ensure compliance with Directive 96/71/EC. This is because the government proposal only partially modifies Law 45/1999 transposing Directive 96/71/EC with regard to irrelevant aspects. Finally, it stressed that the government proposal ignores the role attributed by the Directive to the social partners and, more specifically, to the trade unions. On the employer side, the Spanish Confederation of Employers' Organisations (CEOE) issued no

competent authorities in the host Member State in which the services are provided and to send out and receive documents and/or notices, if need be.

⁴ BOCG. Congress of Deputies, 130/000015, 22/11/2017: http://www.congreso.es/portal/page/portal/Congreso/Congreso/Iniciativas?_piref73_2148295_73_1335437_1335437.next_page=/wc/servidorCGI&CMD=VERLST&BASE=IT12&FMT=INTTXLSS.fmt&DOCORDE R=FIFO&QUERY=%28130%2F000015*.EXPE.%29&DOCS=1-26.

⁵See: https://madrid.ccoo.es/noticia:231369--Rechazo_a_la_propuesta_del_Gobierno_de_trasposicion_de_la_Directiva_de_la_UE_sobre_desplazamiento_de_trabajadores.

official or political statement about the transposition of Directive 2014/67/UE. When contacted, they informed that they do not have any critical comments on its transposition.

With regard to Directive 2018/957, social partners' confederations have not formally discussed its content or its impact on Spanish regulations. The Spanish Economic and Social Council (main tripartite Spanish body) only made a description of the Directive in its annual report (CES, 2019). On the employee side, trade unions CCOO and UGT, in line with ETUC's position, welcomed the Directive. Particularly, they positively assessed the enactment of the principle of equal pay, which was a historical trade union demand. However, they criticised the exclusion of international road transport sector from the application of the directive, which was, in their view, a result of the pressure exercised by previous Popular Party government. On the employer side, CEOE does not have any published official position. When contacted, the CEOE representative highlighted two main concerns. First, for the employer organisation, it is critical that public administrations of Member States fulfil the requirement of providing a single official national website with information which is accurate and updated on a regular basis. Second, for CEOE, a crucial issue is related to the topic of 'business trips', which applies to workers who are sent temporarily to work in another Member State but do not provide services there. The topic of business trips is not regulated in the 'Posting of Workers Directive' but in Regulation (EC) No 883/2004. This regulation provides that, for every cross-border work-related activity (including "business trips") the employer, or any self-employed person concerned, is under the obligation to notify the competent (home) Member State, whenever possible in advance, and to obtain a portable document A1 (PD A1). CEOE claims that this requirement has to be eliminated because it entails unnecessary administrative costs for the companies.

Beyond those social partners' positions on regulatory aspects, social partners have developed supportive materials related to the topic of posting of workers, for both workers and companies. Trade unions have developed informative guides addressed to both migrant workers and posted workers, providing information about existing regulation and labour rights (see UGT guide). The employer organisation CEOE has developed, in cooperation with the Ministry of Work and the Health and Safety State Foundation (Fundación Estatal para la Prevención de Riesgos Laborales (FSP), a website tool which informs companies about health and safety standards and regulation in the EU countries. In addition, some CEOE provincial offices have developed guides which inform companies about Spanish transposition of the Directive 2014/67/UE, explaining employers' duties in relation to posting of workers.

At **sectoral level**, the topic has been more prominent in the construction and road transport sector. In the construction sector, the topic was mainly discussed in the years before the economic crisis. In this sector, bipartite sectoral bodies and trade unions were relatively active in denouncing abuses and circumventions of the Directive. For instance, the Labour Foundation (2006) denounced cases of Portuguese companies within the construction sector posting workers to Spain and not applying minimum wages regulated in collective bargaining. In 2007, the previous construction federation of CCOO (FECOMA-CCOO) launched an initiative aimed at dealing with fraud-related Portuguese workers posted by transnational companies to building sites in Spain. FECOMA-CCOO carried out an awareness-raising campaign on building

sites, distributing information in Spanish and Portuguese about worker rights, stressing the importance of reporting all violations to the labour inspectorate. The union maintained that in the case of many posted workers, the law was not respected, and it asked the employers to check on their subcontractors and demand compliance with the law. In recent years, it seems that the topic has become less important.

In the road transport sector, research carried out by Riesgo-Sanz et al. (2018, 2019) reveals different views among sectoral social partners about EU regulation on posted workers. For the Spanish Confederation of Transport of Goods (CETM) and International Road Transport Association (ASTIC), EU regulation on posted workers should only apply to cabotage. In their view, within international road transport activities, drivers pass through different countries on a temporary basis only, and do not actually provide any services in them. Accordingly, they do not fall within the scope of EU regulation, which is designed for posted workers spending longer periods. Sectoral employer organisations also criticise the high administrative expenses entailed for transport companies complying with Directive 96/71/EC. Bearing this in mind, Spanish employer organisations are satisfied with Directive 2018/957 which excludes international road transport. Indeed, ASTIC agreed to reject the reform of Directive 96/71/EC along with 13 other sectoral employer organisations from EU Member States (El País, 2017, October 23). On the employee side, road transport federations of trade unions CCOO and UGT argue, first, that compared to trade unions from other European countries (France or Germany), the topic of posting of workers is not a priority for them. This is mainly explained because Spain is a 'peripheral country' in the sector with comparatively lower labour costs, even if trade unions acknowledge that Spanish companies also face competition from countries with lower labour costs such as Poland and, particularly, Portugal. In any case, they argue, in line with the European Transport Workers' Federation official position, that EU regulation on posting should be applied to all kinds of international transport activities (Riesco-Sanz et al., 2018, 2019).

Finally, it is worth mentioning that **the media** have barely discussed the topic. Some newspapers discussed the debates on Directive 2018/957 revising the Posted Workers Directive of 1996 (El País, 2017, October 23; ABC, 2017, October 24). They also informed when the new directive was passed (El Diario, 2018, May 29; etc.) Interestingly, debates held in the Spanish parliament in relation to transposition of the Directive 2014/67/UE were barely reflected in the media.

As previously exposed, posting of workers is not a highly discussed topic in the Spanish context. At policy level, the Spanish government's position has to some extent varied in the last 20 years.

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