



COUNTRY BRIEFING PAPER - FRANCE

POSTING OF WORKERS AND FRANCE

According to the national declarations¹ for the year 2017², an estimated 208,713 persons were posted to France, most of these from companies registered in Spain (12.5%), Germany (12%), and Portugal (12%), followed by Italy (9%), Poland (8.5%), countries outside the EU/EFTA (8.5%), the UK (7.5%), Belgium (6%) and Romania (5.5%).

Looking at the nationalities of these workers gives a slightly different perspective, as the greatest share of them are from non EU-EFTA countries (14.5%), followed by Portugal (13%), Poland (10%), Germany (9.5%), Romania (8.5%), Italy (7.5%), Spain (7%), the UK (6.5%) and Belgium (5%). The difference here can be explained by the large number of Romanian, Polish and Portuguese workers based in countries other than their own, and a number of Moroccan, Ecuadorian and Senegalese workers posted from companies registered in Spain, especially in the agriculture sector³.

Five areas are mainly concerned with the phenomenon of posted workers: Grand Est (Eastern region), Provence-Alpes Côte-d'Azur (French Riviera), Auvergne-Rhône-Alpes (Centre/East), Hauts-de-France (Northern region) and Île-de-France (Paris and its suburbs). These five regions alone amass more than 67% of workers posted to France.

On average, each worker was posted 2.5 times, adding up to a total of 516,625 postings to France. In terms of individual workers, this amounts to approximately 0.77% of France's total workforce, slightly above the EU average of 0.6%. This percentage is noticeably higher in more specific sectors such as agriculture, forestry and fishing (3.1%), manufacturing (1.9%) and construction (2.5%). These three sectors are in turn the main sectors of activity⁴ for posted workers in France, with 30% of the workers in manufacturing, 20% in construction, and 10% in agriculture, forestry and fishing.

In turn, 20,343 persons were declared as posted from France⁵, the vast majority of these to Belgium (16,977) and Luxembourg (2,606). As we can see, France is a net receiving country. This fact can be seen more clearly from the data available on A1 forms issued in 2018.

¹ Since October 2016 every declaration for posting workers in France must be made via the SIPSI teleservice.

² De Wispelaere F, and Pacolet J (2018) Posting of workers: *Collection of data from national declaration tools - Reference year 2017*. Brussels: European Commission.

³ Direction Générale du Travail (2019). Analyse des déclarations de détachement des entreprises prestataires de services en France en 2017. Available online: https://travail-emploi.gouv.fr/IMG/pdf/rapport_2017_declarations_de_detachement.pdf.

⁴ Direction Générale du Travail (2019), p. 16. It should be noted that a further 30% of workers are declared as working in an undefined "other" sector.

⁵ These numbers are a severe underestimation of the true number of persons, as data is not available on workers posted to Germany, Spain or the United Kingdom, countries which receive large numbers of workers from France, as can be seen per the A1 reports.

In 2018, 262,126 A1 forms⁶ were issued for workers posted to France according to Article 12 of the Regulation (EC) 883/2004⁷. This represents an 8.6% increase on the number of forms issued in 2017, and makes France the second highest receiver in the EU, behind Germany with 428,935. By contrast, only 117,739 postings⁸ were declared for workers from France, a 7.9% increase compared to 2017. This means that not only is France the largest net host country, with 144,387 more received postings compared to sent postings, but this difference is growing over the years.

The A1 data is generally in line with that of the national declaration tool, showing that both incoming⁹ and outgoing¹⁰ posting relate mostly to EU-15 countries (around 80%), with the only significant flow of workers posted from an EU-13 country to France being from Poland (10%). Data on the main sectors of employment for posted workers in France are not available for 2018, but in 2017 the main sectors were the industrial sector and particularly construction¹¹ (43.9%). However, there was also a significant number in temporary employment (12.6%).

DEBATE ON POSTING OF WORKERS

As we have seen, France is heavily impacted by the posting of workers, especially in terms of workers received. The posting of workers has a real impact on the country's economy. This fact is fairly commonly accepted by all main political parties and trade unions. P. Liébus, speaking in the name of the CAPEB (one of the professional organisations in the construction sector) stated, for example, that *'Detachment is a phenomenon that has been neglected for too long. And today, the figures are becoming mind-blowing'*.

It also represents a real concern for the most important institutions of the country. The *'Cour des comptes'* (Court of Auditors), the institution mandated to control the use of public funds, published its Annual public report for 2019 dedicating one chapter to the question 'how to fight against fraudulent posting of workers'¹².

As such, the country was at the forefront of the negotiations concerning both the "Enforcement directive" 2014/67/EU and the revision of the Directive on the Posting of Workers 96/71/EC.

On 18 June 2015, Mr Rebsamen, Minister for Labour, Employment, Vocational Training and Social Dialogue, co-signed a letter¹³ to then Commissioner Marianne Thyssen along with ministers from

⁶ The number of PDs A1 issued is not necessarily equal to the number of persons involved, as several PDs A1 may be issued to the same person during the reference year.

⁷ De Wispelaere F and Pacolet J (2019) *Posting of workers: Report on A1 Portable Documents issued in 2018*. Brussels: European Commission.

⁸ For a total of 63,288 individual workers.

⁹ The main countries being Germany (21%), Italy (14%), Spain, (12.5%), Belgium (10.5%), Poland (10%), Portugal (7.5%) and Luxembourg (8.5%).

¹⁰ Mainly Belgium (16%), Germany (18.5%), Spain (11%), Italy (9%), Switzerland (8%) and the UK (8%).

¹¹ From the number of A1 forms issued, approximately 5.7% of the construction sector in France was occupied by posted workers in 2017. This is slightly above the EU average of 4.8%. However, both numbers are likely to be inflated as they are based on the number of A1 forms, not the number of individual workers.

¹² See: <https://www.ccomptes.fr/system/files/2019-02/02-lutte-fraude-travail-detache-Tome-1.pdf>.

¹³ http://arbetsratt.juridicum.su.se/euarb/15-03/sverige_och_sex-ms_utstationeringsdirektivet_juni_2015.pdf.

Austria, Belgium, Germany, Luxembourg, the Netherlands and Sweden, highlighting the dangers of posting of workers and calling for a series of amendments to Directive 96/71/EC, including:

- extending the level of protection determined by the directive to recognise the principle of equal pay for equal work in the same place;
- adding a legal base to the directive, anchoring it in Treaty articles with social objectives, to underline that the directive is not just meant to facilitate free movement but also to provide social and labour protection to cross-border workers;
- specifying the maximum duration of a posting;
- improving cross-border co-operation between inspection services and investigating if an electronic exchange of information and data between relevant inspection services could be possible.

The enforcement directive signed in 2014 was widely welcomed as a victory in France, as it answers to a great extent the vision presented by the French authorities, with only article 12 of the enforcement directive being criticised for its lack of ambition¹⁴. Indeed, it does not fully cover subcontracting chains, which are a major source of fraudulent activity. France was one of the first countries to implement the directive, in July 2014.

The revised Directive 2018/957/EU however represents more of a ‘mixed bag’. On 21 February 2019, the government published an order¹⁵ to transpose the Directive¹⁶. This order will take effect on 30 July 2020. The order ensures the effectiveness of the European Directive which France has strongly supported and thus increases the obligations which weigh on foreign employers posting their employees to France.

The new rules address long-standing demands formulated by the European Trade Union Confederation (ETUC) and by French unions. They ensure equal remuneration between posted and domestic employees, establish a maximum duration of posting, widen the scope of host country legislation that employers must abide to, and clarify the information duties of undertakings hosting posted temporary workers. For all these reasons, within the framework of consultations conducted by the General Directorate of Labour (DGT) and the Ministry of Labour, the CFDT (*Confédération française démocratique du travail*) issued a favourable opinion with reservations, an opinion shared by most other trade union organisations.

In the construction sector, the employers’ organisation FFB (*Fédération française du bâtiment*) expressed its contentment regarding the reform of the European laws and pointed out that the European institutions will have to check very carefully the effective cooperation between Member States and will have to strengthen the information on the rules applicable to the posting of workers, in particular on subjects like minimum conventional wages and working time.

¹⁴ Bocquet, E. (2016), Rapport d’information fait au nom de la commission des affaires européennes sur la proposition de révision ciblée de la directive 96/71/CE relative au détachement des travailleurs, p. 13. Available at <http://www.senat.fr/rap/r15-645/r15-6451.pdf>.

¹⁵ <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000038149580&categorieLien=id>

¹⁶ <http://www.senat.fr/ue/pac/EUR000002083.html>

However, though widely claimed as a victory by Emmanuel Macron for recognising the principle of equal pay for equal work in the same place and limiting the maximum duration of a posting to 12 months¹⁷, the directive was also criticised by some trade unions and political opponents for leaving out the crucial sector of transport workers and leaving untouched problems concerning social security coordination¹⁸, which remains a major source of tension regarding posted workers¹⁹.

According to employer representatives in France, though the extension of the scope of Article 3(1), in particular strengthening the principle of equal pay, offers better protection to posted workers, it does little to protect local workers and companies from unfair competition. For employers, the competitive advantage in favour of sending companies is to be found within labour costs as a whole and more specifically within social security contributions²⁰. Indeed, costs related to social security contributions are much higher in France than in several other European countries²¹, leading to posting of workers being perceived as a method of social dumping²².

Focus on cross-border cooperation

As concerns cross-border information sharing, France is at the forefront of several European projects related to the exchange of information on cross-border activities, including the European Platform tackling undeclared work, the work of the Senior Labour Inspectors Committee related to posted workers, and the « Eurodétachement » project launched in 2011.

In addition, bilateral agreements aim to promote operational cooperation in the area of posting and combating illegal work. In 2016, a cooperation agreement was signed with Poland. In 2017, an operational implementation agreement was signed with Bulgaria and Portugal, bringing to twelve the number of texts defining the terms of bilateral cooperation with member states of the European Union. The agreement with Spain was updated on 26 April 2019.

The main drawback nowadays results from the difficulties to get reliable statistics and information to share, especially because this requires efforts and investments to support the data flows and create the necessary tools.

¹⁷ A maximum duration which is widely considered as unnecessary, as the average duration for a posting is around 100 days.

¹⁸ A proposal on revising Regulation (EC) 883/2004 on social security coordination, presented in 2016, is still under discussion.

¹⁹ Bocquet, E. (2016), op. cit..

²⁰ European Commission (2016), Study on wage setting systems and minimum rates of pay applicable to posted workers in accordance with Directive 96/71/EC in a selected number of Member States and sectors, p. 93.

²¹ 38% of the salary in France compared to 6% in Cyprus, for example.

²² Bocquet, E. (2016), op. cit., p. 11.