



COUNTRY BRIEFING PAPER - ROMANIA

POSTING OF WORKERS AND ROMANIA

The National House of Public Pensions of Romania (NHPP) is the competent authority in determining the applicable legislation for migrant workers as concerns the application of the European Social Security Coordination Regulations and the bilateral social security agreements to which Romania is a party.

According to the data available from the national declarations tool¹, in 2017 a total of 6,008 workers were posted to Romania, 6.4% less than in 2016². This amounts to 0.1% of the total workforce in Romania. As we can see, incoming posting is only a marginal phenomenon in Romania. This can be explained by Romania being one of the EU countries with the lowest wages. The few workers posted to the country are therefore usually highly qualified compared to average local workers and earn above the average local wage³.

The main countries of origin are Poland (16%), non-EU countries (13.5%), Spain (13%), Italy (10%), Hungary (10%) and Germany (7.5%). However, if we look at the nationality of the workers posted to Romania, a slightly different picture is shown. From this perspective, the proportion of workers from Poland and non-EU Countries jumps up to 21.5% and 17% respectively, whereas the number of workers from Spain, Italy and Germany drops to 12%, 8.5% and 6% respectively. The proportion of Hungarian workers remains at 10%. This difference can be explained by a high number of Polish and non-EU national workers living in countries other than their own⁴.

The main sectors concerned by posting to Romania are manufacturing (41%), wholesale and retail trade including repair of motor vehicles and motorcycles (21.5%) and construction (14%). As mentioned, the actual number of workers posted to Romania is marginal. These sectors are therefore not threatened economically by posting as such, rather the data seems to point to skill gaps in these sectors which are therefore filled by workers from other countries⁵.

As concerns workers posted from Romania, the data from the national declarations shows a total of 37,704 individual workers, most of these posted to Belgium (37%), France (31%), Italy (18.5%) and Austria (7%). However,

¹ De Wispelaere, F., and Pacolet, J. (2018) Posting of workers: *Collection of data from national declaration tools - Reference year 2017*. Brussels: European Commission.

² For the year 2018, in the Labour Inspection database, 2701 persons posted on the territory of Romania have been identified.

³ European Commission (2016), *Study on wage-setting mechanisms and minimum rates of pay applicable to posted workers in accordance with Dir. 96/71/EC in a selected number of Member States and sectors*, p. 15. Available at: <https://op.europa.eu/en/publication-detail/-/publication/3ced3ff6-92c3-40e8-910f-d602416c0670/language-en>.

⁴ De Wispelaere, F., and Pacolet, J. (2018), op. cit., p. 16.

⁵ European Commission (2016), op. cit., p. 50.

these numbers do not paint a full picture of the state of posting from Romania, as they do not include workers posted to Germany, which receives a large number of workers from Romania, as we shall see.

The data shown by A1 forms issued for workers from Romania gives us a different perspective in this regard⁶. In all, 71,207 A1 forms were issued to workers posted from Romania in 2018, down 16% from 2017. It should be noted that approximately 40% of these workers are posted according to article 13 of the basic regulation, most of them transport workers.

Of the 41,950 workers posted under article 12, the vast majority (93%) are sent to EU-15 countries, mainly Germany (36%), France (15%), Italy (13%), Belgium (12.5%), and the Netherlands (7%). Most workers posted from Romania work in the construction sector (54.6%), with a further 26% in other industry sectors.

In contrast, only 15,883 forms were issued for workers posted to Romania, making Romania a net sender (26,067 more sent than received). As to the countries of origin, the data from A1 forms shows a rather contrasting image compared to that shown by the national declaration tool⁷, with the largest flow of workers coming from Germany (34%), followed by Italy (17%), France (12.5%), and Spain (11%). Poland, the largest flow according to the national declaration tool, is only fifth with 6.5% of all workers. The vast majority come from EU-15 countries, which fits with the image of workers posted to Romania mainly being qualified workers earning above average wages.

DEBATE ON POSTING OF WORKERS

During the negotiations for the adoption of Directive 2014/67/EU, the issue of posting of workers was not a topic of significant interest in public debates in Romania. Information on the provisions of Directive 2014/67/EU was presented in professional magazines or professional⁸ organisations' websites at the time of the adoption of the Directive, but this did not lead to discussions or debates on the subject.

When Romania adopted Law no. 16/2017 on the posting of workers in the framework of the provision of transnational services, the social partners were consulted within the Social Dialogue Commission of the Ministry of Labour (mandatory procedure in the legislative process) and more information was provided regarding the provisions of this law, including on specialised, legislative or legal⁹ websites.

⁶ De Wispelaere, F., De Smedt, L. and Pacolet, J. (2019) *Posting of workers: Report on A1 Portable Documents issued in 2018*. Brussels: European Commission.

⁷ For further information on differences in data between national declarations and A1 forms, see De Wispelaere, F., and Pacolet, J. (2018), op. cit., p. 25-28.

⁸For instance UNTRR published the Directive in Romanian language: <https://www.untrr.ro/legislatie/in-vigoare/codul-muncii/legislatie-ue/directiva-2014-67-ue-din-15-mai-2014-privind-asigurarea-respectarii-aplicarii-directivei-96-71-ce-privind-detasarea-lucratorilor-in-cadrul-prestarii-de-servicii-si-de-modificare-a-regulamentului-ue-nr-1024-2012-privind-cooperarea-administrativa-prin-intermediul-sistemului-de-informare-al-pietei-interne-regulamentul-imi.html#.XqsROZIS82x>.

⁹ See, for instance: Staicu, E. (2017), *Detaşarea salariaţilor la prestarea de servicii transnaţionale*, Legestart, 23 March 2017, available at: <https://legestart.ro/detasarea-salariatilor-la-prestarea-de-servicii-transnationale/> ; or Universul Juridic (2017), *Detaşarea salariaţilor în cadrul prestării de servicii transnaţionale (Legea nr. 16/2017)*, available at: <https://www.universuljuridic.ro/detasarea-salariatilor-cadrul-prestarii-de-servicii-transnationale-legea-16-2017/>.

In the study “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” published in 2016, the annex for Romania presents a similar situation. Thus, the study states the following:

“In general, the issue of posted workers attracts limited attention in public debate and even for social partners the posting issue is not high on the agenda. The absence of debate is linked to the low relevance of ‘receiving’ posting in Romania. The specialised magazines (i.e. on labour law) include articles on relevant European Union case-law on posting and usually the relevant CJ¹⁰ case-law is immediately presented after their occurrence. Also a number of specialised websites (in the legal or tax consultancy area) present and make comments on the case-law. The ‘sending’ of posted workers generated some debate between social partners and Romanian authorities, but it was not at the core of public debate.”

During the consultations that took place for the transposition of the provisions of the Directive 2014/67/EU into the national legislation, the draft national law and the methodological norms for the implementation thereof received a favourable opinion from the Social Dialogue Commission of the Ministry of Labour and the Economic and Social Council¹¹.

Also, in the debates that took place at the level of the Parliament of Romania – the Chamber of Deputies – the draft law transposing the provisions of Directive 2014/67/EU was adopted, receiving favourable opinions from the specialised commissions. The representatives of the Ministry of Labour and Social Justice, the National Agency for Fiscal Administration, as well as representatives of the Romanian Road Transport Union¹² were present at the debate held in the Committee for Labour and Social Protection of the Chamber of Deputies.

However, with the European Commission launching the process of amending the provisions of Directive 96/71/EC, the subject became more present, with positions expressed by some institutions as well as by the national social partners.

In 2015, Bulgaria, the Czech Republic, Estonia, Hungary, Lithuania, Latvia, Poland, Slovakia and Romania, argued in a joint letter¹³ to Commissioner Thyssen that a revision of Directive 96/71/EC is premature and that this process should be postponed for the period after the deadline for transposition of Directive 2014/67/EU and after careful consideration of its effects.

According to the information presented by the European Commission in the Explanatory Memorandum accompanying the draft directive for the revision of the Directive 96/71 (COM/2016/0128 final), the letter argues for the transposition and implementation of Directive 2014/67/EU, followed by an effective assessment of the legislative framework before any re-opening of the negotiations on Directive 96/71/EC.

At the level of the social partners, similarly to the views expressed by the European social partners and the Member States' partners at the European level, the positions of the trade unions and national employers organisations have been divergent, with some trade unions claiming the need to revise the provisions of the

¹⁰ CJ in the acronym adopted in the text for European Court of Justice.

¹¹ See: <http://www.ces.ro/newlib/PDF/avize/avize-2016.pdf?an=5>; <http://dialogsocial.gov.ro/wp-content/uploads/2019/02/06.04.2017.pdf> .

¹² http://www.cdep.ro/pls/proiecte/upl_pck2015.proiect?cam=2&idp=15959.

¹³ http://arbetsratt.juridicum.su.se/euarb/15-03/nio_medlemsstater_utstationeringsdirektivet_augusti_2015.pdf

Directive with the recognition of equal treatment in terms of wages and conditions work and, implicitly, its draft amendment presented by the European Commission, while some employers opposed this approach by the European Commission on grounds of reduced competitiveness and violation of the freedom to provide services¹⁴.

A constant stand against the revision of Directive 96/71/EC was that of the Romanian National Road Transport Union (UNTRR), which stated that the provisions of this directive should not apply to the field of road transport. In the opinion of UNTRR, “the application of the Posting of Workers Directive to all international transports in which hypermobile workers cross the borders every day runs counter to the rationale of the directive itself, as the intention was to apply posting rules to employees working months or years in the territory of a Member State other than the State in which the driver is habitually employed. The posting rules are thus inapplicable for employees working for few days or even hours in different Member States”¹⁵.

UNTRR's position was countered by the Road Transport Workers' Union (SLT), which demanded, like the European Trade Union (ETF), to review working conditions for truck drivers and equal treatment. Actions, debates and awareness-raising events were organised in the period 2016-2017. The National Syndicate Bloc (BNS) also saw the revision of the directive as a way to reduce unfair competition and the exploitation of posted Eastern European workers. BNS thus generally supported the Commission's proposal, also asking for there to be a clear requirement of previous employment in the country of origin, and interestingly, for trade unions to be allowed to engage with and exert pressure equally on local and foreign companies. Despite these positions, Romanian trade unions were only involved in the public debate to a limited extent¹⁶.

In the process of assessing subsidiarity and proportionality on the proposal for a Directive amending Directive 96/71/EC on the posting of workers in the framework of the provision of services, the Parliament of Romania issued a reasoned opinion¹⁷.

¹⁴ Radu, C. (2017), Blocul Național Sindical: Susținem propunerea de Directivă a Parlamentului European privind detașarea lucrătorilor; nu suntem de acord cu punctul de vedere politic al României, News.ro, 24 August 2017, available at: <https://www.news.ro/social/blocul-national-sindical-sustinem-propunerea-de-directiva-a-parlamentului-european-privind-detasarea-lucratorilor-nu-suntem-de-acord-cu-punctul-de-vedere-politic-al-romaniei-1922400524192017081817168706>; BNS (2016), Comisia Europeană trebuie acum să urgenteze revizuirea Directivei privind detașarea lucrătorilor, available at: <https://bns.ro/info-bns/260-comisia-europeana-trebuie-acum-sa-urgenteze-revizuirea-directivei-privind-detasarea-lucratorilor>; CNIPMMR (2016), CNIPMMR nu sustine revizuirea Directivei 96/71/CE privind detasarea lucratorilor in cadrul prestarii de servicii, available at: <https://cniipmmr.ro/2016/03/17/cniipmmr-nu-sustine-revizuirea-directivei-9671ce-privind-detasarea-lucratorilor-in-cadru-prestarii-de-servicii/>.

¹⁵ UNTRR (2017), UNTRR a semnat o Declarație comună împreună cu asociații de transport rutier de marfă și persoane, logistică, camere de comerț și confederații patronale din 17 țări împotriva aplicării Directivei privind Detașarea Lucrătorilor (96/71/CE) care efectuează operațiuni de transport internațional în UE, available at: <https://www.untrr.ro/comunicate-untrr/comunicat-de-pres-18-10-2017-untrr-a-semnat-o-declaratie-comuna-impreuna-cu-asociatii-de-transport-rutier-de-marfa-si-persoane-logistica-camere-de-comert-si-confederatii-patronale-din-17-tari-impotriva-aplicarii-directivei-privind-detasarea-lucratorilor-96-71-ce-care-efectueaza-operatiuni-de-transport-international-in-ue.html#.XNrEwhQzaM8>.

¹⁶ 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.19.

¹⁷ See: <http://legislatie.just.ro/Public/DetaliiDocument/177670>.

The issue of revising Directive 96/71/EC was also the subject of talks between Romanian President Klaus Iohannis and French President Emmanuel Macron on the occasion of the latter's visit to Romania in August 2017¹⁸.

Following the approval of Directive 2018/957/EU, information on its adoption and provisions was also found on the websites of professional organizations or on the websites of legal magazines¹⁹.

Focus on cross-border cooperation

As to cross-border agreements on posting (between social partners of different other stakeholders in the private sector or between public institutions or between public institutions and social partners/different stakeholders), they are considered an opportunity to improve the application of working conditions, representation of the interests of posted workers and to prevent and combat abuses effectively, but they can also induce constraints, depending on the applicable objectives and jurisdiction.

The Romanian Labour Inspection, which also acts as the Liaison Office for the cross-border posting of workers, considers it appropriate to conclude cross-border agreements with a view to improving the exchange of information in order to streamline the verification of working conditions of posted workers.

As a concrete example of cooperation, one should mention that, as a result of a European project, Belgian, French, Italian and Spanish building information brochures are promoted on the construction trade union federation website, along with data related to the REDER network (European Network for Fair and Responsible Posting of Workers), which aims at mutual cooperation in informing, defending and organizing cross-border workers in the construction sector.

The REDER network incorporates trade union organisations and labour inspectorates from 9 countries (Romania, Poland, Bulgaria, Portugal, France, Belgium, Italy, Spain and Germany). REDER cooperates to inform, defend and organize cross-border workers in the construction sector in Europe.

The REDER final seminar brochure sums up the network's actions for 2 years with the testimonies of the posted workers who have been defended. Over a two-year period, the REDER network informed more than 40,000 workers posted in Europe on their rights and more than 100 workers were defended by means of the bilateral cooperation between sending countries and host countries and most of the workers protected by the network REDER joined the trade unions.

¹⁸See: <https://www.presidency.ro/ro/media/declaratii-de-presa/conferinta-de-presa-comuna-a-presedintelui-romaniei-domnul-klaus-iohannis-cu-presedintele-republicii-franceze-domnul-emmanuel-macron>.

¹⁹ See: Wawryszuk, B. (2018), Transportatorii estimează efectele Directivei Detaşării: “Salarii mai mari? Da, vor fi, dar numai pentru câţiva.”, trans.info, 14 June 2018, available at: <https://trans.info/ro/transportatorii-estimeaza-efectele-directivei-detasariei-salarii-mai-mari-da-vor-fi-dar-numai-pentru-cativa-96445>; Ziemkowska, D. (2018), Înfrângere pentru transportatorii din Est. Directiva privind detaşarea lucrătorilor se va aplica şi în transport, trans.info, 29 May 2018, available at: <https://trans.info/ro/infrangere-pentru-transportatorii-din-est-directiva-privind-detasarea-lucratorilor-se-va-aplica-si-in-transport-94027>; UNTRR (2018), Directiva generală privind detaşarea lucrătorilor: Parlamentul European a votat pentru plata egală a tuturor lucrătorilor detaşaţi, available at: <https://www.untrr.ro/afaceri-sociale/pachet-rutier/directiva-general-a-privind-detasarea-lucratorilor-parlamentul-european-a-votat-pentru-plata-egala-a-tuturor-lucratorilor-detasati.html#.XNKmfhQzaM8>; Albu, E. (2018) Modificarea Directivei 96/71/CE privind detaşarea lucrătorilor în cadrul prestării de servicii, Juridice, 11 July 2018, available at: <https://www.juridice.ro/591255/modificarea-directivei-96-71-ce-privind-detasarea-lucratorilor-in-cadrul-prestarii-de-servicii.html>.