Measuring the size of intra-EU posting on the basis of data collected at European and national level

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Conference Intra-EU posting: costs and benefits

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Introduction

• Importance of free movement of persons, goods and services;

• A tradition of clear rules on social security coordination;

• Growing concern about social dumping;

• Latest reform efforts by the Labour Mobility Package and the European Pillar of Social Rights: towards fair labour markets;

• How substantial is it?
Proposal to revise the Posting of Workers Directive and Regulation on the coordination of social security systems

• **Posting of Workers Directive:**
  - All mandatory rules on remuneration in the host Member State apply to workers posted to that Member State (‘Equal pay for equal work in the same place’);
  - Rules on temporary work agencies;
  - Duration of posting longer than 24 months: the labour law of the host Member State will apply.

• **Regulation on the coordination of social security systems:**
  - Does not change the current rules: exception to the ‘lex loci laboris’ principle: subject to the social security system of the sending Member State if they are posted for less than 24 months;
  - Aligns the terminology for social security coordination with the Posting of Workers Directive;
  - A uniform approach to the issuance, verification and withdrawal of the Portable Document A1;
  - It strengthens the administrative rules on social security coordination in the fields of information exchange and verification of the social security status of such workers in order to prevent potentially unfair practices or abuse.
# Legislation that applies to intra-EU mobility

## Intra-EU labour mobility

<table>
<thead>
<tr>
<th>Labour migration</th>
<th>Cross-border work</th>
<th>Posting</th>
</tr>
</thead>
<tbody>
<tr>
<td>Migrating to a different country where one also works</td>
<td>Working in a different country than the country of residence</td>
<td>Temporarily working in a different country than the country in which the employer is based</td>
</tr>
</tbody>
</table>

**Wage and labour conditions**
- Wage and labour conditions of the country of employment
- Wage and labour conditions of the country of employment
- Wage and labour conditions of the country of employment

**Social security**
- Social security of the country of employment
- Social security of the country of employment
- Social security of the country of origin (if less than 24 months)

**Place of residence**
- Country to which one migrates
- Different country than the country of employment (neighbouring country)
- < 3 months: often different country than that of temporary employment
  > 3 months: country of temporary employment
Article 91 of the Implementing Regulation on the coordination of social security systems: “statistical data concerning the application of Regulations (EC) Nos 883/2004 and 987/2009 should be collected by the competent institutions in the Member States under the supervision of the Administrative Commission.”

Data collection of an unexplored but heavily politicised area
The notion ‘posted worker’ under the EU rules on social security coordination and the Posting of Workers Directive

|-----------------------------|------------------|
| **Art. 12 (1) - Posted worker:** "a person who pursues an activity as an employed person in a Member State on behalf of an employer which normally carries out its activities there and who is posted by that employer to another Member State to perform work on that employer's behalf [...] provided that the anticipated duration of such work does not exceed twenty-four months and that he is not sent to replace another person" | **Art. 2 - Posted worker** means "a worker who, for a limited period, carries out his or her work in the territory of a Member State other than the State in which he or she normally works (Article 2) provided that the undertakings, in the framework of transnational provision of services, take one of the following transnational measures: (a) post workers to the territory of a Member State on their account and under their direction, under a contract concluded between the undertaking making the posting and the party for whom the services are intended, operating in that Member State, provided there is an employment relationship between the undertaking making the posting and the worker during the period of posting; or (b) post workers to an establishment or to an undertaking owned by the group in the territory of a Member State, provided there is an employment relationship between the undertaking making the posting and the worker during the period of posting; or (c) being a temporary employment undertaking or placement agency, hire out a worker to a user undertaking established or operating in the territory of a Member State, provided there is an employment relationship between the temporary employment undertaking or placement agency and the worker during the period of posting (Article 1(3))."

| Art. 12 (2) - Posted self-employed person: "a person who normally pursues an activity as a self-employed person in a Member State who goes to pursue a similar activity in another Member State [...] provided that the anticipated duration of such activity does not exceed twenty-four months." | Posted self-employed persons are not covered by Directive 96/71/EC |
The notion ‘posted worker’ under the EU rules on social security coordination and the Posting of Workers Directive

• A distinction between posted workers (Art. 12 BR) and persons active in two or more Member States (Art. 13 BR) is not always easy to make in practice. As a result, workers active in two or more Member States may fall under the terms and conditions of the Posting of Workers Directive;

• Self-employed persons posted according to Article 12 (2) BR are not covered by the Posting of Workers Directive;

• Differences in scope (sub-contracting, intra-group, temporary agency work versus other situations).
Measuring the number of posted workers and the economic impact on sending and receiving Member States

Portable Document A1: is a formal statement on the applicable social security legislation. It proves, amongst others, that posted workers according to Article 12 of Regulation (EC) No 883/2004 or persons active in two or more Member States according to Article 13 of Regulation (EC) No 883/2004 pay social contributions in another Member State. This implies that they do not fall under the social security scheme of the Member State of (temporary) employment. -> **The form is not only issued to posted workers.**

- **PD A1 Questionnaire – reference year 2015:**
  - Type of activity (posting vs active in two or more MSs);
  - Status (employed or self-employed);
  - Sector of economic activity;
  - Individual persons;
  - Duration.
Number of intra-EU posted workers

- PD A1: only an indicative picture of the actual number of postings;
- The number of PDs A1 issued is not necessarily equal to the number of persons involved;
- Differences exist in the definition of posting between Regulation (EC) No 883/2004 and the Posting of Workers Directive;
- Some posted workers begin to work in another Member State without a PD A1;
- It is useful to compare the results of the collection of data on the number of PDs A1 to existing national registration tools.
Intra-EU labour mobility: posting became a substantial third way

<table>
<thead>
<tr>
<th>Type</th>
<th>Flow/Total</th>
<th>Number</th>
<th>As share of ...</th>
<th>Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total EU/EFTA migrants of working age</td>
<td>Total</td>
<td>12.7 million</td>
<td>4% of total EU/EFTA population of working age</td>
<td>2015</td>
</tr>
<tr>
<td>Flow of EU/EFTA migrants of working age</td>
<td>Flow</td>
<td>1.2 million</td>
<td>0.4% of total EU/EFTA population of working age</td>
<td>2014</td>
</tr>
<tr>
<td>Of which ‘return migration’</td>
<td>Flow</td>
<td>631,000</td>
<td>0.2% of total EU population of working age</td>
<td>2014</td>
</tr>
<tr>
<td>EU/EFTA migrants working and living in another MS</td>
<td>Total</td>
<td>8.6 million</td>
<td>3.9% of total EU/EFTA employment</td>
<td>2015</td>
</tr>
<tr>
<td>Cross-border workers in EU-28</td>
<td>Total</td>
<td>1.3 million</td>
<td>0.6% of total EU employment</td>
<td>2015</td>
</tr>
<tr>
<td>Number of persons insured in a MS other than the MS of (temporary) employment</td>
<td>Flow</td>
<td>2.05 million</td>
<td>± 0.6% of total EU/EFTA employment</td>
<td>2015</td>
</tr>
</tbody>
</table>

**Source** Fries-Tersch et al., 2016; Pacolet and De Wispelaere, 2016; EUROSTAT
2.05 million PDs A1 issued to persons insured in a Member State other than the Member State of (temporary) employment

Source: Pacolet and De Wispelaere, 2016
Evolution of the number of PDs A1 issued, 2010-2015

Evolution of the number of PDs A1 issued, 2010-2015

Source: Pacolet and De Wispelaere, 2016
The notion ‘posted worker’ under Regulation (EC) No 883/2004 and Directive 96/71/EC

Active in 2 or more Member States (Art. 13)

Posting according to Art. 12 BR

- 121,000 self-employed
- 1.37 million workers

Posting of Workers Directive

- 87,000 self-employed
- 425,000 employed

Bilateral agreements (Art. 16)

- 27,600 (self-)employed

Employment agencies?
Intra-group?
Sub-contracting?
PDs A1 (posted workers + persons active in 2 or more Member States): Main sending Member States

**Source**: Pacolet and De Wispelaere, 2016
Intra-EU posting: Main receiving Member States

Source Pacolet and De Wispelaere, 2016
Intra-EU posting: Flows among Member States

Not only from EU-13 to EU-15 but also across EU-15

Issued by ...

- EU-15: 56%
- EU-13: 44%
- EFTA: 1%

Issued to ...

- EU-15: 85%
- EU-13: 6%
- EFTA: 9%

Source: Pacolet and De Wispelaere, 2016
Intra-EU posting: Flows among Member States

More than half of postings take place between neighbouring Member States

Source: Pacolet and De Wispelaere, 2016
On average 8% of the PDs A1 issued according to Article 12 apply to posted self-employed persons.

Source: Pacolet and De Wispelaere, 2016
Intra-EU posting: Breakdown by sector of activity

**Strong concentration in the construction sector**

- Construction sector: 41.6%
- Industry (excl. construction sector): 24.4%
- Other services (excl. transport sector): 30.5%
- Transport sector: 2.3%
- Agriculture: 1.2%

*Source* Pacolet and De Wispelaere, 2016
Differences between sending EU-15 and EU-13

Intra-EU posting: Breakdown by sector of activity

**Source** Pacolet and De Wispelaere, 2015
Persons active in 2 or more Member States: Breakdown by sector of activity

**Strong concentration in the transport sector**

- **Transport sector**: 34.2%
- **Industry (excl. construction sector)**: 13.6%
- **Other services (excl. transport sector)**: 31.3%
- **Construction sector**: 19.5%
- **Agriculture**: 1.4%

*Source* Pacolet and De Wispelaere, 2016
A1 forms issued to persons active in the construction sector

Source: Pacolet and De Wispelaere, 2016
A1 forms issued to persons active in the **transport sector**

Source: Pacolet and De Wispelaere, 2016
Posted workers and persons active in 2 or more Member States: average duration

- Each individual person has been posted **1.9** times during the observed period (Art. 12 BR);
- Persons active in 2 or more MSs (Art. 13 BR): on average **1.2** forms per individual person

Source: Pacolet and De Wispelaere, 2016
Size of intra-EU posting and persons active in two or more Member States

Not the best indicator

Marginal overall impact in terms of FTE

Source Pacolet and De Wispelaere, 2016
Some Members States, and within these Member States some specific sectors, are in relative terms confronted with a significantly high percentage of outgoing and incoming posted workers
Overview of some national registration tools

• **Belgium**: ‘LIMOSA’; ‘GOTOT-IN’ and ‘GOTOT-OUT’
• **France**: ‘Déclaration préalable de détachement’
• **The Netherlands**: ‘Melding grensoverschrijdende dienstverlening / Notification of cross-border services’
• **Luxembourg**: ‘Communication de détachement de salariés’ (CDS)
• **Austria**: the ‘Meldepflicht’ (Notification to the Central Coordination Office ‘ZKO3’)
• **Denmark**: the ‘RUT’
• **Slovakia**: notification form
• **Slovenia**: notification form
## Impact of intra-EU posting on the basis of national data

<table>
<thead>
<tr>
<th>Source</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>Share in employment receiving economy/sector</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Belgium</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Number of A1 forms</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>PD A1 Report BE</td>
<td>Total</td>
<td>125,107</td>
<td>125,264</td>
<td>134,340</td>
<td>159,749</td>
<td>156,556</td>
</tr>
<tr>
<td></td>
<td>% change</td>
<td>12.6%</td>
<td>17.0%</td>
<td>14.2%</td>
<td>13.0%</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Construction</td>
<td>45,276</td>
<td>57,461</td>
<td>85,572</td>
<td>114,096</td>
<td>130,597</td>
</tr>
<tr>
<td></td>
<td>% change</td>
<td>26.9%</td>
<td>48.9%</td>
<td>33.3%</td>
<td>14.5%</td>
<td></td>
</tr>
<tr>
<td>LIMOSA</td>
<td>Total</td>
<td>124,060</td>
<td>139,664</td>
<td>163,383</td>
<td>186,525</td>
<td>210,815</td>
</tr>
<tr>
<td></td>
<td>% change</td>
<td>12.6%</td>
<td>17.0%</td>
<td>14.2%</td>
<td>13.0%</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Construction</td>
<td>45,276</td>
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</tr>
<tr>
<td></td>
<td>% change</td>
<td>26.9%</td>
<td>48.9%</td>
<td>33.3%</td>
<td>14.5%</td>
<td></td>
</tr>
<tr>
<td>GOTOT-IN</td>
<td>Total</td>
<td>81,011</td>
<td>88,042</td>
<td>140,408</td>
<td>122,580</td>
<td>143,045</td>
</tr>
<tr>
<td></td>
<td>% change</td>
<td>8.7%</td>
<td>59.5%</td>
<td>-12.7%</td>
<td>16.7%</td>
<td></td>
</tr>
<tr>
<td><strong>France</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>PD A1 Report FR</td>
<td>160,532</td>
<td>161,954</td>
<td>156,490</td>
<td>182,219</td>
<td>190,848</td>
<td></td>
</tr>
<tr>
<td>Déclaration préalable de détachement</td>
<td>144,411</td>
<td>169,613</td>
<td>212,641</td>
<td>228,649</td>
<td>286,025</td>
<td>1%</td>
</tr>
<tr>
<td></td>
<td>% change</td>
<td>17.5%</td>
<td>25.4%</td>
<td>7.5%</td>
<td>25.1%</td>
<td></td>
</tr>
<tr>
<td><strong>Germany</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Number of individual persons</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Soka-Bau</td>
<td>Construction</td>
<td>62,262</td>
<td>68,114</td>
<td>82,018</td>
<td>91,399</td>
<td>99,861</td>
</tr>
<tr>
<td></td>
<td>% change</td>
<td>9.4%</td>
<td>20.4%</td>
<td>11.4%</td>
<td>9.3%</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Meat industry</td>
<td>89,608</td>
<td></td>
<td></td>
<td></td>
<td>38%</td>
</tr>
</tbody>
</table>

Conclusions

- A thin line between posted workers, migrant workers and frontiers workers;
- Number of posted workers under EU coordination rules ≠ Posted workers under Posting of Workers Directive;
- Over the past years, some new questions were included in the PD A1 questionnaire in order to obtain a more detailed overview of posting in the context of the Basic Regulation;
- Further consolidation of the data collection at EU level is needed;
- Data collection at EU level seems to be growing to maturity. Nonetheless, still incomplete information on the duration of postings, the precise economic sector of activity, the number of individual persons. Moreover, only data on the number of PDs A1 issued according to Article 12 are available from a receiving perspective;
- However, still a lot of open research questions: analysis of data available at national level;
- Data collection at European level reveals substantial differences between Member States and sectors of activity;
- Data collection reveals political sensitive issues as shift towards persons active in two or more Member States and self-employed persons.
References


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