

Intra-EU posting Costs and benefits

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Preface: Legislation that applies to intra-EU mobility

Intra-EU labour mobility

Labour migration

Migrating to a different country where one also works

Cross-border work

Working in a different country than the country of residence

Posting

Temporarily working in a different country than the country in which the employer is based

Wage and labour conditions

Wage and labour conditions of the country of employment

Wage and labour conditions of the country of employment

A set of 'hard core' minimum terms of wage and labour conditions 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

1. Introduction (1)

- Intra-EU posting is increasingly seen as a Trojan horse by host Member States;
- Current political and scholarly debates fixate almost exclusively on risks of ‘social dumping’, cross-border social fraud and displacement of domestic jobs;
- Debate is strongly focused on low-skilled posted workers moving from low-wage to high-wage Member States;
- This tunnel vision has marginalised the use of posting and has influenced public acceptance as well as European and national policy;
- Potential benefits of intra-EU posting from the perspective of the Member State of origin as well as that of the host Member State are hardly ever cited.

1. Introduction (2)

- A nuanced fact-based debate is necessary by exploring data available at European and national level related to size, profile and impact of intra-EU posting;
- Detailed analysis of the benefits and costs of intra-EU posting;
- Overview of potential ‘winners’ and ‘losers’;
- Is intra-EU posting a ‘triple win’, bringing benefits to host Member States, Member States of origin and the posted workers themselves?

2. 'The posted worker': a multifaceted notion with a very concentrated impact (1)

Regulation (EC) No 883/2004

Directive 96/71/EC

Definition

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

2. 'The posted worker': a multifaceted notion with a very concentrated impact (2)

- 'Front door/back door' principle;
- The transitional arrangements related to the free movement of workers for persons from Member States that joined on 1 May 2004 expired on 30 April 2011;
- Empirical evidence shows an upward trend of intra-EU posting since 2011 after a stagnation between 2007 and 2010;
- Three reasons might explain this counter-intuitive evolution
 - *Posting tends to be pro-cyclical;*
 - *It reflects a consciously chosen form of mobility as it has a number of advantages over a permanent move;*
 - *Posting is employer-driven and depends on the evolution of trade in services.*

2. 'The posted worker': a multifaceted notion with a very concentrated impact (3)

- Some 56% of postings occur from EU-15 Member States;
- Roughly 38% of postings are from one high-wage Member State to another;
- The flow from low-wage to high-wage Member States represents 'only' a third of total postings;
- Intra-EU posting represents less than 1% of total EU employment. *'Much ado about nothing'?*
- *No.* The number of postings and their share in total employment strongly differ among Member States and sectors of activity.

2. 'The posted worker': a multifaceted notion with a very concentrated impact (4)

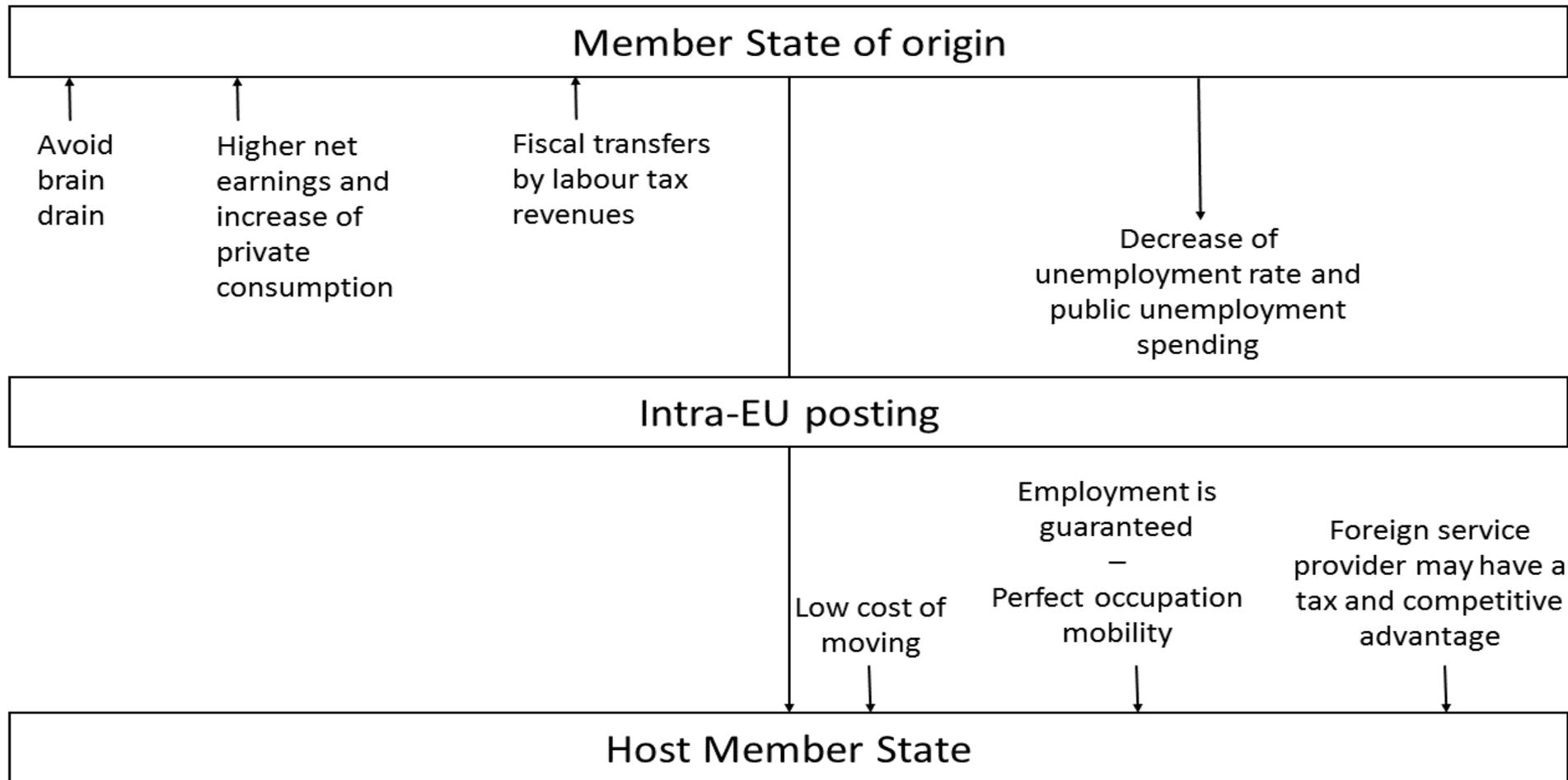
- Intra-EU posting accounts for approximately 16% and 4.5% of total employment in Luxembourg and Belgium;
- It takes on a substantial part in some labour-intensive sectors of activity, particularly in construction and freight transport by road;
- It accounts for some 4% of employment in the German construction sector and approximately 7% in the French construction sector. It even amounts to one third of employment in the Belgian construction sector;
- According to figures published by Wagner and Hassel (2016) approximately 4 out of 10 of the workers employed in the German meat processing industry are posted workers.

3. A comprehensive overview of costs and benefits

- A number of benefits and costs of posting for the economic actors and Member States involved can be established;
- There are potential costs and benefits to all Member States involved in posting – be it the Member State of origin or the host Member State; as well as the posted workers themselves;
- In addition, also other economic actors such as posting undertakings, service recipients (both contractors and consumers), domestic workers and tax authorities will experience some minor/major costs and benefits;
- We mainly look at the economic effects on national economies in terms of changes in trade, profits, employment, wages, labour tax revenues, social protection, consumption and prices.

3.1. From the perspective of the Member State of origin

Potential benefits of intra-EU posting for sending Member States



3.1. From the perspective of the Member State of origin

- **3.1.1** Regulatory competition in favour of foreign service providers and posted workers: intra-EU posting as ‘business model’?
- **3.1.2** Higher wages and purchasing power for posted workers
- **3.1.3** Higher tax revenues from posted workers
- **3.1.4** Intra-EU posting as adjustment mechanism for economic shocks
- **3.1.5** Not only benefits but certainly also potential costs

3.1.1 Regulatory competition in favour of foreign service providers and posted workers: intra-EU posting as 'business model'? (1)

- The current regulatory framework does not ensure a 'level playing field' between companies;
- Posting of Workers Directive:
 - By applying wages and working conditions of the host Member State and not of the Member State of origin 'social dumping' threats are limited to a high extent;
 - Directive has an in-built structural wage gap between posted and domestic workers;
 - In 2017 the monthly German minimum wage amounted to only 41% of the mean value of average monthly earnings in Germany;
 - This gives a competitive edge to posting companies;
 - The Posting of Workers Directive does not apply to self-employed persons. As a result, the competitive advantage of posted self-employed persons is (much) greater compared to domestic workers and even posted workers.

3.1.1 Regulatory competition in favour of foreign service providers and posted workers: intra-EU posting as 'business model'? (2)

- Regulation on the coordination of social security systems:
 - Exception to the 'lex loci laboris' principle;
 - This is mainly motivated to encourage intra-EU mobility and economic interpenetration and to avoid an additional administrative burden and a possible loss of rights;
 - Differences in employer social contribution rates create 'regulatory competition' between domestic service providers and foreign services providers.
- Labour costs constitute just one aspect that will determine competitive advantage or disadvantage;
- Other aspects are differences in corporate income taxes as well as differences in productivity, knowledge, skills, and flexibility of companies and their workers.

3.1.1 Regulatory competition in favour of foreign service providers and posted workers: intra-EU posting as 'business model'? (3)

- In view of all this, one may conclude that posting is an interesting 'business model' for service providers;
- This was never the original purpose;
- It is even prevented by several provisions in the EU rules on the coordination of social security systems
 - The posting period is limited to 24 months (*temporary nature of posting*);
 - The worker may not be sent to replace another posted person (*not designed to replace another worker*);
 - The employer must normally carry out its activities in the Member State of origin;
 - Etc.

3.1.2 Higher wages and purchasing power for posted workers

- Posted workers will be able to improve their financial situation;
- The minimum wage per hour for an unskilled worker in the German construction sector was € 11.15 in 2015. This is almost 4 times higher than the average hourly gross salary in Romania and Bulgaria and almost double the average hourly gross salary in Poland;
- Price level differences among Member States create a higher purchasing power for posted workers residing in a low-wage Member State compared to domestic workers residing in a high-wage Member State;
- Because of larger welfare gains, the incentive for posted workers from low-wage Member States to remain in the host Member State for a longer period is expected to be higher than posted workers from middle and high-wage Member States.

3.1.3 Higher tax revenues from posted workers

- Member States of origin can benefit from the labour taxes levied to the (much) higher wages when workers are sent to provide services abroad;
- Labour taxes levied to the wages of posted workers are estimated to amount some 0.7% of total monthly labour tax revenues of the Member States of origin;
- Only some 0.3% of total monthly labour tax revenues received by EU-15 Member States relates to posting while this is 5.7% for EU-13 Member States;
- Labour tax revenues from EU-13 posted workers are estimated to decrease by 77% if they are no longer posted and instead employed in their Member State of origin.

3.1.4 Intra-EU posting as adjustment mechanism for economic shocks

- Intra-EU labour mobility is an important tool to support adjustment to economic shocks. In such an event people are moving from high to low unemployment regions;
- The ability of posting to decrease unemployment in the Member State confronted with an economic shock on the one hand, and to increase household incomes and even (labour) tax revenues, on the other, are important features;
- Posting may even be more effective in cushioning an economic shock than permanent labour mobility.

3.1.5 Not only benefits but certainly also potential costs

- Domestic workers and posted workers are performing the same work on the same site, but having (1) other pay and employment conditions and (2) other social security coverage;
- Posted workers might be confronted with fraudulent practices regarding wage payment and working hours;
- Several scholars report cases where posted workers became victims of discrimination, exploitation and xenophobic attitudes;
- Posted workers seem to invest less in integrating themselves into domestic society and will most likely not devote any efforts to become part of the host Member States' life;
- Posting raises fears in the Member States of origin about the erosion of the workforce.

3.2. From the perspective of the host Member State

- **3.2.1** Reply to labour and skill shortages or substitution of domestic labour?
- **3.2.2** Social dumping versus cross-border social fraud : two different concepts causing the same negative impact
- **3.2.3** A dual employer market?

3.2.1 Reply to labour and skill shortages or substitution of domestic labour? (1)

- Domestic workers employed in labour-intensive sectors, such as the construction sector and freight transport by road, might be sensitive to displacement effects;
- This threat has been existing for a very long time in the construction sector. In the nineties, this was observed in the German construction sector;
- France, Belgium, Italy and Austria show for recent years an increase of investment in construction but a decrease of the number of domestic workers employed in the construction sector while there was a positive change in the number of incoming posted workers;
- Question is also whether posting causes a displacement of domestic jobs in each sub-sector of the construction sector.

3.2.1 Reply to labour and skill shortages or substitution of domestic labour? (2)

- The discussion on job displacement by posting might be temporary taking into account the global ‘war for talent’;
- In this respect the benefits of posting as reply to labour and skill shortages cannot be overlooked, especially because posting satisfies short-term excess labor demand in a flexible way and is the ideal solution for filling temporary labor market shortages;
- The National Bank of Denmark concluded in 2016 that Denmark is near full employment and must find ways of expanding its labour force to avoid harmful effects on the economy. In addition, there was already reporting of labour shortages in the Danish construction sector;
- There is a potential for managing imbalances in the European labour market.

3.2.2 Social dumping versus cross-border social fraud : two different concepts causing the same negative impact (1)

- ‘Social dumping’ can be considered as an downward pressure on national welfare states created by the competitive advantage that other countries have resulting from differences in social standards and working conditions that are not remedied by European legislation;
- “what is social dumping to the losers is economic opportunity to the winners who take advantage of their lower labour costs to gain a foothold on these new markets” (Barnard, 2009);
- It is a discussion on competitive advantages between Member States without referring to the fraudulent practices.

3.2.2 Social dumping versus cross-border social fraud : two different concepts causing the same negative impact (2)

- Statutory and sectorial minimum wages avoid to a large extent the threat of social dumping;
- An increased risk of social dumping occurs when there would be a shift from a worker to a self-employed status;
- A bigger problem might be the cost of cross-border fraud by posting;
- Displacement of formal domestic jobs by undeclared work is probably much higher. This is ‘the elephant in the room’ according to Darvas (2017);
- It illustrates the importance of labour inspectorates and related investments. The payback effect not only manifests in regularisations or sanctions but also and even more in the formal jobs that are safeguarded or even created.

3.2.3 A dual employer market?

- Bernaciak (2015): “the role of high-wage country companies in exploiting the differences in socioeconomic conditions between domestic and foreign locations is rarely a subject of public debate”;
- Figures for Belgium reveal a picture of a dual employer market in the construction sector, in which large Belgian contractors benefit from the use of posting on the one hand, through their profits and operating surplus, whereas Belgian subcontractors (read small and medium-sized companies) are out-bid in the market on the other;
- More than 20 years ago, a similar picture was already observed for the German construction. Large construction companies were able to respond to this situation while small and medium-sized companies were tend to lose out (Hunger, 2000).

4. Conclusion: who gains and who loses?

- Both trade and labour mobility are likely to create ‘winners’ and ‘losers’. Intra-EU posting, that embodies both, is no exception to this;
- Evidence reveals that both Member States of origin and posted workers largely benefit from it;
- The outcome for host Member States is ambiguous, showing for labour-intensive sectors a risk of displacement of domestic workers as well as a dual employer market;
- The ambition should be that intra-EU posting is an opportunity for both the ‘weaker’ and the ‘stronger’;
- Ideally, intra-EU posting is not a ‘business model’ exploiting regulatory differences between Member States but rather an economic model benefiting from the free movement of services and following a pragmatic approach in response to labour and skill shortages in host Member States and economic shocks in Member States of origin.

Some references

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