

Posted workers

La condizione dei lavoratori in distacco transnazionale in Europa

a cura di Rossana Cillo e Fabio Perocco

The Posting of Workers in Austria Working Conditions, Rule Enforcement, and the Fight Against Social Dumping

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Abstract As a predominantly receiving country for posted workers, Austria has developed a complex governance system for the implementation of the posting of workers regulation and the enforcement of rules against wage and social dumping. Despite the existence of elaborate rules and intricate enforcement mechanisms, posted workers' labour rights in Austria are still not always guaranteed, they operate under poor working conditions, and a level playing field is not ensured. The transnational temporary mobility nature of this form of service provision creates challenges to rule enforcement, which eventually expose workers posted to Austria to several vulnerabilities.

Keywords Posted work. Austria. Wage dumping. Social dumping. OSH. Rule enforcement.

Summary 1 Introduction. – 2 Posting in Austria. Facts, Trends and a Future Scenario. – 3 Managing Posting in Austria. The Governance System. – 4 Posting Challenges in Austria. – 4.1 Wage and Social Dumping. – 4.2 Occupational Health and Safety. – 4.3 Rule Enforcement. – 5 Conclusions.



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1 Introduction

In early 2018, an article in *Der Standard*, one of the main Austrian daily newspapers, informed on the ‘boom’ in the number of posted workers coming to Austria from the rest of the EU, especially Eastern EU Member States, and with that the increase in the cases of wage dumping and the challenges to enforce national standards on this mobile and to a certain degree elusive workforce (Szigetvari 2018). Official data and research on the posting of workers to Austria support these claims.

The number of postings of workers has been increasing within the EU in the last years, specifically from approximately 1 million posted workers in 2010 to 1.8 million PDs A1 reported in 2018. Austria ranked fourth in 2017 and fifth in 2018 among the countries with the highest numbers of incoming labour in the context of the Posting of Workers Directive. This trend has been recorded since the Eastern Enlargement of the EU started in 2004, which means that more and more employees, in particular from the Eastern European Member States, are sent by employers to carry out a service across the EU on a temporary basis, in the context of a contract of services, an intra-corporate posting or a hiring out through a temporary agency. Although the EU law defines a set of mandatory rules regarding the terms and conditions of employment to be applied to posted workers, and Austria has taken measures to prevent the exploitation of cross-border labour mobility, research indicates that posted workers are among the highly vulnerable groups of workers in Austria. Posted workers’ rights are often not guaranteed, they are frequently operating under poor working conditions and a level playing field is not ensured (Scoppetta, Hollan 2018). Foreign service providers sometimes undercut local service providers because of their lower labour standards, which consequently leads to social dumping.

The chapter builds on research conducted by the authors in four EU-funded projects since 2017. It combines empirical evidence on posting in Austria, with a special focus on the areas of the transposition and implementation of the Posting of Workers Directive, gaps between posting legislation and practices, labour migration and the posting of third country nationals, as well as occupational health and safety (OSH). The chapter focuses on posting in Austria providing an overview of the posting trends, the governance system, and the main challenges in the Austrian context, specifically wage and social dumping, OSH, and rule enforcement, before providing a few concluding remarks.

2 Posting in Austria. Facts, Trends and a Future Scenario

Posting data come from different sources. National authorities in Austria require foreign companies to report their posted workers through a specific form for most sectors (ZKO3) except transport, which has its own form (ZKO3T), both submitted to the Financial Police. In addition, portable documents A1 (PD A1) are issued in sending countries and submitted to the social security authorities in the receiving countries. These figures do not always coincide, but they give an idea of the increasing trend of the use of posting to provide services across the EU. According to data provided by the Austrian Financial Police, in 2019 Austria recorded 212,233 posted workers coming to the country. In 2018, the authorities reported 119,907 PDs A1 for workers posted to Austria (i.e. 15% less than in 2017). Among the sending countries are the neighbouring countries of Germany, Slovenia, Slovakia, Hungary, Italy, but also Poland (De Wispelaere, De Smedt, Pacolet 2020). Austria ranked highest in terms of postings received from neighbouring countries, which underscores the importance of geographical proximity in the dynamics of posting. Moreover, recent research findings indicate a trend in the rise of posting of third country nationals (TCNs), which refers to the posting of non-EU nationals through a company based in one EU country to work in another EU country (Geyer, Danaj, Scoppetta 2020). Because of geographic proximity and historic links, Austria is a country which gains from incoming TCN labour from the Western Balkans, posted particularly from Slovenia. At the same time, Austria is also increasingly sending more posted workers to other EU countries, issuing 88,117 PDs A1 for workers posted from companies based in Austria to other EU countries. The overall number of PDs A1 rose by 61% from 2017 to 2018, which comprises a share of 2.5% in national employment of Austria as a sending Member State (De Wispelaere, De Smedt, Pacolet 2020). From a sending as well as from a receiving perspective, the most relevant sector employing posted workers in Austria is the construction sector with around 45.6% of PDs A1 issued for Austrian workers posted to other countries and about 64.3% of foreign workers posted to Austria's construction sites in 2017 (De Wispelaere, Pacolet 2018).

Trends for the country suggest a further rise of the number of postings in Austria, though this tendency was interrupted by the Coronavirus COVID-19 pandemic. Similar to other EU countries, the Austrian government mandated a shutdown of all non-essential businesses by 16 March 2020 and introduced strict travel restrictions between mid-March to mid-June 2020. COVID-19 and the government's countermeasures resulted in the strongest decline in employment in Austria since the winter of 1952-3 with 200,000 individuals losing their jobs in the first two weeks of the lockdown and 600,000

others applying for short-time work programmes. Foreign nationals were among the most affected by the crisis. The number of posting notifications (ZKO3 forms) submitted to the Austrian Financial Police declined from 17,735 in March 2019 to 9,560 in March 2020 (-46.1%). In construction, the decrease was even stronger. The numbers dropped from 5,208 to 2,438 (-53.2%; Geyer, Danaj, Scoppetta 2020). The reduction in posting notifications due to the shutdown was significant. As of end of April 2020, most construction sites have, nevertheless, opened again and anecdotal evidence from trade unions indicates that workers from neighbouring countries restarted work at Austrian construction sites (Geyer, Danaj, Scoppetta 2020). Though it is too early to assess overall major consequences for the economy, the labour market and the social situation of vulnerable non-standard workers such as posted workers, we can assume that most (if not all) posted workers lost their posting assignments. Many assignments have become precarious during the pandemic. The crisis thus affected workers comprehensively. Once travel restrictions are lifted, we assume the usual cross-border labour mobility in the European market to restart and cross-border labour mobility, including posting, to resume. Together with it, the risks of wage and social dumping as well as fraudulent practices might reemerge.

A foresight workshop with representatives of the academia and the various stakeholders involved in posting conducted in 2019¹ revealed that experts anticipate that in the near future (according to the foresight exercise design by 2035) Austria is going to experience a restrained development characterised by a moderately positive economic situation with labour surpluses and low interest rates which will benefit the construction sector. Factors influencing the economic situation that were expressed by the participating experts during the workshop encompass the global economy, income trends of the demanders, public orders, the legal framework such as, for instance, low-carbon policy regulations, the interest rate level and mobility. Amongst the factors determining labour demand are the economic and social situation in the sending countries, the conditions for both social dumping and posting, migration regulations, EU enlargement processes as well as wage levels and working conditions. Finally, other important factors contributing to the scenario were discussed, such as the political situation within the EU, historic migration paths and relationships² and the potential change in the 'status' of a worker and his/her employment relationship with the employer in

1 European Centre for Social Welfare Policy and Research, Vienna; Joint Visit Con3Post Project, 24 September 2019. <https://www.euro.centre.org/projects/detail/3346>.

2 They are especially relevant for the posting of third country nationals due to Austria's historical links with the Western Balkan states.

the future labour market. This slightly positive scenario is also characterised by an increase in large orders from the public but limited regulations in the social field. The economic potentials are regarded as easy to be utilised by firms, which means that an increase in migrant labour supply and posting, even new upcoming forms and sub-types of posting, are expected. Austria will still be attractive for posted workers in the future due to the higher salary rates compared to most sending countries, i.e. most of Austria's neighbouring countries. At the same time, experts are concerned about the implications of a social protection system that does not develop at the same pace as the economy. Therefore, a more proactive role of the state, that further develops regulatory mechanisms both to steer the market economy and to adjust the social welfare systems, is needed so that practices leading to social dumping can be avoided, social rights of workers can be guaranteed, and posted workers are comprehensively protected (Scoppetta unpublished).

3 Managing Posting in Austria. The Governance System

Austria has a neocorporatist system, where social partners have shown resilience in preserving long-standing cooperation (Pernicka, Hefler 2015), and who, in response to the EU-induced labour market liberalisation, lobbied for the introduction of protective measures to the national labour market that aimed to prevent social dumping and unfair competition between local and EU-based undertakings (Afonso 2012; Krings 2009; Menz 2003, 2005). The provisions of the Directive on the Posting of Workers (Directive 96/71/EC) and of the Directive on the Enforcement of the Directive on the Posting of Workers (Directive 2014/67/EU) have largely been implemented into Austrian legislation by means of the Anti-Wage and Social Dumping Act (*Lohn- und Sozialdumping-Bekämpfungsgesetz*) passed in 2011 and updated in 2017.³ The tasks and responsibilities of the authorities registering posted workers, inspecting posting firms, investigating suspicious cases and enforcing the law (i.e. jurisdictional authorities) are regulated by the law, although there are still some legal issues related to the new clauses included in the Revised Directive of the Posting of Workers passed in 2018 (Directive (EU) 2018/957) that need to be addressed before the Directive comes into force by the end of July 2020.

The Austrian governance system on posting and the fight against social dumping is complex. The main stakeholders include the Central Co-Ordinating Agency for Posting and Secondment Reports at the

³ Austrian Federal Ministry of Finance, Central Co-Ordinating Agency Posting and Secondment Reports. <https://www.bmf.gv.at/en/topics/combating-fraud/zko.html>.

Federal Ministry of Finance, the Federal Ministry of Social Affairs, Health, Care and Consumer Protection (BMSGPK), the Labour Inspectorates that depend on the BMSGPK, the regional administrative authorities as well as the Austrian social security institutions together with the social partners,⁴ as well as institutions additionally involved in OSH-related matters such as the Construction Workers Leave and Severance Pay Fund (BUAK for the construction sector) and the Austrian Workers' Compensation Board (AUVA). BUAK is an important institution, because it is a statutory body under public law that serves also as a paritarian institution for the social partners in the construction industry that seeks the consensus of both employer and employee representatives, similarly to institutions such as *Commissione Nazionale Paritetica per le Casse Edili* (CNCE) in Italy, *Service+Vorsorge für Bauwirtschaft* (SOKA-Bau) in Germany, and *Union des Caisses de France du Réseau CIBTP* (UCF) in France. OSH-related matters are laid down in the Workers Protection Act (*ArbeitnehmerInnenschutzgesetz*),⁵ the Regulation of Workplaces (*Arbeitsstättenverordnung*)⁶ and the Law on Coordination of Construction Works (*Bauarbeitenkoordinationsgesetz*).⁷ Other basic conditions of work concern the maximum work period and minimum rest periods laid down in the Working Time Law (*Arbeitszeitgesetz*)⁸ and the Hours of Rest Law (*Arbeitsruhegesetz*),⁹ amongst others such as the protection of young employees, of employees during pregnancy and the maternity protection period.

There are marked differences in the governance of posting in Austria compared to other countries such as Belgium, where it is Labour Inspectorates and their different departments that mostly

4 I.e. the Economic Chamber (*Wirtschaftskammer Österreich*, WKO), the Chamber of Labour (*Arbeiterkammer*, AK), the Chamber of Agriculture (*Landwirtschaftskammer*, LK), the Trade Union Federation (*Österreichischer Gewerkschaftsbund*, ÖGB), as well as the Federation of Austrian Industries (*Industriellenvereinigung*, IV).

5 Consolidated federal law: entire legal regulation for employee protection law, available at: <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008910>.

6 Federal law consolidated: entire legal regulation for workplace regulations, available at: <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10009098>.

7 Federal law consolidated: entire legal provision for the Construction Coordination Act, available <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10009146>.

8 Federal law consolidated: entire legal provision for the Working Hours Act, available at: <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008238>.

9 Federal law consolidated: entire legal provision for the Rest of Work Act, available at: <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008541>.

monitor and control posting practices. In Austria, the Financial Police is responsible for the inspection of posted workers' payment and social insurance status, which means that they investigate the status of the workers and the companies in cases of irregular employment, tax evasion, fraud, customs and so on. They are also the authority where posting notifications are submitted by foreign undertakings that intend to post their workers to Austria. Labour Inspectorates oversee only issues related to OSH. While the financial police can review the social insurance status of the posted workers, social security is governed by different institutions, which can be sector-specific, as is the case with BUAK in construction, the main posting sector. Another authority, the Competence Centres for Combating Wage and Social Dumping, reviews suspicious cases identified by BUAK or the financial police. Despite these authorities having separate mandates, there is a considerable amount of cooperation among public authorities on matters related to posting, which, although reported to generally work well, is not without challenges. Similarly, Austrian authorities have established good transnational collaboration with their counterparts in several sending countries and makes use of the Internal Market Information (IMI) system to exchange information on posting companies (Haidinger 2018; Hollan, Danaj 2018).

Apart from institutional rule enforcement, the protection of posted workers is also supported by the trade unions, the Chamber of Labour and non-governmental organizations. Social partners' involvement can be detected at the policy level with the role they played in extending national labour standards to cover posted workers in Austria and the introduction of the anti-wage and social dumping law, as well as their participation in the governance of BUAK. In addition, minimum pay regulations in Austria are not set by statutory law (except for the public sector) but laid down in sectoral and branch-level collective bargaining agreements (CBAs), which cover about 98% of the employees. Their application is controlled by public authorities since 2011. The anti-wage and social dumping law requires posting companies to pay CBA rates to their workers while posted in Austria, which makes the country one of the first to apply the equal pay principle for incoming posted workers, even prior to the revision of the Posting of Workers Directive in 2018 (Directive (EU) 2018/957). The support for individual grievances, on the other hand, comes mostly from the Chamber of Labour, which reported its involvement in multiple cases of underpayment and other pay irregularities against posted workers in Austria (Gagawczuk 2019; unpublished). There are also two NGOs that provide support but only to those categories of posted workers whose circumstances intersect with their migration status, such as UNDOK's counselling service for the undocumented or irregular migrants, or with their exploitation, such as MEN VIA's support for persons involved in human trafficking or forced labour.

4 Posting Challenges in Austria

Three main issues are identified in Austria when taking the perspective of posted workers regarding their secondment: posted workers' labour rights often are not guaranteed, they operate under poor working conditions, and a level-playing field is not ensured. Each of these challenges and how they affect posted workers' experience in Austria are discussed below in more detail.

4.1 Wage and Social Dumping

Despite the introduction of national regulation to prevent wage and social dumping in the context of posting, these forms of abuse can be found in Austria. Research conducted after the first anti-dumping law came into force (i.e. 2011), found different forms of wage dumping (Schmatz et al. 2014), which continue to the present. According to Haidinger (2018) 44 out of 100 inspected cases in 2018 were suspected of underpayment, which in the construction sector amounted to 50% of the entitled remuneration. In January 2020, the Austrian Federal Minister of Labour, Family and Youth reported in a press release that 60% of offences of underpayment in Austria involve foreign companies.¹⁰

Underpayment in Austria comes in different shapes and forms related to working time, skills, and even the legality of contractual arrangements. The most salient issues in relation to wage dumping are: incorrect working time documentation, e.g. part-time work instead of full-time and/or unreported overtime; incorrect reporting of skill level, e.g. low-skill instead of special/high-skill; incorrect pay or omitted allowances, supplements and special payments; disregard of minimum wages and applicable wage and salary levels as stipulated in collective agreements; using the home country's legal framework for setting pay rates; double books or parts of the initially correctly paid salary later returned to employers; and salary deductions on accommodation and other expenses (AK Wien 2019; Krings 2019; Schmatz et al. 2014). Interviews with posted workers also revealed that there are dubious contractual arrangements in place and sometimes workers do not even know the company they are employed at.

To minimise costs, some companies in Austria are also participating in the transformation of posting into a business model. Specialised consultants assist companies in establishing new companies in EU

¹⁰ *Der Standard* (2020). "Lohndumping: 60 Prozent der Anzeigen gegen ausländische Firmen". 20 February. <https://www.derstandard.at/story/2000114799066/mehrzazien-und-planquadrate-an-den-grenzen-gegen-sozialdumping>.

countries with lower labour and social costs such as Slovenia, for example, and formally post their workers to Austria (Danaj et al. 2020). Letterbox companies, while not illegal *per se*, have become a problematic service provision model that leads to other forms of regulatory evasion that eventually make posted workers even more precarious and expose them to exploitation (Berntsen, Lillie 2015). Apart from bogus posting, undeclared posting is also a form certain companies use to minimise costs, especially by asking workers to declare themselves as self-employed, which is commonly associated with precarious working conditions across the EU (Conen, Schippers 2019).

Another form of abuse are irregularities in social contributions and health coverage. The posting assignment requires workers to receive a portable document A1 form, which stipulates that the worker continues to be covered by the legislation on social protection of the country where s/he habitually works (Art. 12, Regulation (EC) No. 883/2004 on the coordination of social security systems). In order to benefit from the entitlements, however, the employer must continue to pay contributions in the sending country. In Austria, BUAK in the construction sector, the Financial Police and the Competence Centres for Combating Wage and Social Dumping across all sectors can control whether companies are actually paying contributions, but these checks are not always easily verifiable. Verifying that the PD A1 forms are genuine, and the employers continue to pay contributions regularly, can be challenging for the host country without the collaboration of its counterparts in the sending country. In our research, we found several cases of unpaid contributions, which the posted workers involved reportedly discovered when they needed to access them. For example, one Hungarian worker injured while posted in Austria waited for two months for his sick leave to be paid before finding out from the social insurance in Hungary that they never filed his case with the authorities and by then they had declared bankruptcy and therefore could not be legally prosecuted. In another case, a Slovak worker who eventually developed a terminal disease was de-registered from social insurance and after his passing, the family was faced with a high and uncovered hospital bill (Hollan, Danaj 2018).

4.2 Occupational Health and Safety

Because of the temporary labour migration status, OSH-related risks of posted workers are manifold. The research we conducted in Austria in 2018 highlighted three main risks for the elevated OSH vulnerabilities posted workers face (Danaj et al. 2020), namely the little attention by employers for OSH training towards posted workers, the temporary status of posted workers that marks them as easier to be exploited and set under pressure to accept unsatisfactory

working (and thus also OSH) conditions, and the short-term stay influencing posted workers' lack of information and knowledge about their rights and obligations. These three factors are then combined with workers' transnational mobility and the language barriers they face while posted (Danaj, Zólyomi 2018). As a result, despite Austria's relatively good OSH enforcement practice, when it comes to posted workers, they remain exposed to risks that often go unnoticed until workers suffer an occupational accident or get sick.

Research in Austria reveals that posted workers are not sufficiently familiar with and do not feel they 'belong' to the Austrian system, therefore they often consent to working more than the legally permitted working hours or fail to demand their labour rights according to Austrian law and collective agreements (Hollan, Danaj 2018). Despite the existence of different channels of information for posted workers, such as the national posting platform (postingofworkers.at), dissemination through trade unions, Chamber of Labour and the BUAk, posted workers in Austria seem to not be well-informed about their rights and entitlements (Haidinger 2018). With regard to OSH-related grievances, posted workers, trade union representatives and labour inspectors interviewed, highlight how weak posted workers' position is to assert their rights. They often do not even report dangerous working conditions and go back to work too early after sickness or injury. Furthermore, language barriers increase workers' vulnerabilities in that it prevents them from accessing otherwise available OSH information and training and obstructs the work of labour inspectors, trade unions and other actors who aim at securing a safe and healthy workplace for all workers, including posted workers (Hollan, Danaj 2018).

4.3 Rule Enforcement

Although posted workers have the same rights as other workers, in practice they are often unable to exercise their rights as the examples of underpayment and unpaid social contributions or OSH risks indicate. They remain one of the most vulnerable segments of the labour force. Our research reveals that this is the result of lack of proper information, protection and the capacities of the institutions to enforce posting and labour rules.

Lack of information comes from both sides: the employers and the workers. Some companies may not be informed enough about their obligations regarding payments, labour law, OSH and labour protection, and others might deliberately commit fraud to increase their profit. Some workers are also often uninformed about their rights and entitlements during the posting assignment, while some might be indifferent to these rights as a way not to jeopardise their employment

(cf. Lillie 2016). In the case of workers posted to Austria, efforts are made by various institutions to provide information to both companies and workers. The national websites on posting (Entsendeplattform.at as well as postingofworkers.at) provide information in seven EU languages, including German, but insights from the authorities indicate that while the platform manages to attract 7,000 visitors per month on average, it is mostly companies that make use of it (Haidinger 2018; Murr unpublished). The reasons why workers are not accessing this platform might be related to their digital or language barriers. While the platform is comprehensive, figuring out which rule or collective bargaining agreement is applicable to their case might be extremely difficult without support, which companies can afford but workers most certainly cannot. Posted workers neither have a social net provided by the public that supports them in case of need nor an institution – be it a public, private or civil society-based organisation – that offers loud support in fighting for their rights. Even though the Austrian Chamber of Labour offers consultations in various languages on labour law and other work-related grievances posted workers might have (European Centre for Social Welfare Policy and Research 2019), a comprehensive support service for posted workers comprising information provision, training, legal advice and specialised lawyers for claiming rights in front of courts as well as preventive measures such as support to workers and employers prior to their posting, is not available in Austria. This is a real challenge because the regulatory framework in Austria is very complex to navigate on their own, and in the construction sector there are only 19 CBAs, for example. Language barriers might also be an additional reason, as the information is available in certain languages, e.g. the national platform provides it in English, German, Hungarian, Polish, Czech, Slovak and Slovene, but does not cover other countries within the EU or the languages of third countries, such as the Western Balkans, the countries of origin of many workers posted from Slovenia.

At the same time, the authorities are struggling with enforcing national rules and consequently, the rights of posted workers. Their struggle is partially related to the very complex structure of the enforcement mechanisms. As described in the governance section of the chapter, the labour inspectorate has a very narrow focus on OSH, while the financial police share the registration of posted workers and the inspection of employment documentation and remunerations with other agencies such as BUAKE or the competence centres. Yet, neither labour inspectorates nor other public authorities are the contact points in charge for the enforcement of non-paid wages. They inspect and investigate the enforcement of public law, i.e. the law in place to combat wage and social dumping, and prosecute employers in case of infringement, but they do not request employers to pay workers. Withheld wages must, thus, be claimed individually by the workers

themselves via labour courts. Furthermore, the structural separation among the various public authorities hampers the well-functioning of protective mechanisms, as they might miss identifying potential abuse if it is not strictly in a specific authority's mandate (Hollan, Danaj 2018). To overcome this issue, there is regular knowledge exchange between representatives of OSH authorities and representatives of the Financial Police, the Competence Centre for Combating Wage and Social Dumping at the Vienna Regional Health Insurance Fund (Wiener Gebietskrankenkasse) or, for the construction sector, the BUAk. And they organise joint inspections in transnational workplaces. While this good cooperative attitude helps improving enforcement efforts, the different authorities maintain distinct approaches to inspection. For example, the labour inspectorate focuses on whether the employer is abiding by the rules and acts on behalf of the safety of the workers, whereas the financial police investigates both employers and employees checking that their documentation is in order. Conducting mutual inspections may lead to tension as the labour inspectors might need the collaboration of the workers to identify any OSH risks, but workers might not collaborate with the Financial Police because if they are found in violation of the law, they would themselves suffer the consequences (Hollan, Danaj 2018). The situation is even more difficult for posted workers who are third country nationals and whose migration and employment status depend on their employer and would not want to jeopardise it. In fact, inspectors that participated in a focus group discussing this topic also mentioned instances of uncollaborative behaviour and even (verbal) aggression from the workers towards the inspectors (Danaj et al. 2020).

Public authorities are also struggling with the insufficient institutional capacities to inspect transnational workplaces. Most inspection authorities have fewer human resources than would be necessary to conduct regular inspections, e.g. in 2017 the financial police had 450 inspectors while they would need at least 600. Furthermore, around 60% of their inspections were driven by complaints, and few cases absorbed most resources instead of conducting thorough risk analysis for a large number of cases (Haidinger 2018). In addition, their power of intervention is also limited by the very legal framework that is supposed to fight wage and social dumping. The Austrian Anti-Wage and Social Dumping Act (LSD-BG) in 2017 introduced fines of € 500-20,000 for not notifying Austrian authorities of posting, thwarting wage controls, improper wage documentation and underpayments, which are quite low and therefore a risk that employers are willing to take should they be caught (Gagawczuk unpublished). Recently, it has also been reported that because the fine for not making the documentation available to the authorities is lower than in cases of violations of the anti-dumping law, some companies are simply refusing to show their documents to the inspectors.

On the transnational level, establishing closer cooperation remains difficult. Austrian authorities use the IMI system regularly since 2017, but there are matters related to posting/OSH grievances that cannot be resolved through the system. Furthermore, the responses from their counterparts are not always timely, therefore the possibility to monitor foreign employers remains very limited (Haidinger 2018; Hollan, Danaj 2018). Efforts are made to establish cross-border cooperation, at least with the neighbouring countries, such as Slovenia, where joint visits are sometimes conducted. However, most of these initiatives remain project-based. A more institutional transnational cooperation has been established between BUAK and its counterparts in France, Germany and Italy. This type of cooperation has been possible only at the bilateral or regional level, as not all EU countries would have such an authority with which to exchange information and collaborate (CIOFS-FP 2019).

5 Conclusions

Austria is one of the countries making use of both outgoing and, most predominantly, incoming posting. National regulation and a complex governance system have been put in place to control this form of labour mobility and protect the national labour market. However, the transnational temporary mobility nature of this form of service provision creates challenges to rule enforcement, which eventually expose workers posted to Austria to several vulnerabilities. The main issues remain wage and social dumping and the poor working conditions some of these posted workers experience. Multiple forms of wage and social dumping have been identified, all leading to considerable inequalities between posted workers and workers employed locally. Underpayment is the main form of wage dumping as companies try to reduce costs by circumventing Austrian legislation and sometimes committing fraud. Inspections reveal that underpayment is common among foreign companies that post workers to Austria, which means that despite the Anti-Wage and Social Dumping Act and the institutional efforts to enforce it, interventions and punitive measures still remain insufficient and too weak to have a preventive effect against abusive companies. Enforcement is also confronted by the following issues: workers and employers not always know their rights and obligations, a comprehensive support service for posted workers is missing, and the capacities of the institutions to enforce posting and labour rules are insufficient.

These findings suggest that while the legal framework and a complex governance system are necessary, they are not sufficient to overcome the challenges that posting poses to national systems. The transnational and temporary dimension of posting requires more com-

prehensive measures that take into consideration the dynamics and hypermobility of these workers and the companies that post them. Viable ways need to be found to provide the same terms and conditions to all workers regardless of whether they are posted or not.

Bibliography

- Afonso, A. (2012). "Employer Strategies, Cross-Class Coalitions and the Free Movement of Labour in the Enlarged European Union". *Socio-Economic Review*, 10(4), 705-30. <https://doi.org/10.1093/ser/mws008>.
- AK Wien (2019). AK Präsidentin: "Unternehmen dürfen durch Lohndumping keinen Gewinn machen!". 7 November 2019. https://www.ots.at/presseaussendung/OTS_20191107_OTS0121/ak-praesidentin-unternehmen-duerfen-durch-lohndumping-keinen-gewinn-machen.
- Berntsen, L.; Lillie, N. (2015). "Breaking the Law? Varieties of Social Dumping in a Pan-European Labour Market". Bernaciak, M. (ed.), *Market Expansion and Social Dumping in Europe*. London; New York: Routledge, 43-60. <https://doi.org/10.4324/9781315766607-12>.
- CIOFS-FP (2019). *Key Messages. EEPOW Peer Review 'Bilateral and Multilateral Cross-Border Practices. The Italian Approach to Preventing Social Dumping and Enhancing Access to the European Labour Market'* (Trieste, 26 June 2019). <https://www.euro.centre.org/publications/detail/3537>.
- Conen, W.; Schippers, J. (eds) (2019). *Self-Employment as Precarious Work. A European Perspective*. Cheltenham, UK; Northampton, MA: Edward Elgar Publishing.
- Danaj, S. et al. (2020). *From Bosnia and Herzegovina to Austria via Slovenia. Migration and Posting of Third Country Nationals in the EU. A Regional Case Study. European Centre Report*. Vienna: European Centre for Social Welfare Policy and Research. <https://www.euro.centre.org/publications/detail/3796>.
- Danaj, S.; Zólyomi, E. (2018). *Occupational Health and Safety of Posted Workers in the EU. A Comparative Report. POOSH. Occupational Safety and Health of Posted Workers. Depicting the Existing and Future Challenges in Assuring Decent Working Conditions and Wellbeing of Workers in Hazardous Sectors*. Vienna: European Centre for Social Welfare Policy and Research. <https://www.euro.centre.org/publications/detail/3354>.
- De Wispelaere, F.; De Smedt, L.; Pacolet, J. (2020). *Posting of Workers. Report on A1 Portable Documents issued in 2018*. Luxembourg: Publications Office of the European Union.
- De Wispelaere, F.; Pacolet, J. (2018). *Posting of Workers. Report on A1 Portable Documents issued in 2017*. Luxembourg: Publications Office of the European Union.
- European Centre for Social Welfare Policy and Research (2019). *Key Messages. EEPOW Peer Review 'Guaranteeing Posted Workers' Rights. The Austrian Approach to the Implementation of the Enforcement Directive'* (Vienna, 28 February 2019). <https://www.euro.centre.org/publications/detail/3535>.
- Gagawczuk, W. (2019). "Grenzüberschreitendes Lohn- und Sozialdumping. Wie können faire Arbeitsbedingungen sichergestellt werden?". Soukup, N. (ed.), *Neoliberale Union oder Soziales Europa? Ansätze und Hindernisse für eine so-*

- ziale Neuausrichtung der EU, Bd. 20. Arbeiterkammer Wien: Sozialpolitik in Diskussion.
- Gagawczuk, W. (unpublished). "Guaranteeing Posted Workers' Rights and Access to Social Welfare. Social Partners' Contribution". *Guaranteeing Posted Workers' Rights. The Austrian Approach to the Implementation of the Enforcement Directive = Conference Proceedings* (Vienna, 28 February 2019).
- Geyer, L.; Danaj, S.; Scoppetta, A. (2020). *The Impact of COVID-19 on the Posting of Workers and Their Workplace Safety. Preliminary Evidence from the Austrian Construction Sector*. Covid-Blog of the European Centre for Social Welfare Policy and Research. <https://www.euro.centre.org/webitem/3752>.
- Haidinger, B. (2018). *Transnational Monitoring and Enforcement of Posted Work. The Case of Austria*. Brussels: SOLIDAR. http://www.solidar.org/system/downloads/attachments/000/000/830/original/TNC_Report_-_Country_Study_Austria.pdf?1541517427.
- Hollan, K.; Danaj, S. (2018). *POOSH COUNTRY Report in Austria*. Vienna: European Centre for Social Welfare Policy and Research.
- Krings, T. (2009). "A Race to the Bottom? Trade Unions, EU Enlargement and the Free Movement of Labour". *European Journal of Industrial Relations*, 15(1), 49-69.
- Krings, T. (2019). "Posted Workers in Österreich. Grenzüberschreitende Entsendearbeit im Spannungsfeld von offenen Märkten und (supra-)nationaler Regulierung". *Österreichische Zeitschrift für Soziologie*, 44, 21-41.
- Lillie, N. (2016). "The Right Not to Have Rights. Posted Worker Acquiescence and the European Union Labor Rights Framework". *Theoretical Inquiries in Law*, 17(1), 39-62. <https://doi.org/10.1515/til-2016-0003>.
- Menz, G. (2003). "Re-regulating the Single Market. National Varieties of Capitalism and Their Responses to Europeanization". *Journal of European Public Policy*, 10(4), 532-55. <https://doi.org/10.1080/1350176032000101226>.
- Menz, G. (2005). *Varieties of Capitalism and Europeanization. National Response Strategies to the Single European Market*. Oxford: Oxford University Press.
- Murr, R. (unpublished). "Guaranteeing Posted Workers' Rights. The Austrian Approach to Implementation of the Enforcement Directive". *Guaranteeing Posted Workers' Rights. The Austrian Approach to the Implementation of the Enforcement Directive = Conference Proceedings* (Vienna, 28 February 2019).
- Pernicka, S.; Hefler, G. (2015). "Austrian Corporatism. Erosion or Resilience?". *OZP. Austrian Journal of Political Science*, 44(3), 39-56. <https://doi.org/10.15203/ozp.326.vol44iss3>.
- Schmatz, S. et al. (2014). *Entwicklungen im Bereich des Lohndumping* (Developments Related to Wage Dumping in Austria). Vienna: L&R Sozialforschung.
- Scoppetta, A. (unpublished). *Con3Post. Brief Summary of the Foresight Workshop*. Con3Post Foresight Workshop (Vienna, 24 September 2019).
- Scoppetta, A.; Hollan, K. (2018). "Ausbeutungsrisiko Entsendung. Schutz und Bedingungen entsandter ArbeitnehmerInnen in Österreich" (The Risk of Exploitation in Posting. Occupational Health and Safety of Posted Workers in Austria). *A&W blog*, 15 October 2018. Vienna: Chamber of Labour Vienna. <https://awblog.at/ausbeutungsrisiko-entsendung>.
- Szigetvari, A. (2018). "Starker Anstieg temporärer Arbeitnehmer aus Osteuropa". *Der Standard*, 9 February 2018. <https://www.derstandard.at/story/2000073905877/jobs-in-oesterreich-bei-osteuropaeern-heiss-begehrt>.

