



# Posting of third-country nationals: contracting chains, recruitment patterns, and enforcement issues

Insights from case studies

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European Labour Authority (2025), *Posting of third-country nationals: Contracting chains, recruitment patterns, and enforcement issues. Insights from case studies*, ELA Strategic Analysis, Publications Office of the European Union, Luxembourg.

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**Acknowledgements:** Milieu acknowledges the work of its national experts: Ela Omersa, Karol Muszynski and Luísa Andias. The European Centre for Social Welfare Policy and Research acknowledges the fieldwork and technical support of Judith Screiber, Sara Ambrósio, Kamil Matuszczyk, Barbara Švagan and Nikko Bilitza and thanks all the public authorities, social partners, labour market intermediaries and other experts for sharing their knowledge and expertise. The centre expresses its gratitude to the posted workers who shared their posting experience and in so doing provided invaluable first-hand insights into the topic of third-country nationals' participation in the posting supply chains.

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The report provides detailed insight into the experiences of certain workers and other entities and stakeholders interviewed, but the findings shall not be generalised beyond the scope of this study and the fieldwork carried out.

Luxembourg: Publications Office of the European Union, 2025

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Print: ISBN 978-92-9401-871-7    doi:10.2883/0028908    HP-01-25-012-EN-C  
PDF: ISBN 978-92-9401-870-0    doi:10.2883/9118560    HP-01-25-012-EN-N

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# Executive summary

This study examines the recruitment channels and contractual arrangements for posted third-country national (TCN) workers (i.e. workers from non-EU countries), focusing on their experiences in both sending EU Member States (Poland, Portugal and Slovenia) and receiving Member States (including Germany, Austria, Belgium and the Netherlands). It provides an overview of the workers' journey within the EU, offering a holistic insight into their posting experience. The study also highlights the main challenges reported by 24 posted TCN workers during interviews and also the monitoring and enforcement issues identified by the national-level enforcement authorities interviewed. These insights help to identify factors that could increase the risk of non-compliance and unfavourable working conditions for posted TCN workers. Additionally, particular emphasis during fieldwork was placed on the role of labour market intermediaries in the posting of TCN workers and the contractual arrangements of the subcontracting chains they were involved in.

The evidence and data used in the study consist of primary and secondary data collected through a mixed methodology approach, including a scoping review of the existing academic and grey literature, an analysis of the relevant legislation and three empirical case studies focusing on TCN workers who entered the EU via Poland, Portugal and Slovenia and were later posted to other Member States (in total, 52 semi-structured interviews were conducted with 23 public authorities, nine social partners and non-governmental organisations, five labour market intermediaries and 24 posted workers). The three case studies represent important TCN posting corridors either in absolute numbers (Poland and Slovenia) or in relative numbers pertaining to specific TCNs (Brazilians in Portugal). In each Member State, the main group of TCNs involved in posting were interviewed, such as Ukrainians (plus one Belarusian) in Poland, Brazilians in Portugal and those from Bosnia and Herzegovina in Slovenia.

To limit the scope, the current study provides evidence from specific economic sectors. The construction sector was studied across all three case studies, and the second sector selected was different for each Member State and reflective of the posting activity and characteristics of that country, namely domestic (elderly) care services for TCNs posted from Poland, logistics for TCNs posted from Portugal and international road transport for TCNs posted from Slovenia.

The study focuses on three case studies - Poland, Portugal and Slovenia - rather than on all Member States. The analysis thus does not aim to provide comprehensive data or make generalisable conclusions about all TCN postings within the single market. Rather, the study provides detailed insight into the experiences of workers and stakeholders interviewed during the fieldwork, identifying issues relevant for planning of ELA's operational activities, including the enforcement efforts with national authorities. The findings should not be generalised beyond the scope of this study and the fieldwork carried out.

The key findings from this report can be summarised as follows.

## **The context: flows of TCN posting**

- TCNs represent a growing segment of the EU labour market. They enter the EU primarily for employment reasons and are typically employed in labour-intensive sectors characterised by labour shortages, such as construction and transport. TCN workers are also increasingly involved in the posting of workers.
- The national migration regimes of Member States shape the status of TCNs by regulating their entry into the EU labour market. While EU directives on the posting of workers have been transposed across all Member States, their enforcement varies depending on national legislative frameworks and labour law practices. Notably, the individual approaches to the contractual arrangements under which TCNs perform activities of Member States included in the study give rise to questions and practical issues related to their posting (e.g. the engagement of TCNs through civil law contracts in Poland).
- Among posted TCNs, Ukrainians account for the majority of incoming postings in several Member States. Around 80% of TCN workers posted from Poland had the Ukrainian nationality in 2021. However, most of these workers remain based in Poland, indicating that posting is not typically used as an initial step in relocation. In addition, in several Member States, more than a quarter of the posted TCNs have the Ukrainian nationality (Belgium, Lithuania, the Netherlands, and Austria) and third country nationals were most frequently posted by companies established in Poland (30%). Since 2019, the majority of posted workers from Slovenia have been TCNs, with those from Bosnia and Herzegovina forming the largest group among them. There is limited data on posted TCNs available for Portugal.

- Data is lacking on the posting of TCN workers in the EU, but construction and transport seem to be the leading sectors where TCN posting takes place across the EU.
- The main economic sectors for TCN workers posted from Poland are construction, transport, and health and care services. TCN workers posted from Portugal are primarily employed in the construction and services sectors. Posting from Slovenia is predominantly characterised by TCNs working in sectors such as construction and international freight transport.

### **TCN recruitment and posting**

- Recruitment of TCNs into the posting supply chain in Member States like Poland and Portugal typically occurred after their arrival in the national territory and following some time spent working in the national territory. In Slovenia, TCNs, particularly those from Bosnia and Herzegovina and Serbia, were often recruited both to meet the needs of the Slovenian labour market and, in some cases, with the intention of posting them to work abroad.
- Within the case studies covered by fieldwork, the labour market intermediaries did not generally recruit TCNs in their countries of origin to post them due to national labour market supply options or stringent TCN posting requirements. Most workers reported carrying out 'typical' work for a local employer before entering arrangements that included posting to other Member States.
- Workers' entry into posting varied across the three case study Member States. Ukrainians in Poland entered the posting supply chain through employers, Brazilians in Portugal used informal social contacts and online advertisements, and those from Bosnia and Herzegovina in Slovenia were recruited through both informal contacts and formal networks.
- Posting contracts or addenda to employment contracts were not always provided to posted TCN workers. Even when they existed, the contractual terms of posting could sometimes be vague. Linked to their employment status and contractual arrangements, some posted TCN workers faced challenges regarding pay and social security coverage.

### **Actors, intermediaries and supply chain configurations in posting**

- Labour market intermediaries involved in the recruitment and/or posting of TCN workers ranged from informal brokers to various private and public actors.
- The profiles of the employers that post TCN workers were diverse, but small subcontractors that often have a TCN background themselves were common in the three case studies. Posting companies were one of three types: genuine subcontractors, locally registered branches of the main contractor based in the receiving Member State or labour suppliers. The subsidiaries were, reportedly, often 'letterbox companies' registered as part of cost-saving tactics.
- The entities supplying labour included registered temporary work agencies and a group of companies that, although legally registered as companies with economic activity, specialise in the supply of labour. In practice, they operate as temporary work agencies and provide workers on the basis of business cooperation agreements or service contracts with user companies but are not registered as such.
- The basic structure of the posting supply chain configuration in the case studies was a three-tier system comprising one main contractor or user company and two levels of subcontracting. The contractor that supplied the TCN workers was based in the sending Member State and was hired as a subcontractor by a company or temporary work agency in the receiving Member State that operated as the go-between for the posting company / temporary work agency and the user company. The middle tier could be a genuine entity, a subsidiary, a letterbox company or an informal middleperson. The formation of chains, in which smaller operators in the sending and receiving country participated, was driven by the user companies in the receiving countries in order to reduce costs and liabilities. Other configurations of posting supply chains included further layers of subcontracting and networks of small operators between which workers are registered or transferred repeatedly.

### **Challenges reported by posted TCNs**

- Some posted TCN workers reported experiencing some level of irregularity with their migration or employment status both in their Member State of entry and residence as well as across other Member States where they worked. Some of them mentioned possessing work permits or declarations of

entrustment of work issued in Poland or Slovenia, despite not having worked in these countries before being posted or since becoming posted workers.

- The main challenges reported by posted TCNs include lack of payment of social security contributions during posting assignments, not receiving annual leave payments or being asked to reimburse leave payments to the employer, doubts about legal status when working on posting assignments in Germany (when posted from Poland and Slovenia), underpayment and other remuneration-related issues, as well as issues related to accommodation, especially for interviewees working in the care and international road transport sectors.
- Many irregularities and issues reported are not specific to posting of TCNs. However, the latter are particularly vulnerable as they face barriers in access to information and they are less likely to report problems to authorities.

### **Monitoring and enforcement**

- Monitoring and enforcement of posting rules as far as TCN workers are concerned cross-cuts the mandates of different national public institutions and agencies, necessitating efficient and effective cooperation and coordination efforts fit for the rapid pace of posting activities.
- The fragmentation of monitoring and enforcement competences among various national public authorities that cover different policy areas, such as migration, employment and social protection, at the level of different institutions, might create gaps, whereas enforcing the rights of certain posted TCN workers becomes increasingly complex and resource heavy.
- Cross-country cooperation is necessary to monitor and enforce posting rules across the EU, but territorial jurisdictions and different enforcement rules and practices across countries create challenges. As suggested by the national enforcement authorities interviewed, these challenges could potentially be overcome with increased cross-border cooperation efforts including digitalisation and the improvement of EU inspection efforts.
- Challenges reported by the authorities in the sending Member States related to the monitoring of letterbox companies and entities that operate as temporary work agencies or outsourcing companies, limited human resources and TCN workers' reluctance to come forward and collaborate with the authorities by reporting the abusive practices of recruiting intermediaries and posting companies.

### **Risk factors for non-compliance**

- The risk factors at both the individual and institutional levels seem to be related to non-compliance when posting TCN workers. The individual factors include lack of resources, increased dependence on the employer and other factors that contribute to workers experiencing unfavourable working conditions and not turning to the enforcement authorities. In addition, institutional factors, such as fragmentation of competences and the complexity of the regulatory framework from a compliance perspective, also play a significant role.
- In labour supply chains and subcontracting, operators in the lower tiers may be economically more precarious than those in the higher tiers. However, most recruiters, posting companies and labour market intermediaries working directly with or employing posted workers are located in the lower tiers. Without shared liability, the burden of compliance is borne entirely by operators in the lower tiers.
- Some of the obligations, especially those related to workers' migration and permit status and the right to work and/or be posted, are the responsibility of the workers and not the employers, which increases workers' risk of falling into an irregular situation.
- Lack of information and accessibility issues can increase the risk of non-compliance for both companies and workers, especially where there are language barriers, complex regulatory frameworks and limited financial and human resources.

The study underscores the need for enhanced monitoring and coordinated enforcement efforts among national enforcement authorities to address these systemic challenges and advocates increasing the level of legal certainty for employers and improving the safeguarding of TCN workers' rights and well-being within the EU labour market.

# Abbreviations

AICCOPN – Employers' Association of Civil Construction and Public Works Industry (Portugal)

CJEU – Court of Justice of the European Union

CPC – certificate of professional competence

CPLP – Community of Portuguese Language Countries

EU – European Union

IEFP – Institute for Employment and Vocational Training (Instituto do Emprego e Formação Profissional) (Portugal)

IMI – internal market information (system)

LMI – labour market intermediary

NGO – non-governmental organisation

PD A1 – portable document A1

PWD – posting of workers directive <sup>(1)</sup>

TCN – third-country national

TEU – Treaty on European Union

TFEU – Treaty on the Functioning of the European Union

TWA – temporary work agency

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<sup>(1)</sup> Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (OJ L 18, 21.1.1997, p. 1). See also consolidated text of the directive (<http://data.europa.eu/eli/dir/1996/71/2020-07-30>).



# Glossary

Posted worker	A worker who, for a limited period, carries out their work in the territory of a Member State other than the state in which they normally work (Article 2 of the posting of workers directive).
Third-country national (TCN)	Any person who is not a citizen of the EU within the meaning of Article 20(1) of the Treaty on the Functioning of the European Union and who is not a person enjoying the right to free movement in the EU, as defined in Article 2(5) of Regulation (EU) 2016/399 (Schengen Borders Code).
TCN worker	A third-country national who has been admitted to the territory of a Member State and who is legally resident and is allowed to work in the context of a paid relationship in that Member State in accordance with national law or practice (Article 2(b) of the single permit directive <sup>(2)</sup> ).
Posted TCN	A third-country national who is a worker and, for a limited period, carries out their work in the territory of a Member State other than the state in which they normally work, in accordance with Article 2 of the posting of workers directive.
Labour market intermediaries	'Entities or institutions that interpose themselves between workers and firms to facilitate, inform, or regulate how workers are matched to firms, how work is accomplished, and how conflicts are resolved' (Autor, 2009). 'These entities can be private or public' (Eurofound, 2016).
Public employment services	Public employment services are the authorities that connect jobseekers and employers. Although structured differently in each Member State, all such services help match supply and demand in the labour market through information, placement and active support services at the local, national and European levels <sup>(3)</sup>
Private employment services	<p>A private employment agency is any natural or legal person, independent of the public authorities, who provides one or more of the following labour market services:</p> <ul style="list-style-type: none"> <li>• services for matching offers of and applications for employment, without the private employment agency becoming a party to the employment relationships that may arise therefrom;</li> <li>• services consisting of employing workers with a view to making them available to a third party, who may be a natural or legal person (referred to below as a 'user undertaking') who assigns their tasks and supervises the execution of these tasks;</li> <li>• other services relating to job-seeking, determined by the competent authority after consulting the most representative employers' and workers' organisations (e.g. the provision of information), that do not set out to match specific offers of and applications for employment (Article 1(1) of the International Labour Organization Private Employment Agencies Convention, 1997 (No 181)).</li> </ul> <p>Private employment services include agency work, direct recruitment, managed services providers, recruitment process outsourcing and career management (World Employment Confederation, 2023).</p>

<sup>(2)</sup> Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State (OJ L 343, 23.12.2011, p. 1).

<sup>(3)</sup> 'European Network of Public Employment Services', Commission website, accessed 6 March 2025, [https://employment-social-affairs.ec.europa.eu/policies-and-activities/european-employment-strategy/european-network-public-employment-services\\_en](https://employment-social-affairs.ec.europa.eu/policies-and-activities/european-employment-strategy/european-network-public-employment-services_en)

Temporary work agency	Any natural or legal person who, in compliance with national law, concludes contracts of employment or employment relationships with temporary agency workers to assign them to user undertakings to work there temporarily under their supervision and direction (Article 3(b) of the temporary work agency directive).
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# 1. Introduction

The posting of third-country nationals (TCNs) (i.e. nationals of non-EU countries) in the EU has increased substantially over the last 10 years. In 2022, on average, one out of four of the incoming posted workers was a TCN. In several EU Member States, more than a quarter of the posted TCNs had Ukrainian nationality (in Belgium, Lithuania, the Netherlands and Austria) (European Commission: Directorate-General for Employment, Social Affairs and Inclusion et al., 2024a: 26). While exact figures for all sending and receiving Member States and the nationality of the TCNs or their sectoral distribution are not systematically available, partial data reveal a picture of a growing phenomenon within the EU.

TCNs posted within the EU come from a diverse array of countries of origin. They often initially entered Member States with which they have geographical proximity or historical ties. While all Member States have their own national migration regimes, the main inflows of TCNs to EU Member States that are later involved in the posting of workers are Ukrainians and Belarusians entering through Poland and Lithuania, Brazilians through Portugal, and those from Bosnia and Herzegovina and other Western Balkan countries through Slovenia (Danaj et al., 2023a; ELA, 2023a). Therefore, this explorative study will focus on some of these entry and posting flows in order to better understand the experience of TCNs posted from their entry countries to other Member States.

Poland, Portugal and Slovenia, which are the entry and sending countries selected for this study, have all designed national policies that facilitate the recruitment and employment of TCNs from certain countries to their own national labour market. Yet, as many of their national operators have extended their economic activities to other Member States, they have indirectly facilitated the establishment of an additional route for the entry of TCNs to the broader EU market. Previous research has indicated that the trend of posting TCNs within the EU has the potential to develop into a significant mobility channel. This is because it provides TCNs with the opportunity to access the larger European market, facilitated by employers who can arrange work, travel and accommodation. This support is particularly beneficial for low- and medium-skilled TCN workers, for whom such arrangements would otherwise be challenging (Danaj et al., 2020, 2023a; Lens, Mussche and Marx, 2022; Mussche, Corluy and Marx, 2018).

The posting of workers directives apply equally to posted workers who are EU citizens and posted workers who are TCNs. The posting of TCN workers was reviewed by the Court of Justice of the European Union (CJEU) as early as in 1994 when the *Vander Elst* case<sup>(4)</sup> was submitted for an opinion to the CJEU. Based on that case and other related case-law (e.g. C-91/13 *Essent*<sup>(5)</sup>, C-18/17 *Danieli*<sup>(6)</sup>, C-477/17 *Balandin*<sup>(7)</sup> or C-540/22 *SN*<sup>(8)</sup>), the posting of TCN workers within the framework of the provision of services in the EU is possible on the condition that they hold a valid work and residence permit in the Member State from which they are posted. Since posting practices involving TCNs sit at the intersection of immigration regimes and the posting framework, the former generally affects the workers' path within the EU (Lens Mussche and Marx, 2022; Novitz and Andrijasevic, 2020; Rasnača and Bogoeski, 2023a). The double dependence on the employer for work, residence and work permit renewal, combined with the triple frame of reference between country of origin, sending Member State and receiving Member State, requires closer analysis from the perspective of workers' experiences.

Although there is substantial research within the broader posting literature on the posting of TCNs in the EU, specific studies focusing on the precise aspects of the posting of TCN workers across the EU remain scarce. Most of the existing publications are either exploratory or provide anecdotal case evidence on the topic. Early reports on the posting of TCNs have highlighted concerns about their recruitment in the countries of origin, which appears to be linked to the posting business model. Yet, detailed accounts of the recruitment and mobility pathways of TCN workers that cover both their move from the country of origin to the Member State of residence and their

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<sup>(4)</sup> CJEU, Judgment of the Court of 9 August 1994, *Raymond Vander Elst v Office des Migrations Internationales*, C-43/93, EU:C:1994:310.

<sup>(5)</sup> CJEU, Judgment of the Court of 11 September 2014, *Essent Energie Productie BV v Minister van Sociale Zaken en Werkgelegenheid*, Case C-91/13, EU:C:2014:2206.

<sup>(6)</sup> CJEU, Judgment of the Court (Third Chamber) of 14 November 2018, *Danieli & C. Officine Meccaniche SpA and Others v Regionale Geschäftsstelle Leoben des Arbeitsmarktservice*, Case C-18/17. EU:C:2018:904.

<sup>(7)</sup> CJEU, Judgment of the Court (First Chamber) of 24 January 2019, *Raad van bestuur van de Sociale verzekeringsbank v D. Balandin and Others*, Case C-477/17, EU:C:2019:60.

<sup>(8)</sup> CJEU, Judgment of the Court (Fifth Chamber) of 20 June 2024, *SN and Others v Staatssecretaris van Justitie en Veiligheid*, Case C-540/22, EU:C:2024:530.

involvement in EU cross-border service provision are lacking. Specific to the case studies selected for the current study, previous reports have already mentioned the bilateral agreements in some Member States (e.g. in Poland and Slovenia) as being particularly relevant (European Commission: Directorate-General for Employment, Social Affairs and Inclusion et al., 2024b: 175), as they set the stage for the intra-EU posting experience for the TCN workers concerned.

In addition, the role of labour market intermediaries (LMIs), especially temporary work agencies (TWAs), in the recruitment and posting of TCNs has been signalled as problematic in some analytical work (e.g. Novitz and Andrijasevic, 2020) but has remained largely underexplored. Although little empirical research exists about the role of cross-border LMIs, such as TWAs in the posting supply chain, previous work indicates that they constitute an important and growing segment of labour mobility in the EU today, including for TCNs (Arnholtz and Lillie 2023; Stojanov et al., 2022). Mapping of the types and profiles of the labour intermediaries involved in the posting supply chain and in-depth studies on the role of these intermediaries in TCN posting, including details of the terms and conditions TCN workers experience in posting situations, are scarce. Therefore, during the fieldwork conducted for this study, particular attention was paid to the role of LMIs.

This report seeks to fill the existing knowledge gaps by examining the recruitment channels and contractual arrangements for TCN posting. It traces the inflows of workers from their countries of origin (Ukraine, Brazil and Bosnia and Herzegovina) to the three sending case study countries (Poland, Portugal and Slovenia) and follows the experiences of posted TCN workers in the receiving Member States throughout the posting chain. The key focus of the study is on the posting experiences reported by the TCN workers; however, it is examined within the broader context of their arrival in the entry Member State and their experience there that led them to accept posting assignments. It also examines the contracting chains in which posted TCN workers are involved and maps and identifies the typology of public and private actors and the LMIs involved. The study subsequently details the challenges associated with the working conditions of posted TCNs, as evidenced by fieldwork conducted in the three case studies. It also emphasises related enforcement challenges to identify factors that might heighten the risk of non-compliance or unfavourable working conditions for TCN workers. These last two elements are particularly significant from the perspective of the ELA, as they could inform targeted enforcement activities.

The study is based on primary and secondary data collected through a mixed methodology approach, including a scoping review of the existing academic and grey literature, a legal analysis and three empirical country case studies (see Annex 1 on the details of the study methodology). Poland, Portugal and Slovenia are used as case studies and particular attention is paid to the citizens of Ukraine, Brazil and Bosnia and Herzegovina, respectively, as they account for the highest shares of TCN workers in each case study country. These three cases represent important TCN posting corridors either in absolute numbers (Poland and Slovenia) or in relative numbers pertaining to specific TCNs (e.g. Brazilians in Portugal) (ELA, 2023a). The current study provides evidence from various economic sectors. The construction sector was studied across all three case studies. The second sector was different for each Member State and selected to reflect the specific labour market characteristics and posting activity of the country, namely domestic (elderly) care services for TCNs posted from Poland, logistics for TCNs posted from Portugal and international road transport for TCNs posted from Slovenia.

For each country case study, official statistics from Eurostat and national offices, legal documents, academic and grey literature, national reports and other publications were used. New empirical data was collected through fieldwork in the case study Member States during April–July 2024 through 52 semi-structured interviews conducted with 23 public authorities involved in policymaking or enforcement of posting rules, nine social partners, including both employer and worker organisations, non-governmental organisations (NGOs) providing support or other services to TCNs and/or posted workers, other experts, representatives of five LMIs and 24 posted workers. In each Member State, the main group of TCNs involved in posting were interviewed, that is, Ukrainians (plus one Belarusian) in Poland, Brazilians in Portugal and those from Bosnia and Herzegovina in Slovenia. At the time of the interviews, 16 of the posted workers were actively on a posting assignment, while 8 were in their country of residence or sending country, having been previously posted. Regarding the three case studies, among the workers with Poland as the entry country, one was posted during the interview and seven were residing in Poland. In the Polish case study, all Ukrainian workers had entered Poland before the EU activated the temporary

protection directive <sup>(9)</sup>. For those workers with Portugal as the entry country, five were on a posting assignment and one was residing in Portugal. All 10 workers with Slovenia as the entry country were on a posting assignment at the time of the interviews. Most of the interviews, including all those with workers who were posted at the time, were conducted by phone or teleconference.

The stakeholders and independent experts interviewed were asked about their knowledge and experiences of the posting of TCNs in terms of practices, trends and patterns, challenges in terms of working conditions, the involvement of LMIs, notably TWAs, and their recommendations. TCN workers were asked about their migration and employment pathways, including their journey to each of the case study countries, recruitment practices in the national labour markets and posting chains, and their overall experience of posting, in particular social security coverage while posted and their experience with LMIs <sup>(10)</sup>.

The study refers to several vulnerabilities faced by TCNs within the EU's posting supply chains. The analysis reveals the challenges reported by posted TCNs as they navigated complex contracting chains dominated by small subcontractors and intermediaries. It highlights the diverse experiences of TCN workers in the economic sectors studied in the Member States selected (Poland, Portugal and Slovenia), emphasising that, while TCNs are increasingly recruited within the EU, many report challenges in relation to working conditions. Therefore, the findings of the study underscore the need for enhanced monitoring and coordinated enforcement efforts among national agencies to address these systemic challenges.

The report is structured as follows. Following this introduction, in Chapter 2, we describe the context of TCN migration and posting within the EU, focusing on the key aspects of the legal framework relevant to the case studies as well as the characteristics of the mobility patterns and flows. Chapter 3 covers the recruitment of TCNs and their entry channels into the EU and subsequent recruitment into the posting supply chain based on the results of the fieldwork. Chapter 4 presents the findings on contracting chains, actors and intermediaries, followed by the Chapter 5 on the challenges faced by TCN workers, monitoring and enforcement, and non-compliance risk factors. The report is completed by the conclusions drawn from the analysis in Chapter 6.

It is essential to note that the findings reported here should not be generalised beyond the scope of this study and the fieldwork carried out in the three selected Member States.

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<sup>(9)</sup> Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof (OJ L 212, 7.8.2001, p. 12). Temporary protection is an exceptional measure to provide immediate and temporary protection in the event of a mass influx or imminent mass influx of displaced persons from non-EU countries who are unable to return to their country of origin. The 2001 temporary protection directive provides a tool for the EU to address such situations.

<sup>(10)</sup> More information about the methodology can be found in Annex A.

## 2. The context: pathways and flows of TCN posting in the EU

The access of TCNs to the EU labour market is predominantly regulated by each Member State, with national immigration policies forming the basis for the entry regimes in the case study countries. If posting of workers to other Member States takes place thereafter, it is then regulated by the EU legal framework on the posting of workers. Generally, the posting of TCNs is allowed within the framework of the provision of services, whereby TCNs with a valid work permit can be posted to other Member States based on the same rules as those for EU citizens. At the same time, posting of workers does not exempt them from compliance with the immigration rules of their country of entry. Hence, the national immigration policy, existing bilateral or multilateral agreements with non-EU countries, and labour and social protection policies for foreigners intersect with the EU legal framework for posting.

In this chapter, Sections 2.1 and 2.2 below present an overview of the relevant legal framework at the EU level and in the three case study Member States, respectively, and Section 2.3 presents the mobility patterns and flows of TCN migration and posting in the EU.

### 2.1. EU posting legal framework

**The posting of workers directives apply equally to posted workers who are EU citizens and to posted workers who are TCNs. Some sector-specific EU rules could have an impact on the accessibility of posting for TCN workers.**

The EU legal framework <sup>(11)</sup> on posting of workers applies equally to EU and TCN posted workers because the legislation does not distinguish workers on the basis of nationality. There is no legislation at the EU level harmonising the requirements that Member States can impose for the posting of TCNs. In this context, TCN workers who are regularly and habitually employed by a service provider established in a Member State can be posted to another Member State without being subject in the other Member State to undue administrative formalities such as the obligation to obtain a work permit (European Commission 2024a: 11).

The main legal instrument in this framework is the posting of workers directive (PWD) <sup>(12)</sup>. Recital 20 of the directive states that it is to apply without prejudice to bilateral agreements concluded by the EU with non-EU countries and Member State legislation on intra-EU mobility of non-EU-country service providers and entry, residence and access to employment of workers from non-EU countries. The PWD was revised by Directive (EU) 2018/957 in 2018 <sup>(13)</sup>. Similar to the original version, the revised directive applies to both EU and TCN posted workers. The enforcement of the directive is facilitated by Directive 2014/67/EU <sup>(14)</sup>. That directive is

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- <sup>(11)</sup> The EU legal framework on posting of workers includes the posting of workers directive and the revised posting of workers directive, Directive (EU) 2020/1057 on posting drivers in the road transport sector and the enforcement directive. Directive (EU) 2019/1152 on transparent and predictable working conditions in the EU is also relevant, as it establishes additional information rights for posted workers. The social security legislation applicable to posted workers are Regulation (EC) No 883/2004 on the coordination of social security systems and its implementing Regulation (EC) No 987/2009, by force of Regulation (EU) No 1231/2010, which extends the coordination rules for social security laid down in those regulations to TCN legally resident in the EU and being in a situation which is not confined in all respects within a single Member State.
- <sup>(12)</sup> Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (OJ L 18, 21.1.1997, p. 1). The PWD contains a reference to undertakings established in a non-EU country. Article 1(4) of the directive stipulates that undertakings established in a non-Member State must not be given more favourable treatment than undertakings established in a Member State. Posting of workers, including TCNs, from such companies is regulated under national law can therefore not take place under more favourable conditions than posting by companies set up in the EU.
- <sup>(13)</sup> Directive (EU) 2018/957 of the European Parliament and of the Council of 28 June 2018 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services (OJ L 173, 9.7.2018, p. 16).
- <sup>(14)</sup> Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation') (OJ L 159, 28.5.2014, p. 11).

complemented by Directive (EU) 2020/1057<sup>(15)</sup> which lays down specific rules for posting of drivers in the road transport sector<sup>(16)</sup>.

The social security of posted workers is regulated through Regulation (EC) No 883/2004 on the coordination of social security systems<sup>(17)</sup> and its implementing regulation, Regulation (EC) No 987/2009<sup>(18)</sup>, and Regulation (EU) No 1231/2010<sup>(19)</sup> extends the coordination rules for social security laid down in Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 to TCNs legally resident in the EU and in a situation that is not confined in all respects to a single Member State. Article 12 or 13 of Regulation (EC) No 883/2004, depending on whether work is carried out in one or multiple other Member States, determines the legislation applicable when posting of workers takes place. Article 12 of Regulation (EC) No 883/2004 determines the legislation applicable to both employed people who normally pursue activities in a Member State and who are posted by that employer to another Member State to perform work on its behalf and people who normally pursue an activity as a self-employed person in a Member State and who go to pursue a similar activity in another Member State. Therefore, the applicable social security regime in line with Article 12 can be determined for both posted and self-employed workers. Article 13 of Regulation (EC) No 883/2004 covers individuals who pursue an activity as an employed or self-employed person in two or more Member States (known as the 'multistate activity' rule). Depending on the circumstances, the responsible regime will be the Member State of residence, the 'registered office' or place of business of the employer or, for the self-employed, the country where the centre of interest of activities is located. Article 13 is especially relevant in the international road transport sector, one of the sectors covered by the Slovenian case study.

More directly and specifically for the international road transport sector, the rules on driving licences and professional qualifications can limit the possibility of posting TCN drivers shortly after their entry to the EU. In line with Directive (EU) 2022/2561 on the initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods or passengers<sup>(20)</sup>, the international road transport driver needs a certificate of professional competence (CPC) in addition to an EU driving licence. While there are some frameworks for the exchange of non-EU country driving licences<sup>(21)</sup>, this is not the case for the CPC. All drivers working for EU undertakings have to obtain their CPC in the EU<sup>(22)</sup>. While the exact period needed to obtain the CPC may vary in individual cases, in principle the driver will have needed to reside in the EU for a certain time, usually at least some weeks or months, in order to receive this certification<sup>(23)</sup>; hence, recruitment from a non-EU country and immediate posting to work in other Member States is not possible.

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<sup>(15)</sup> Directive (EU) 2020/1057 of the European Parliament and of the Council of 15 July 2020 laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector and amending Directive 2006/22/EC as regards enforcement requirements and Regulation (EU) No 1024/2012 (OJ L 249, 31.7.2020, p. 49).

<sup>(16)</sup> Notably, Directive (EU) 2020/1057 also sets out the situations in which a driver is not considered to be posted. This is in line with CJEU case-law (Judgment of the Court (Grand Chamber) of 1 December 2020, *Federatie Nederlandse Vakbeweging v Van den Bosch Transporten BV and Others*, C-815/18, ECLI:EU:C:2020:976) in which the CJEU affirmed that a worker who provides very limited services in the territory of the Member State to which that worker is sent cannot be regarded as 'posted' because there is no sufficient connection to that Member State. This applies to a driver who, in the course of transporting goods by road, merely transits through the territory of a Member State. The same would also be true of a driver carrying out only cross-border transport operations from the Member State where the transport undertaking is established to the territory of another Member State or vice versa. Directive (EU) 2020/1057 is part of the EU road mobility package I.

<sup>(17)</sup> Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ L 166, 30.4.2004, p. 1).

<sup>(18)</sup> Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems (OJ L 284, 30.10.2009, p. 1).

<sup>(19)</sup> Regulation (EU) No 1231/2010 of the European Parliament and of the Council of 24 November 2010 extending Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 to nationals of third countries who are not already covered by these Regulations solely on the ground of their nationality (OJ L 344, 29.12.2010, p. 1).

<sup>(20)</sup> Directive (EU) 2022/2561 of the European Parliament and of the Council of 14 December 2022 on the initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods or passengers (codification) (OJ L 330, 23.12.2022, p. 46).

<sup>(21)</sup> Usually linked to the Vienna and Geneva Conventions.

<sup>(22)</sup> European Parliament, 'Answer given by Ms Válean on behalf of the European Commission', Parliamentary question E-000158/2003(ASW), [https://www.europarl.europa.eu/doceo/document/E-9-2023-000158-ASW\\_EN.html](https://www.europarl.europa.eu/doceo/document/E-9-2023-000158-ASW_EN.html).

<sup>(23)</sup> Article 9, Directive (EU) 2022/2561 of the European Parliament and of the Council of 14 December 2022 on the initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods or passengers (OJ L 330, 23/12/2022, p. 46).

**The Vander Elst case clarified that EU law prevents a Member State from requiring undertakings lawfully established elsewhere in the EU to obtain work permits for TCN workers providing services in their territory.**

CJEU case-law has been pivotal in clarifying the application of the posting framework to TCNs<sup>(24)</sup>. It is well established in case-law that the right to temporarily send workers to another Member State to provide services covers TCNs employed by a service provider established in a Member State. The posting of TCN workers is, according to the CJEU's decision in the Vander Elst case<sup>(25)</sup>, subject to the lawful and habitual employment of the posted TCN in the sending Member State.

As a consequence of the Vander Elst case-law, receiving Member States are precluded from requiring a work permit and establishing a prior authorisation procedure for TCNs posted by an undertaking established in another Member State when workers hold a valid residence and work permit in the sending Member State. In subsequent case-law, the CJEU clarified that the concept of 'lawful and habitual employment' is not coupled 'with a requirement of residence or employment for a certain period in the state of establishment of the service provider'<sup>(26)</sup>. The Court decided that legislation imposing a requirement for the prior existence of an employment contract of indefinite duration for at least six months<sup>(27)</sup>, at least one year's prior employment<sup>(28)</sup> or an employment contract of indefinite duration<sup>(29)</sup> was disproportionate to the objectives sought. In contrast, according to the CJEU, 'the entry to, and residence in, the territory of a Member State by TCNs in connection with a posting by a service provider established in another Member State is a matter which has not been the subject of harmonisation at EU law level'<sup>(30)</sup>.

Concerning how far residence requirements can be set by the host Member State, the CJEU had already clarified that Member States are prevented from automatically refusing the issuance of an entry and residence permit to a TCN lawfully posted by an undertaking established in the sending Member State who has entered without a visa in the receiving Member State<sup>(31)</sup>. In addition, the recently decided preliminary question in case C-540/22 SN and Others<sup>(32)</sup> dealt with the issue of whether it is justifiable that posted TCNs, after a period of 90 out of 180 days, must apply for a residence permit in the receiving Member State in addition to their residence permit in the sending Member State. Moreover, it dealt with the question of whether such a residence permit in the receiving Member State can be limited to the duration of the work and residence permits in the sending Member State.

According to the Court's judgment, a national legislation requirement that a posted TCN obtains a residence permit after 90 days of posting in the receiving Member State where the duration of the service provision exceeds three months is not contrary to Article 56 of the Treaty on the Functioning of the European Union (TFEU). Moreover, such legislation may establish, as a condition of obtaining such a residence permit, that the posting undertaking declares beforehand the supply of services in respect of which the posted TCN workers are to be posted and

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<sup>(24)</sup> For an overview of the case-law of the CJEU on posting of workers, including TCNs, see ELA (2023a), Annex 1.

<sup>(25)</sup> CJEU, Judgment of the Court of 9 August 1994, *Raymond Vander Elst v Office des Migrations Internationales*, C-43/93, EU:C:1994:310.

<sup>(26)</sup> CJEU, Judgment of the Court (First Chamber) of 19 January 2006, *Commission of the European Communities v Federal Republic of Germany*, C-244/04, EU:C:2006:49, para. 55; CJEU, Judgment of the Court (First Chamber) of 21 September 2006, *Commission of the European Communities v Republic of Austria*, C-168/04, EU:C:2006:595, para. 51.

<sup>(27)</sup> CJEU, Judgment of the Court (First Chamber) of 21 October 2004, *Commission of the European Communities v Grand Duchy of Luxembourg*, C-445/03, EU:C:2004:655, paras 32 and 44–45.

<sup>(28)</sup> CJEU, Judgment of the Court (First Chamber) of 19 January 2006, *Commission of the European Communities v Federal Republic of Germany*, C-244/04, EU:C:2006:49, para. 63; CJEU, Judgment of the Court (First Chamber) of 21 September 2006, *Commission of the European Communities v Republic of Austria*, C-168/04, EU:C:2006:595, para. 50.

<sup>(29)</sup> CJEU, Judgment of the Court (First Chamber) of 21 September 2006, *Commission of the European Communities v Republic of Austria*, C-168/04, EU:C:2006:595, para. 50.

<sup>(30)</sup> CJEU, Judgment of the Court (Fifth Chamber) of 20 June 2024, *SN and Others v Staatssecretaris van Justitie en Veiligheid*, C-540/22, EU:C:2024:530, para. 66.

<sup>(31)</sup> CJEU, Judgment of the Court (First Chamber) of 21 September 2006, *Commission of the European Communities v Republic of Austria*, C-168/04, EU:C:2006:595, para. 67.

<sup>(32)</sup> The case was brought by Ukrainian nationals who work for a Slovak company and hold temporary residence permits for employment in Slovakia and who have been posted to the Netherlands for a period of over 90 days, that is, the duration of their right to circulate in the Schengen area. Although the Dutch authorities stated that no work permit was required, they granted a residence permit with a duration limited to the period of validity of the applicants' residence permit in Slovakia, which was, however, shorter than the envisaged duration of the posting. The applicants lodged new applications with the Dutch authorities for residence permits based on new residence permits obtained in Slovakia with a longer expiry date. The Dutch authorities granted the applications, limiting them, however, to the end date of the posting as declared by the employer (paras 39 and 40 of the judgment of the Court of Justice in case C-540/22).



communicates to the authorities of the receiving Member State the residence permits that those workers hold in the Member State where it is established, as well as their employment contracts.

Concerning the validity of the residence permit in the receiving Member State, the Court decided that Article 56 of the TFEU allows national legislation to set the period of validity of the residence permit granted to a TCN worker posted to that Member State, which may be shorter than the period needed to perform the service for which that worker is posted, and that the period of validity is limited to the period of validity of the work and residence permits of the posted TCN in the sending Member State.

Lastly, it should be noted that, although a few Member States do not impose any additional requirements regarding the right of entry and stay of posted TCNs in the receiving Member State, the majority, including Germany, which was the host country reported by many of the posted workers interviewed during the fieldwork phase of this study, require an application for a temporary residence permit or a Vander Elst visa, in some cases, even if the posting is shorter than 90 days<sup>(33)</sup> (ELA, 2023a: 57–58; European Commission: Directorate-General for Employment, Social Affairs and Inclusion et al., 2024b: 64, 101). According to official information from the German Federal Foreign Office, Germany requires individuals entitled to long-term residence to obtain the Vander Elst visa if they intend to provide temporary services for more than a 3-month period in any 12-month period. For holders of a temporary residence permit in the sending Member State, depending on the length of stay, the authorities issue either a Schengen visa (for stays of up to 90 days) or a Vander Elst visa (Auswaertiges Amt, 2025: 8).

## 2.2. National legal frameworks in Poland, Portugal and Slovenia

In this section, we discuss some key aspects of national immigration policies and how they relate to the posting legal framework for TCNs, focusing on the three case study countries selected. The need to understand the details of these special national regimes became apparent during the fieldwork phase when workers referred to the requirements of these regimes. In addition, dedicated bilateral agreements or immigration regimes that facilitate immigration for specific nationalities could also create better conditions for TCN workers, since they might be less dependent on their employer for the renewal of their work and residence permits (ELA, 2023a: 7).

### National statutory migration regimes of Member States shape the status of TCNs by regulating their entry into the EU labour market.

The involvement of TCNs in the posting supply chain is preceded by their entry into the labour market of a Member State. Member States remain competent to determine the applicable conditions and rules for entry, residence and the right to work of TCNs not covered by specific EU instruments. Each country may have its own legal instruments for certain categories or nationalities of TCNs. These may consist of domestic legal provisions or bilateral agreements with specific non-EU countries. An overview of the specific provisions applicable in the selected Member States relevant for fieldwork phase of this study is presented below.

#### Poland

Poland has numerous legal instruments regulating migration and the employment of TCNs. The most important are the Act of 20 April 2004 on employment promotion and labour market institutions<sup>(34)</sup>, the Act of 12 December 2013 on foreigners<sup>(35)</sup>, the Act of 15 June 2012 on the consequences of entrusting work to foreigners residing in

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<sup>(33)</sup> This distinction is relevant as Article 21(1) of the Convention implementing the Schengen Agreement provides that a foreign national who holds a valid residence permit issued by one of the Member States may, on the basis of that permit and a valid travel document, move freely for up to 90 days in any 180-day period within the territories of the other Member States, provided that the foreign national fulfils the entry conditions referred to in Article 6(1)(a), (c) and (e) of the Schengen Borders Code and is not on the national list of alerts of the Member State concerned. Article 6(1)(a), (c) and (e) of the Schengen Borders Code relates to the entry conditions for TCNs, including the possession of a valid travel document. By contrast, stays of more than 90 days in a 180-day period continue to fall solely within the competence of the Member States.

<sup>(34)</sup> Act of 20 April 2004 on employment promotion and labour market institutions (Ustawa z dnia 20 kwietnia 2004 r. o promocji zatrudnienia i instytucjach rynku pracy), *Official Gazette* 2004, No 99, item 1001, <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=wdu20040991001>.

<sup>(35)</sup> Act of 12 December 2013 on foreigners (Ustawa z dnia 12 grudnia 2013 r. o cudzoziemcach), *Official Gazette* 2013, item 1650, <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=wdu20130001650>.

the territory of the Republic of Poland in violation of the regulations <sup>(36)</sup>, the Act of 12 March 2022 on assistance to citizens of Ukraine <sup>(37)</sup> and the new Act on foreigners' access to the labour market <sup>(38)</sup>. One precondition of TCNs obtaining a work permit in Poland is the so-called labour market test, a screening procedure for eligible Polish or EU / European Economic Area / Swiss nationals for open positions carried out by the local employment office before allowing the permit application to proceed for TCNs. The only exceptions to this labour market test are the 'shortage occupations' <sup>(39)</sup>, defined at the national level by the regulation of the Minister of Family, Labour and Social Policy or at the voivodship level, and people hired based on 'declarations on entrusting work to a foreigner' and the 'notification procedure for Ukrainians', which we explain further below, since all posted workers interviewed for this study entered Poland under one of these regimes.

## **Portugal**

The legal regime for entry and stay of foreigners in Portugal is defined by Law No 23/2007 of 4 July 2007 on entry, permanence, exiting and removal of foreigners <sup>(40)</sup>, according to which TCNs need a visa to enter the country unless they have a residence permit or are exempt for other reasons. For example, Brazilian nationals are exempt from visa requirements for short-term stays in Portugal. Apart from a short-stay visa, there are various long-stay visas that can be either temporary or for residence authorisation, depending on the duration of the stay in the country and the purpose. In 2022, a new type of visa, the jobseeker visa, was introduced. This visa allows the holder to enter and reside in Portugal only for the purpose of seeking employment and authorises its holder to work as an employee (subordinated work activity).

The posted workers interviewed for the Portuguese case study, however, had relied on the older version of Law No 23/2007, which allowed the possible granting of residence permits without the need for a visa through a so-called expression of interest <sup>(41)</sup>. This basically meant that, upon an expression of interest presented to the relevant authority <sup>(42)</sup>, the requirement to hold a visa in order to obtain a residence permit to perform work as an employee (subordinate professional activity) or self-employed person (independent professional activity) was waived under certain conditions. This included having an employment contract or the promise of an employment contract or having an employment relationship proven by a union, by a representative of migrant communities with a seat on the Council for Migration or by the Authority for Working Conditions. Applicants must have legally entered national territory, registered and paid contributions to social security (except in cases of a promised employment

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<sup>(36)</sup> Act of 15 June 2012 on the consequences of entrusting work to foreigners residing on the territory of the Republic of Poland in violation of the regulations (Ustawa z dnia 15 czerwca 2012 r. o skutkach powierzania wykonywania pracy cudzoziemcom przebywającym wbrew przepisom na terytorium Rzeczypospolitej Polskiej), *Official Gazette* 2012, item 769, <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=wdu20120000769>.

<sup>(37)</sup> Act of 12 March 2022 on assistance to citizens of Ukraine (Ustawa z dnia 12 marca 2022 r. o pomocy obywatelom Ukrainy w związku z konfliktem zbrojnym na terytorium tego państwa), *Official Gazette* 2022, item 583, <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20220000583>.

<sup>(38)</sup> Draft Act of 15 May 2024 on access of foreigners to the labour market (Projekt ustawy z dnia 15 maja 2024 r. o dostępie cudzoziemców do rynku pracy), No UC46 on the legislative work list of the Council of Ministers, <https://legislacja.rcl.gov.pl/projekt/12385455/katalog/13060155>. Passed on 18 December 2024 through the Ministerial Council.

<sup>(39)</sup> Some of the shortage occupations defined at the national level are healthcare professionals, IT workers, engineers, construction workers and professionals, care workers (assistants for people with disabilities, caregivers for elderly people, caregivers in nursing homes) and professional drivers.

<sup>(40)</sup> Law No 23/2007, of 4 July, which approves the regime on entry, permanence, exiting and removal of foreigners (Lei No 23/2007, de 4 de julho, aprova o regime jurídico de entrada, permanência, saída e afastamento de estrangeiros do território nacional), *Official Gazette*, No 127/2007, Series I, of 4 July 2007, <https://diariodarepublica.pt/dr/legislacao-consolidada/lei/2007-67564445> (consolidated version).

<sup>(41)</sup> On June 4, 2024, Decree-Law No 37-A/2024, of 3 June, which amended Law No 23/2007, came into force, which ended the possibility of granting residence permits through the expression of interest mechanism. However, residence permit procedures initiated before 4 June 2024 continue to be governed by the previous wording of Law No 23/2007 – Decree-Law No 37-A/2024, of 3 June, which amended Law No 23/2007, revoking the procedures for residence authorisation based on manifestations of interest (Decreto-Lei No 37-A/2024, de 3 de junho, altera a Lei No 23/2007, de 4 de julho, procedendo à revogação dos procedimentos de autorização de residência assentes em manifestações de interesse), <https://diariodarepublica.pt/dr/legislacao-consolidada/decreto-lei/2024-868097377> (consolidated version).

<sup>(42)</sup> This used to be the Foreigner and Border Police (SEF), which was dissolved in 2023 and its responsibilities taken over by a new agency – the Agency for Integration, Migration and Asylum (AIMA). The administrative competences of SEF were transferred to AIMA, but the other competences of SEF (policing) were transferred to the Criminal Police, the Public Security Police and the National Republican Guard.

contract)<sup>(43)</sup>. Additionally, legal entry was presumed if the applicant had been employed within the national territory and had regularised their status with social security for a minimum of 12 months.

### **Slovenia**

Slovenia also has legal provisions related to migration and the employment of foreigners within the country. The following are the most relevant pieces of legislation: the Employment, Self-Employment and Work of Foreigners Act<sup>(44)</sup>, which regulates the work of TCNs on the Slovenian labour market, and the Foreigners Act<sup>(45)</sup>, which regulates the conditions and procedures for the entry, exit and stay of TCNs in Slovenia. Consequently, TCNs may work in Slovenia on the basis of a number of different work permits, such as the single permit for residence and work (i.e. single permit). The procedure for obtaining a single permit is conducted by the administrative units (*upravne enote*), national administrative authorities established under the Ministry of Public Administration, which are responsible for issuing single permits. Applications may be submitted by either employers or workers and must demonstrate compliance with several legal conditions. The single permit procedure requires the approval of the Employment Service of Slovenia, which also performs a labour market test. Similar to Poland, Slovenia also has an official list of professions in which there are shortages<sup>(46)</sup>, but this list is only indicative. The labour market test involves checking the unemployment registers to see if there are any suitable candidates for employment.

**Poland, Portugal and Slovenia have adopted specific rules of entry for selected non-EU countries, such as through bilateral or multilateral agreements or other legal instruments. These rules can influence migrant worker flows and stocks.**

In addition to the national entry regimes for TCNs, certain Member States have established international agreements that apply to one or multiple countries of origin. In the three case study countries, such bilateral and multilateral arrangements exist and play an important role in the management and control of the entry of TCNs. They not only give specific groups of TCNs access to the labour market of these Member States but also indirectly might facilitate accessibility to the broader European market via posting of workers when companies employing them exercise the freedom to provide services.

### **Poland**

In the case of Poland, a specific system of labour migration from some post-Soviet countries (Armenia, Belarus, Georgia, Moldova, Ukraine)<sup>(47)</sup> facilitates the entry and employment of these nationals. TCNs coming from these countries are permitted to work in Poland without obtaining a work permit under the 'declarations on entrusting work to a foreigner' regime, as regulated by the Act of 20 April 2004 on the promotion of employment and labour market institutions<sup>(48)</sup>. This exemption applies if they hold an authorisation to stay in Poland (i.e. in the form of a valid visa or if they do not require a visa). A declaration on entrusting work is not sufficient in itself to establish legal residence, but it can serve as a reason for receiving residence authorisation or even a visa. Declarations of work can cover a period of employment of up to 24 months and employment must start within six months of submitting the declaration. The remuneration for the worker must be at least the same as for workers engaged in similar work or holding comparable positions in Poland. The declaration must be submitted to the local employment office prior to the commencement of work, and the individual may start working only after the declaration is registered, which may take up to seven days.

### **Portugal**

In Portugal, citizens of the Community of Portuguese Language Countries (CPLP)<sup>(49)</sup> benefit from special conditions for entry and residence. There are several bilateral and multilateral agreements with members of the CPLP that facilitate the movement of citizens from these countries. The bilateral agreement of 2003 between Portugal and Brazil had already established a visa exemption regime for Brazilians for stays of up to 90 days

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<sup>(43)</sup> In the case of independent professional activity, legal entry was assumed whenever the applicant had a contract for the provision of services or independent professional activity in force in the national territory and had their situation regularised with social security, in both cases for at least 12 months.

<sup>(44)</sup> Employment, Self-employment and Work of Foreigners Act (Zakon o zaposlovanju, samozaposlovanju in delu tujcev (ZZSDT)), *Official Gazette of the Republic of Slovenia*, Nos 91/21 and 42/23, <https://pisrs.si/pregledPredpisa?id=ZAKO6655>.

<sup>(45)</sup> Foreigners Act (Zakon o tujcih – ZTuj-2), *Official Gazette of the Republic of Slovenia*, No. 91/21 et al., <https://pisrs.si/pregledPredpisa?id=ZAKO5761>.

<sup>(46)</sup> [https://www.ess.gov.si/fileadmin/user\\_upload/Iskalci\\_zaposlitve/Dokumenti\\_IZ/Deficitarni\\_poklici\\_2024.pdf](https://www.ess.gov.si/fileadmin/user_upload/Iskalci_zaposlitve/Dokumenti_IZ/Deficitarni_poklici_2024.pdf).

<sup>(47)</sup> Russian nationals were also included in this system but have been excluded since 2022.

<sup>(48)</sup> [https://pup.tczew.ibip.pl/public/get\\_file.php?id=240366](https://pup.tczew.ibip.pl/public/get_file.php?id=240366).

<sup>(49)</sup> Angola, Brazil, Cabo Verde, Equatorial Guinea, Guinea-Bissau, Mozambique, São Tomé and Príncipe, and Timor-Leste.

(extendable for the same period). In 2021, a mobility agreement was signed among members of the CPLP, which resulted in changes in the legal regime governing the issuance of visas and residence permits. This agreement facilitates the entry of TCNs from these countries to Portugal through simplified visa arrangements and streamlined application procedures. Individuals from this group of countries can apply for different types of CPLP visas (e.g. CPLP temporary visa, CPLP residence visa, job search visa), which do not require prior consultation, must be granted outright and can only be refused if there is an indication of a ban on entry and stay in the Schengen information system. Citizens of the CPLP are also exempt from presenting specific elements required for each type of visa, for instance proof of means of subsistence, as long as they present a 'term of responsibility'. The term of responsibility, signed by the entity hosting the worker or by a Portuguese citizen or a qualified foreign citizen who holds a residence document in Portugal, serves as proof of means of subsistence, guaranteeing food and accommodation to the visa applicant, as well as reimbursement of the costs of removal, in cases of irregular stays<sup>(50)</sup>.

Therefore, the issuance of CPLP visas is governed by requirements that are less stringent than the general rules. CPLP visas have a territorial validity limited to Portugal<sup>(51)</sup>. Despite the territorial restriction, Portuguese national authorities consider that workers with CPLP visas can be posted, because the EU rules on the issuance of portable document s(PDs) A1 are not confined to specific types of residences. These workers are not allowed to work in other Member States, but they can be posted, and the Institute for Social Security issues a PD A1 if they have a valid CPLP visa. Citizens of countries where the CPLP agreement is in effect, who possess a short-term visa or temporary stay visa, or who have legally entered the national territory are eligible to apply for a CPLP residence permit in Portugal. The granting of the residence permit depends, *mutatis mutandis*, on compliance with the conditions for granting residence visas and CPLP residence permits. Thus, it is not necessary to hold a CPLP visa to apply for a CPLP residence permit.

### **Slovenia**

Slovenia concluded two bilateral agreements on labour migration – one with Bosnia and Herzegovina in 2012 and another with Serbia in 2019 – to simplify the employment rules for these citizens. According to the agreements, employment is possible only through collaboration between the public employment services of each of the two countries of origin and Slovenia. Potential employers in Slovenia initiate the process by filing a job application with the Employment Service of Slovenia, which then checks for suitable local candidates through the so-called labour market test and verifies the employers' tax obligations and other labour law conditions for the employment of TCNs. If all conditions are met, the Slovenian employment service forwards the job post to the public employment services in Bosnia and Herzegovina or in Serbia. These services select candidates in the countries of origin based on employers' requirements and present them for final selection. The process should take a maximum of 15 days.

The main distinction between the overall framework for the employment of TCNs in Slovenia and for citizens of Bosnia and Herzegovina and Serbia recruited through the bilateral agreement procedures is that the public employment services in the country of origin and Slovenia are directly involved in the process and the work permits issued are valid for three years and extendable for a further three years. Additionally, workers are required to stay with the same employer for a minimum of one year. After this period, they gain free access to the Slovenian labour market and potentially the broader EU market (Danaj et al., 2023a). According to the representative of the Ministry of Labour, Family, Social Affairs and Equal Opportunities, the Slovenian authorities also support circular migration through these bilateral agreements.

**EU posting directives have been transposed into national legislation by all Member States, but the approach to their application and enforcement varies depending on the national legislative frameworks in each of the three countries.**

As in the case of all Member States, the three case study countries selected for this study have incorporated the EU directives on posting into national legislation and implemented them. Moreover, they apply the relevant regulations in the area of social security coordination (see Section 2.1 above). Once a TCN worker or self-employed person enters the EU through one of the available entry and residence permit schemes, such as those

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<sup>(50)</sup> The current government announced new rules concerning CPLP visas and CPLP residence permits; however, at the time of writing there was no official information on the content of these rules.

<sup>(51)</sup> The visas are printed on a specific model sticker. Article 24-A of Regulatory Decree No 84/2007, as amended by Regulatory Decree No 4/2022, of September 30, in force since 30 October 2022.

mentioned previously, companies are permitted to post the TCN to another Member State if the conditions for posting are complied with.

### **Poland**

Posting from and to Poland is regulated by the Act of 10 June 2016 on posting of workers in the framework of the provision of services<sup>(52)</sup>, which incorporates Directive 96/71/EC, Directive 2014/67/EU and Directive (EU) 2019/1152 into national law. The act does not define posting itself, but it provides a definition of an employee posted from Poland (Article 3.7) as a worker who ‘performs work on the territory of Poland and is posted to perform work on the territory of another Member State’. This wording does not use the term ‘employment relationship’ or ‘employment contract’. This is interpreted as allowing the use of civil law forms of contracts, that is, ‘contracts of mandate’, to hire workers who are then posted from Poland to another Member State<sup>(53)</sup>. Under this interpretation, contractors working under contracts of mandate are protected by the PWD. This is particularly relevant for this study, as the majority of the workers interviewed who were posted from Poland were working or had worked under these civil law contracts (‘contracts of mandate’). For additional details on civil law contracts in Poland, refer to Box 2 below.

### **Portugal**

The framework governing the posting of workers in Portugal is regulated by Law No 29/2017 of 30 May<sup>(54)</sup> and the Portuguese Labour Code (approved by Law No 7/2009 of 12 February<sup>(55)</sup>). TCNs who are legally resident in Portugal can be posted under the same conditions as resident nationals if the conditions for posting are fulfilled. They enjoy the same rights and are subject to the same responsibilities as posted nationals. However, according to the Institute for Social Security in Portugal, there are exceptions for TCNs with a certificate of expression of interest. Although they are considered legal residents and are permitted to work in the national territory, they cannot be posted because a residence certificate (permanent or temporary) is required to issue the PD A1.

### **Slovenia**

In Slovenia, the EU framework on posting was transposed into national legislation by the Employment Relationship Act (Zakon o delovnih razmerjih – ZDR-1) and the Transnational Provision of Services Act<sup>(56)</sup>. The former regulates the posting of workers in general, including to non-EU countries, and the latter regulates the posting of workers to Member States, European Free Trade Area (EFTA) states and the United Kingdom. An employer may temporarily post a worker abroad if it is foreseen in the employment contract or a separate addendum (Article 208(1) and (3) of the Employment Relationship Act) (Kresal, 2020). Additionally, an addendum to the employment contract can be concluded only if the employment contract already provides for the possibility of working abroad.

Slovenian legislation does not differentiate between the posting of EU nationals and TCNs. Once TCNs have obtained the appropriate work permits in Slovenia or in another Member State, they enjoy the right to free movement and their employment and social security rights and obligations are the same as those of EU nationals. However, TCN workers can be posted to other Member States only if they possess a valid residence and work permit or a temporary residence permit for the purpose of employment, self-employment or work in Slovenia, or if they have the right to free access to the Slovenian labour market (Article 6(8) of the Transnational Provision of Services Act). As with any posted worker, the employer is required to obtain a PD A1 for posted TCNs. For holders of the first permit, employed TCN workers for whom the application for the PD A1 has been submitted must have been continuously covered by compulsory Slovenian social insurance for at least 30 days prior to the posting. In

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<sup>(52)</sup> Act of 10 June 2016 on posting of workers in the framework of the provision of services (Ustawa z dnia 10 czerwca 2016 r. o delegowaniu pracowników w ramach świadczenia usług), *Official Gazette* 2016, item 868, <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20160000868>.

<sup>(53)</sup> See also <https://www.biznes.gov.pl/pl/portal/00200> and <https://www.pip.gov.pl/dla-sluzb-bhp/porady-prawne/prawo-pracy>.

<sup>(54)</sup> Law No 29/2017, of 30 May, transposing Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 concerning the posting of workers in the framework of the provision of services (Lei No 29/2017, de 30 de maio, que transpõe a Diretiva 2014/67/UE, do Parlamento Europeu e do Conselho, de 15 de maio de 2014, relativa ao destacamento de trabalhadores no âmbito de uma prestação de serviços), *Official Gazette*, No 104/2017, Series I, of 30 May 2017, <https://diariodarepublica.pt/dr/legislacao-consolidada/lei/2017-150546996> (consolidated version).

<sup>(55)</sup> Law No 7/2009, of 12 February, approving the revision of the Labour Code (Lei No 7/2009, de 12 de fevereiro, que aprova a revisão do Código do Trabalho), *Official Gazette*, No 30/2009, Series I, of 12 February 2009, <https://diariodarepublica.pt/dr/legislacao-consolidada/lei/2009-34546475> (consolidated version).

<sup>(56)</sup> Transnational Provision of Services Act (Zakon o čezmejnem izvajanju storitev (ZČmIS-1)), *Official Gazette of the Republic of Slovenia*, No 40/23, <https://pisrs.si/pregledPredpisa?id=ZAKO8529>.

the case of the self-employed, they must have been covered for at least 60 days prior to being sent to provide services abroad <sup>(57)</sup>.

The Transnational Provision of Services Act, also known as the posting regulation, was initially adopted in 2017 and revised in 2023. The 2017 act addressed elements such as the insufficient and inconsistent information system, the poorly monitored procedure for issuing PD A1 certificates, inefficient responses to reported violations and breaches of workers' rights, and insufficient transnational administrative cooperation between national competent authorities (Vah Jevšnik and Cukut Krilić, 2016). The 2017 act only regulated the social security regime under Article 12 of Regulation (EC) No 883/2004. For activities carried out in two or more Member States, Article 13 of Regulation (EC) No 883/2004 is applicable. The changes in national law did not concern PDs A1 issued on the basis of Article 13. This might have contributed to an increase in the number of PDs A1 issued under Article 13 from 2018 onwards (European Commission: Directorate-General for Employment, Social Affairs and Inclusion et al., 2024c: 11). The revised 2023 act addressed this aspect by also regulating the issuance of PDs A1 for individuals carrying out work in multiple Member States.

#### Box 1: The posting regulation in international road transport in Slovenia

The 2023 Transnational Provision of Services Act transposed Directive (EU) 2020/1057 on the posting of drivers in the road transport sector into the Slovenian legal framework, in addition to the 2022 regulation on the enforcement of the rules on working time and compulsory rest periods for mobile workers and on recording equipment (*uredba o nadzoru izvajanja predpisov o delovnem času in obveznih počitkih mobilnih delavcev ter o zapisovalni opremi*). While the regulation mainly regulates roadside checks and controls, the 2023 Transnational Provision of Services Act provides the rules on posting in the international road transport sector, including definitions, period of posting, the type of information and records the driver must keep and provide for checks, the documentation obligations of the employer and self-employed posted drivers, and also the provisions for cooperation between national authorities in the case of international road transport and on sanctions. Article 17 of the Act also lays down rules on the type of information that a self-employed TCN providing services in international transport must submit to the Employment Service of Slovenia to notify the commencement of the provision of services.

In addition, the 2023 act addressed another essential point. Slovenia's national legislation allowed posting companies to pay contributions based on the minimum wage for comparable work. This effectively allowed companies posting from Slovenia to reduce their costs by paying lower social security contributions for their workers during their posting regardless of their salaries in the receiving Member State. The 2023 act introduced the principle of equal treatment of posted workers and replaced a provision in Article 144(2) of the Pension and Disability Insurance Act <sup>(58)</sup>, which determined that the basis for the payment of contributions was the salary that would have been received for the same work in Slovenia. In addition to addressing the above matters, the 2023 act transposed Directive (EU) 2020/1057 on the posting of drivers in the road transport sector into Slovenian legislation.

**Contracts under which TCNs perform work in the sending Member State, and which allow them to be posted, vary across countries.**

#### **Poland**

In Poland, work can be performed under two types of contracts: 'contracts of mandate', which are contracts governed by civil law (*umowa zlecenie* or *umowa cywilnoprawna*), and 'labour law contracts' which are regulated under labour law (*umowa o pracę*) (Box 2). Overall, the 'contract of mandate / civil law contract' has become the de facto hiring framework for TCNs, and it is also often the contract TCNs posted from Poland have (Danaj et al., 2023a; Kielbasa et al., 2022).

<sup>(57)</sup> <https://zavezanec.zzzs.si/prijava-sprememba-in-odjava-obveznih-socialnih-zavarovanj/cezmejno-izvajanje-storitev/>.

<sup>(58)</sup> Pension and Disability Insurance Act (Zakon o pokojninskem in invalidskem zavarovanju (ZPIZ-2)), *Official Gazette of the Republic of Slovenia*, No 48/22 et al., <https://pisrs.si/prehledPredpisa?id=ZAKO6280>.

## Box 2: Civil law contracts in Poland

Civil law contracts are a 'special category of atypical contracts used to contract labour in Poland' (Lewandowski, 2018) that are governed by civil law. Contracts of mandate (*umowa zlecenie*) are the more popular type of civil law contracts used in the Polish labour market (Lewandowski, 2018: 7; Muszyński, 2019: 12), while contracts to perform specified work (*umowa o dzieło*) are also relevant but not so common.

### *Distinction between employment relationship, contracts of mandate and sole proprietorship*

Contracts of mandate are due diligence contracts, meaning that they require the contractor to undertake action without necessarily guaranteeing a specific outcome.

An employment relationship, according to Polish law, is an agreement in which an employee agrees to perform specified work for an employer, under their supervision, at designated times and places, in exchange for remuneration (Article 22(§1) of the Polish Labour Code). The elements of supervision and the specification of place and time are commonly referred to as 'subordination' in Polish case-law<sup>(59)</sup> and labour law doctrine (Duraj, 2011, 2015; Osajda and Borysiak, 2024).

Employment under the conditions of Article 22(§1) is presumed to be an employment contract, regardless of the name given by the parties to such a contract. However, the application of this presumption in the case of work performed under civil law contracts is not unequivocal, as legal doctrine and jurisprudence<sup>(60)</sup> have been inconsistent in interpreting the concept of 'subordination' and distinguishing between the two types of contracts (Grzebyk, 2015; Muszyński, 2016; Wszeborowski, 2023).

Contractors hired under civil law contracts are distinct from sole proprietorship, in which an individual operates a business and is officially registered as an entrepreneur.

### *Rights under civil contract*

Contractors hired under contracts of mandate are subject to compulsory social insurance contributions (except for sickness insurance, which is voluntary) and are entitled to receive unemployment benefits under certain conditions and the statutory hourly minimum rate. Civil law contractors are not, however, subject to other features of an employment contract, such as a monthly minimum wage, working time regulations, overtime pay and protection against dismissal, including termination notice periods, and they are not entitled to the right to paid holiday, etc.

The extension of some of the protective features of employment contracts to contracts of mandate was the result of policies implemented in the last decade and has contributed to the 'normalisation' of such contracts (Muszyński, 2019: 12–13). Importantly, in 2016, Article 8a of the Act of 10 October 2002 on the minimum wage was introduced to include a minimum hourly wage for contracts of mandate (Muszyński, 2019: 19) and, since 2019, individuals employed under civil law contracts can also join and establish trade unions (as amended by the Act of 5 July 2018 amending the Act on trade unions and other acts<sup>(61)</sup>).

### *Monitoring of civil contracts*

The labour inspectorate is competent to supervise compliance with minimum standards in situations where civil law contracts are concluded. It monitors the legality of the employment, that is, whether civil law contracts are concluded in a situation where an employment contract should have been concluded instead (Articles 10(1)(3) and 10(1)(4) of the Act of 13 April 2007 on the State Labour Inspection<sup>(62)</sup>, and Articles 22(1)(2) and 281(1)(1) of the Labour Code). The labour inspectorate also monitors whether the work situation and conditions of contractors under civil law contracts respect, among other things, occupational safety and health rules, the statutory hourly minimum rate and posting requirements (Article 10(2) and Article 13 of the Act of 13 April 2007 on state labour inspection).

<sup>(59)</sup> For example, Polish Supreme Court, ruling from 13 April 2016 r., II PK 81/15; ruling from 18 February 2016, II PK 352/14; SN z 3 October 2018, II UK 275/17; ruling from 6 December 2016, II UK 439/15.

<sup>(60)</sup> See, for instance, Polish Supreme Court ruling from 28 June 2011, II PK 9/11, where the Supreme Court asserted that 'the general level of control exercised by the mandator over a person hired on civil law contract of mandate does not imply subordination.' The same statement is repeated in the Polish Supreme Court ruling from 22 April 2015, II PK 153/14.

<sup>(61)</sup> Act of 5 July 2018 amending the Act on trade unions and other acts (Ustawa z dnia 5 lipca 2018 r. o zmianie ustawy o związkach zawodowych oraz niektórych innych ustaw), *Official Gazette* 2018, item 1608, <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20180001608>.

<sup>(62)</sup> Act of 13 April 2007 on the State Labour Inspection (Ustawa z dnia 13 kwietnia 2007 r. o Państwowej Inspekcji Pracy), *Official Gazette* 2007, No 89, item 589, <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=wdu20070890589>.

### *Posting and civil contracts*

The Act of 10 June 2016 on the posting of workers provides a definition of an employee posted from the territory of Poland (Article 3(7)) as a worker who performs work in Poland and is subsequently posted to carry out work in another Member State. This wording does not use the term 'employment relationship' or 'employment contract'. In Poland this is interpreted as allowing the use of civil law forms of employment contracts, that is, contracts of mandate, to employ workers who are then posted from Poland to another Member State <sup>(63)</sup>.

Under Article 2(2) of the PWD, the determination of whether an individual engaged under a contract of mandate qualifies as a worker falls under the jurisdiction of the Member State to which the worker is posted. Consequently, it is up to that Member State to decide if the individual should be treated as a posted worker in accordance with the directive. On their official posting website, the Polish authorities explicitly state that individuals hired under contracts of mandate may fall under the scope of the directive, noting the following: 'employment based on contract of mandate can be treated by other Member States as not fully autonomous work, work that is co-organised by the entrepreneur and partially subordinated. In practice, a posted worker can also be a person who had been hired in Poland under a contract of mandate.' <sup>(64)</sup>.

In practice, PDs A1 can be issued in Poland for people hired under civil law contracts and also for those in an employment relationship. These can be issued at the request of the employer who hires the person based on a contract of mandate <sup>(65)</sup>.

### **Portugal**

In Portugal, it is important to note that employment contracts with foreign workers (the Labour Code does not specify whether this refers to both EU citizens and TCNs) must contain, among other clauses, the agreed remuneration rate and the normal working time. Employment contracts related to seasonal activity in the agriculture or tourism sector, of a duration not exceeding 35 days, however, are not subject to a written form.

### **Slovenia**

In Slovenia, the contract or posting addendum must specify details such as the duration of the posting, holidays and days off, minimum annual leave, salary amount and currency, supplementary health insurance abroad, other benefits (cash or in kind) the worker is eligible for during the posting, the procedure for securing and exercising rights to payments and other benefits according to the receiving country's regulations, and the conditions for returning to Slovenia. These conditions must meet the minimum requirements set out in national legislation or the more favourable collective bargaining terms (see Kresal, 2020). Additionally, the Health Insurance Institute of Slovenia states on its website that posted workers must have paid contributions for at least 30 days if they are employed, and 60 days if they are self-employed, before being posted <sup>(66)</sup>. TCNs must have their permit fully issued, not just in the process of being obtained, and this also applies to permit renewals.

**TWAs are regulated and monitored in all three Member States. Although they can post TCNs under certain conditions, there are unclear practices that could circumvent the legal backstops in place to protect fair competition and workers.**

Since part of the focus during fieldwork was on the role of LMIs in the posting of TCNs and the experience of posted workers with said intermediaries, this section summarises the key rules in force in the three case study countries. TWAs and their roles in the posting supply chain differ across the case study countries, and there are certain differences in how these entities are defined, the types of obligations they must fulfil under the posting regime and the limitations they face.

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<sup>(63)</sup> See also <https://www.biznes.gov.pl/pl/portal/00200> and <https://www.pip.gov.pl/dla-sluzb-bhp/porady-prawne/prawo-pracy>.

<sup>(64)</sup> See <https://www.biznes.gov.pl/pl/portal/00200>; the same wording is given on the Polish Labour Inspectorate website (<https://www.pip.gov.pl/dla-sluzb-bhp/porady-prawne/prawo-pracy>).

<sup>(65)</sup> This is confirmed, for example, by an official Polish guide to issuing PDs A1. See Social Security Institution (2023), *Jak otrzymać zaświadczenie A1 Poradnik [How to get a PD A1. Guide]*, Warsaw, <https://www.zus.pl/documents/10182/167567/Jak+otrzymac+zaswiadczenie+A1+2023.pdf/aa3cf785-cf27-79c3-d7b3-972b8a05662f?t=1694599893780>.

<sup>(66)</sup> In line with Article 12(1) and 12(2) of Regulation (EC) 883/2004, Article 14(1) and 14(3) of Regulation (EC) No 987/2009, and point 1 of Decision No A2 of 12 June 2009 concerning the interpretation of Article 12 of Regulation (EC) No 883/2004 of the European Parliament and of the Council on the legislation applicable to posted workers and self-employed workers temporarily working outside the competent State (OJ C 106, 24.4.2010, p. 5).



## Poland

Polish law categorises employment agencies (*agencje zatrudnienia*) into different types: job placement (*pośrednictwo pracy*), personal advice (*doradztwo personalne*), job advice (*doradztwo zawodowe*) and TWAs (*praca tymczasowa*)<sup>(67)</sup>. To conduct these activities, a company must be listed in the National Register of Employment Agencies<sup>(68)</sup>. For registration companies need to meet the following criteria (Article 19 of the Act of 20 April 2004 on employment promotion and labour market institutions): have no arrears in taxes, social security contributions, health insurance, the Labour Fund, the Guaranteed Employee Benefits Fund and the Bridge Pension Fund; have no criminal record in the form of sanctions; and not be under a liquidation or bankruptcy procedure. Registered agencies receive a certificate permitting them to provide job placements, personal advice, job advice and temporary work services. There is no specific provision addressing the hiring and posting of TCNs by TWAs.

Employment agencies can be held liable and face sanctions if they provide services without proper registration (Articles 121.1a and 121.1b of the Act of 20 April 2004 on employment promotion and labour market institutions) or collect fees from jobseekers (Article 121.2). They are also accountable for failing to sign written contracts, violating minimum statutory requirements or not providing contract translations to foreigners (Articles 121.4–121.8). TWAs can use civil law contracts, hiring temporary contractors through a contract of mandate and assigning them to employer-users. The Act of 9 July 2003 allows TWAs to direct non-employees to perform temporary work based on civil law contracts (Article 7.2).

In 2017/2018, a new rule on TWA activity was introduced, limiting the use of a temporary worker by one employer-user to 18 months within a period of 36 months. This restriction on TWAs might affect foreign workers in Poland (including TCNs), as they might be employed through outsourcing schemes that operate in a similar way to TWAs but are not registered as such to circumvent this new regulation<sup>(69)</sup>. In this arrangement, the outsourced worker is typically employed by an outsourcing company and assigned to work for another company. The outsourced workers are contracted under civil law contracts with the outsourcing companies, specifying that they perform their tasks at the facilities of another company. Simultaneously, the outsourcing companies have another civil law contract with the company that received the work (the unofficial 'employer-user').

## Portugal

In Portugal, workers hired by TWAs and posted abroad have the right to at least the same conditions as would be applicable if they worked in Portugal without prejudice to the more favourable regime contained in the applicable law or contract.<sup>70</sup> TWAs are prohibited from charging candidates any sums in cash or kind for temporary employment either directly or indirectly. Operating a TWA requires a licence, granted only after meeting several requirements, including regularised contributions to tax and social security and making a security deposit equal to 150 months of the minimum monthly salary plus the global contribution rate. TWAs contracting workers abroad must pay a 10 % deposit of the workers' remuneration to the public employment service (Instituto do Emprego e Formação Profissional (IEFP))<sup>(71)</sup>, provide medical benefits through insurance if not covered in the receiving Member State, and ensure repatriation of workers upon contract completion, employment termination or non-payment of wages.

Unlike TWAs, which require a licence, private recruitment agencies<sup>(72)</sup> only need to provide some details to the IEFP, including their name, address in Portugal, tax or commercial registration number and supporting documentation. They must ensure responsible repatriation of job candidates via a deposit or bank guarantee equivalent to 13 times the minimum monthly remuneration. For placements abroad, recruitment agencies must inform the consular affairs service electronically, ensure that the TCN has a residence permit or work authorisation,

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<sup>(67)</sup> These classifications are outlined in the Act of 20 April 2004 on employment promotion and labour market institutions.

<sup>(68)</sup> <https://lang-psz.praca.gov.pl/en/rejestr-agencji-zatrudnienia>.

<sup>(69)</sup> This was established within the scope of an interview with the labour inspectorate for the purpose of European Labour Authority research.

<sup>(70)</sup> Decree-Law No. 260/2009, of September 25, on the legal framework for the operation and licensing of private placement agencies and temporary work agencies (Decreto-Lei n.º 260/2009 de 25 de Setembro, que regula o regime jurídico do exercício e licenciamento das agências privadas de colocação e das empresas de trabalho temporário), Official Gazette no. 187/2009, Series I of 25 September 2009, <https://diariodarepublica.pt/dr/legislacao-consolidada/decreto-lei/2009-63511624> (consolidated version)

<sup>(71)</sup> This corresponds to the expected duration of the contracts and at least two months of remuneration or the value of the remuneration, if the contract is shorter than two months, plus the cost of repatriation trips.

<sup>(72)</sup> A recruitment agency is a 'natural or legal person, not belonging to the Public Administration, who, by mediating between the supply of and demand for employment, promotes the placement of jobseekers, without being part of the resulting labour relations, by carrying out at least one of the [following] services': (1) receipt of job offers; (2) registration of jobseekers; (3) placing jobseekers; and (4) selection, counselling or vocational training, provided it is carried out with a view to placing the jobseeker (Article 2(a) and Article 14, Decree-Law No 260/2009, of September 25).

provide access to medical services and adequate accommodation, and arrange repatriation within six months if the employment contract is not fulfilled for reasons not attributable to the jobseeker.

### **Slovenia**

In Slovenia, TCNs can be recruited through TWAs and other intermediaries, including public employment services and social networks such as job fairs and job portals. Employers have various contractual options, ranging from permanent and temporary contracts, full-time and part-time employment, agency work, and work suitable for students or pensioners. Among these, permanent contracts of indefinite duration are the predominant type of employment. In principle a TCN can be employed only on a full-time basis (40 hours per week). Exceptions include TCNs with at least a higher education qualification or those whose working time is reduced in accordance with pension and disability insurance regulations or parental protection regulations.

The Labour Market Regulation Act <sup>(73)</sup> defines an employer supplying workers to user undertakings as any legal or natural person who concludes employment contracts with workers to provide work to the user. This employer must obtain a permit and be listed in the register of domestic or foreign legal and natural persons authorised to perform this activity (see Article 163(2) Article 167 of the act). While TWAs appear fall under this definition, need a special permit and must be listed in the relevant registry, recruitment agencies remain unregulated.

Although national legislation allows temporary agency workers to be posted, the employment of TCN workers through TWAs has been restricted. TWAs are not allowed to obtain a single permit for TCN workers, nor a permit for seasonal work, and are only authorised to facilitate the employment of TCN workers who (i) already have unrestricted access to the Slovenian labour market, (ii) possess a valid single residence and work permit or (iii) are EU Blue Card holders. This rule significantly limits the potential pool of TCN workers to be posted by TWAs (Krapež, 2024). The ministry responsible for labour can revoke a permit and remove a TWA from the register if it posts TCN workers outside the specified categories. The stakeholders interviewed confirmed that TWAs do not recruit TCNs in their home countries to post them from Slovenia. Posted workers interviewed also indicated that they usually engage with TWAs only after obtaining (permanent) work permits.

## **2.3. Mobility patterns and flows of TCN migration and posting in the EU**

**Traditionally classified as countries of emigration, in the last decade all three case study Member States have transitioned to countries of immigration.**

### **Poland**

Poland has rapidly become a receiving country of TCN workers linked to labour market demands and ties with the countries in the former Soviet Union and to the facilitated entry rules introduced for these specific nationalities. Despite this, as at 2023, Poland's total share of the TCN population remained relatively modest, about 2 % of the total population. Yet, according to Eurostat data, it has been growing steadily since the 2010s. The TCN population is critical to the country's supply of workers.

### **Portugal**

Like Poland, historically a country of emigration, Portugal has seen an increasing inflow of international migrants during the past two decades. While for a long time Portugal had experienced outward migration, in 2022, for the sixth consecutive year, the number of immigrants exceeded that of emigrants. According to Eurostat <sup>(74)</sup>, the total number of immigrants entering Portugal increased from 14 668 in 2012 to 167 098 in 2022. The number of immigrants from outside the EU-27 has grown significantly during this period in both absolute and relative terms (from 3 715 or 25.3 % of the total immigrants to 96 905 or 58 % of the total of immigrants) <sup>(75)</sup>.

### **Slovenia**

Lastly, over the past 10 years, immigration to Slovenia has significantly increased, primarily driven by TCNs originating from the Western Balkans. As a result, in 2023, the total number of working-age immigrants (15–

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<sup>(73)</sup> Labour Market Regulation Act (Zakon o urejanju trga dela (ZUTD)), *Official Gazette of the Republic of Slovenia*, No 80/10 et al., <https://pisrs.si/pregledPredpisa?id=ZAKO5840>.

<sup>(74)</sup> Eurostat, migr\_imm1ctz series, data accessed 11 February 2025.

<sup>(75)</sup> Eurostat, migr\_imm1ctz series, data accessed 11 February 2025.

64 years old) reached 117 800, that is, 8.8 % of the total population, with most being TCNs (8 % of the total population). Immigrants also make up 9.14 % of Slovenia’s employed population, while TCNs account for 8.25 % of the employed population in Slovenia (see Figure B1 in Annex B).

**The composition of TCNs by nationality in the three countries could be influenced by existing immigration rules at the national level.**

**Poland**

Looking at the shares of foreign nationalities in the Polish workforce, according to Statistics Poland, the national statistics institute of Poland, Ukrainians constitute the largest group of workers, in January 2024 accounting for 68.7 % of all foreign workers (see Table B1 in Annex B), followed by workers from Belarus and Georgia. These last two post-Soviet countries also benefit from facilitated access to the Polish labour market. In 2023, Poland issued 642 763 first residence permits to TCNs, while another 26 were issued to nationals of EFTA states <sup>(76)</sup> (see Table 1 for the total number of first residence permits issued by Poland in 2023). Looking at nationalities, according to Eurostat data, the number of first residence permits issued in 2023 to Ukrainians was slightly lower than those issued to citizens from Belarus (240 634 compared with 255 595). However, it is worth noting that in 2021, the year before the outbreak of the war, Ukrainians were issued with 730 470 first residence permits. This illustrates that the numbers of first residence permits were led by Ukrainians (until the outbreak of war in 2022), followed by citizens of other post-Soviet countries and of Asian and South-East Asian countries, which account for a growing number of entries into Poland (see Table 1).

Similarly, statistics on declarations of entrustment of work show a decrease in the number of work legalisations for Ukrainians starting in 2022, while the importance of Ukraine as a source of workforce remains significant (see Table B2 in Annex B). Facilitated labour market access through the declaration of entrustment of work introduced an essential dynamic to the Polish labour market, enabling the mitigation of skill shortages by using this pool of incoming workers. Prior to the war (2021), there were 1 635 104 accepted and registered declarations for Ukrainians in Poland. This number has decreased since the outbreak of war: while in 2022, the first year of war, the number of registrations recorded for Ukrainians was 610 824, in 2023, there were only 175 433 registered declarations.

These statistics indicate that, while Ukrainians continued to arrive in Poland, those who have entered since 2022 are legitimising their stay and work through the legal pathway known as ‘notifications of entrusting work to Ukrainians’. This process is based on a more recent law that came into effect in March 2022, designed to address the needs of Ukrainians displaced by the conflict. In 2023, a total of 1 078 041 notifications for the legalisation of work for Ukrainians were submitted. Although the methods of legalising work may be changing for this group, the numbers seem to continue to grow <sup>(77)</sup>. In this study, the Ukrainians interviewed all arrived in Poland before the temporary protection <sup>(78)</sup> regime was activated. Even before the war, Ukrainians were the main group of TCNs coming to Poland for work purposes.

Table 1: Number of first residence permits issued to TCNs in Poland for the top 10 countries (\*) of citizenship in each year, 2017–2023

	2017	2018	2019	2020	2021	2022	2023
<i>Total</i> <sup>(79)</sup>	688 912	648 169	724 416	598 047	967 345	700 264	642 789
UA	587 969	523 704	599 468	488 858	730 470	285 496	255 595

<sup>(76)</sup> The EFTA states are Iceland, Liechtenstein, Norway and Switzerland.

<sup>(77)</sup> Data on declarations and notifications of entrusting work are publicly available from the Ministry of Labour and Social Policy (<https://psz.praca.gov.pl/web/urzed-pracy/-/8180075-zezwozenia-na-prace-cudzoziemcow>).

<sup>(78)</sup> Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof (OJ L 212, 7.8.2001, p. 12); Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection (OJ L 71, 4.3.2022, p. 1).

<sup>(79)</sup> For Tables 1, 2 and 3, the total for each year includes all first-residence permits issued that year (not just those issued to the top 10 countries).

BY	42 984	BY	52 581	BY	54 107	BY	50 923	BY	130 903	UA	264 037	UA	240 634
MD	7 819	IN	7 456	GE	9 283	RU	11 326	RU	23 473	TR	19 912	TR	17 843
IN	6 382	TR	7 109	RU	8 989	GE	4 906	TR	10 001	IN	17 170	IN	13 684
TR	6 309	MD	6 752	MD	6 343	TR	4 707	IN	7 737	GE	15 569	GE	12 403
RU	4 878	RU	6 365	TR	5 798	IN	4 449	GE	7 064	RU	12 292	PH	8 799
CN	3 931	GE	5 186	IN	5 747	MD	3 620	MD	6 006	MD	8 757	RU	7 969
NP	2 704	CN	4 063	CN	3 388	KZ	2 356	PH	4 648	UZ	8 396	UZ	7 859
VN	2 136	NP	3 829	PH	2 708	VN	1 959	KZ	4 292	PH	6 444	KZ	6 884
KZ	1 954	AZ	2 640	VN	2 613	IN	1 770	UZ	3 785	KZ	5 956	MD	6 414

(\*) Azerbaijan (AZ), Belarus (BY), China (CN), Georgia (GE), India (IN), Kazakhstan (KZ), Moldova (MD), Nepal (NP), Philippines (PH), Russia (RU), Türkiye (TR), Ukraine (UA), Uzbekistan (UZ), Viet Nam (VN).

Source: Eurostat, migr\_resfirst, data accessed 11 February 2025

### Portugal

In Portugal in 2023, 134 754 first residence permits were issued to TCNs, while another 1 153 were issued to nationals of the four EFTA states. The total number of first residence permits issued in 2023 (135 907) represents a 25 % increase from the previous year and a 299 % increase compared with 2017 (see Table 2). Among the top 10 nationalities, Brazilians continued to stand out with the most permits granted. Together with citizens of other Portuguese-speaking countries (Angola, Cabo Verde, Guinea-Bissau), they accounted for 44.7 % of all first residence permits issued in 2023. Immigration to Portugal remains strongly characterised by its special relationship with Portuguese-speaking countries and has been closely linked with employment opportunities especially since the early 2000s (Carvalho, 2022). This is also reflected in the composition of incoming TCNs, in terms of nationality and country of origin, which has become more diverse over time. While in the 1990s, Portuguese-speaking African countries, such as Cabo Verde and Angola, were the main countries of origin, subsequent waves of immigrants included mainly citizens of Brazil and also of eastern Europe (Ukraine, Moldova), Africa (Cabo Verde, Angola, Guinea-Bissau, São Tomé and Príncipe) and more recently Asia (China, India, Nepal, Bangladesh) (Carvalho, 2022; Reis de Oliveira, 2023). Despite a decrease in inflows in the two years (2020 and 2021) following the outbreak of the COVID-19 pandemic, the number of foreign citizens residing in the country continued to grow, exceeding 700 000 (77 % of which were TCNs), a stock never before reached in Portugal (Reis de Oliveira, 2023). Brazilian nationals constitute the largest immigrant community in Portugal, representing almost a third of the foreign population (Table B3 in Annex B).

Table 2: Number of first residence permits issued to TCNs in Portugal for the top 10 countries (\*) of citizenship in each year, 2017–2023

	2017		2018		2019		2020		2021		2022		2023
<i>Total</i>	34 073	<i>Total</i>	61 741	<i>Total</i>	93 475	<i>Total</i>	84 397	<i>Total</i>	84 805	<i>Total</i>	108 684	<i>Total</i>	135 907
BR	11 574	BR	28 210	BR	48 796	BR	42 245	BR	39 456	BR	46 734	BR	38 686
CN	2 602	NP	4 211	IN	6 267	IN	7 172	IN	7 407	IN	7 358	IN	12 113
CV	2 060	IN	4 094	NP	5 010	AO	4 829	AO	4 597	AO	6 698	BD	10 072
AO	1 831	AO	2 877	AO	4 478	CV	4 224	CV	3 889	BD	6 131	AO	8 527
IN	1 801	CV	2 565	CV	4 380	NP	3 880	GW	3 746	CV	4 490	CV	8 050
NP	1 746	CN	2 335	GW	3 457	GW	3 378	NP	2 759	PK	3 978	NP	7 837
UA	1 247	BD	1 954	BD	2 396	BD	2 154	USA	2 475	NP	3 854	PK	6 817
GW	1 120	GW	1 907	CN	2 175	ST	1 580	BD	2 132	GW	3 672	GW	5 436
VE	924	VE	1 693	VE	1 888	CN	1 414	PK	2 006	USA	3 275	USA	4 743
ST	772	UA	1 547	UA	1 829	VE	1 412	ST	1 980	ST	2 709	RU	4 731

(\*) Angola (AO), Bangladesh (BD), Brazil (BR), Cabo Verde (CV), China (CN), Guinea-Bissau (GW), India (IN), Nepal (NP), Pakistan (PK), Russia (RU), São Tomé and Príncipe (ST), Ukraine (UA), United States of America (US), Venezuela (VE).

Source: Eurostat, migr\_resfirst, data accessed 11 February 2025.

## Slovenia

In Slovenia, in 2023, a total of 31 814 first residence permits were issued to TCNs and another 41 to nationals of the EFTA states (refer to Table 3 for the total number of first residence permits issued by Slovenia in 2023). Among the top 10 nationalities, citizens from Bosnia and Herzegovina have consistently been the main group to receive first residence permits (11 978 in 2023). Since 2019 they have been followed by citizens from Kosovo <sup>(80)</sup>, Serbia and North Macedonia. Citizens of other nationalities, including Russia, Türkiye, Ukraine, India, Montenegro and China, have also been granted permits, although the annual numbers remain in the hundreds. In terms of countries of origin, immigration to Slovenia is characterised by the historical movement of citizens from the other republics of the former Yugoslavia, which continued following its dissolution and armed conflicts in the 1990s. Since Slovenia joined the EU in 2004, and notably since 2012, there has been a further increase in the number of immigrants coming from the region. Geographical proximity, language and cultural similarities, as well as bilateral agreements concluded between Slovenia and Bosnia and Herzegovina and between Slovenia and Serbia, are the main reasons why emigrants from the Western Balkans chose Slovenia (Danaj et al., 2020). The main and by far the largest group of immigrants comes from Bosnia and Herzegovina followed by Kosovo, Serbia and North Macedonia. In 2022, there were also 6 223 people coming from Ukraine, displaced by the armed conflict (see Figure B2 in Annex B).

Table 3: Number of first residence permits issued to TCNs in Slovenia for the top 10 countries (\*) of citizenship in each year, 2017–2023

	2017		2018		2019		2020		2021		2022		2023
<i>Total</i>	19 609	<i>Total</i>	29 632	<i>Total</i>	31 517	<i>Total</i>	19 010	<i>Total</i>	27 099	<i>Total</i>	32 781	<i>Total</i>	31 855
BA	10 414	BA	15 714	BA	14 878	BA	8 588	BA	11 705	BA	13 994	BA	11 978
RS	3 259	RS	5 147	KS	5 862	KS	3 904	KS	7 058	KS	8 029	KS	6 492
KS	2 016	KS	3 819	RS	5 105	RS	2 497	RS	3 238	RS	3 506	RS	3 888
MK	1 473	MK	2 061	MK	2 112	MK	1 299	MK	1 684	MK	2 478	MK	2 906
RU	458	RU	532	RU	574	RU	394	RU	580	RU	841	RU	1 327
UA	289	TR	368	CN	410	TR	328	TR	530	TR	793	IN	915
TR	265	UA	318	UA	350	UA	258	UA	217	UA	341	TR	830
CN	206	CN	242	TR	321	ME	185	ME	213	IN	314	CN	446
ME	113	ME	177	ME	208	CN	176	IN	120	ME	265	BD	220
SY	107	US	131	US	143	US	67	CN	116	CN	230	NP	203

(\*) Bosnia and Herzegovina (BA), Bangladesh (BD), China (CN), India (IN), Kosovo (KS), Montenegro (ME), North Macedonia (MK), Russia (RU), Serbia (RS), Syria (SY), Türkiye (TR), Ukraine (UA), United States of America (US).

Source: Eurostat, migr\_resfirst, data accessed 11 February 2025

**TCNs who enter the three countries for employment reasons are typically employed in labour-intensive sectors where labour shortages are reported.**

## Poland

Looking at the reasons for granting first residence permits, it is overwhelmingly the case that TCNs enter Poland for employment reasons. The only exception is from 2022 onwards when large flows of migration occurred from Ukraine for humanitarian reasons. Regarding the position of Ukrainians in the Polish labour market, a National Bank of Poland survey found that both pre- and post-war Ukrainian migrants earn an average net salary in the range of PLN 3 000–4 000 (approximately EUR 700–940). Notably, for pre-war migrants, median wages increased by approximately 38 % between 2019 and 2022. Additionally, there was a 6 % rise in median wages between the 2022 and 2023 surveys (NBP, 2023). These findings indicate a relatively successful integration of the Ukrainian workforce in Poland. An analysis of reported wages by MRPIPS (2024) indicates that Ukrainians

<sup>(80)</sup> This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.

working in the information and communications sector had the highest earnings, whereas the lowest earnings were observed in service activities and domestic employment. According to stakeholder interviews conducted in Poland, Ukrainians are predominantly employed in construction, service industries and domestic care work.

### **Portugal**

First residence permits issued to TCNs are primarily for employment purposes, indicating that immigration to Portugal is in many cases work related. Work reasons accounted for 55 161 (or 40.6 %) of all first residence permits issued in 2023, while family reunification was the second main reason at 32.8 %, and 17.6 % of permits were issued for educational purposes <sup>(81)</sup>.

In Portugal, TCN workers tend to be over-represented in the lower paid segment of the labour market and in certain sectors, albeit with marked differences by nationality. TCNs are more represented in lower paid occupational groups such as service workers, salespersons, plant and machine operators, assembly workers and unqualified workers. The share of unqualified workers is particularly high (over 50 %) among nationals of Nepal and Guinea-Bissau but less so in the case of Brazilian nationals (25 %) (Reis de Oliveira, 2023). In terms of sectors, TCNs are mostly concentrated in construction, wholesale and retail trade, hotels and restaurants, and real estate and business services. From the late 1990s, immigration to Portugal was mainly driven by the demand for labour in construction. However, the share of those employed in the construction sector has decreased over the years (Danaj et al., 2023b). Brazilian nationals mainly work in services, especially hotels and restaurants, while many Asian nationals are employed in agriculture.

### **Slovenia**

Similarly, in Slovenia, the majority of first residence permits issued to TCNs are for employment purposes. Out of 31 855 first residence permits issued in 2023, those for work reasons accounted for 20 714 (or 65 %), while family reunification was the second main reason at 26 %, and 8 % were granted for educational purposes<sup>82</sup>. Citizens of Bosnia and Herzegovina constitute the main group to be issued first permits for employment by Slovenia: in 2023, 40.70 % of the total first permits for employment purposes were issued to citizens of Bosnia and Herzegovina. Moreover, of all first residence permits issued to citizens of that country in 2023, 70.38 % were for employment purposes. TCN workers tend to be over-represented in the construction, transport and storage, and manufacturing industries. Construction is the sector with the largest share of TCNs, reaching 40.4 % in 2021, followed by transport and storage with 28 %, and manufacturing with 10.9 % of total employment (Danaj et al., 2023a).

**Posting of TCNs has been on the rise over the last 10 years; posted TCNs predominantly come from European neighbouring or historically linked countries of origin and are posted mostly from eastern and southern Member States, yet systematic data are missing.**

Turning to the numbers and flows of TCNs entering the posting supply chain in the EU, it is important to note that, beyond the three cases studied here, TCN posting patterns and trends have been one of the main topics discussed in both academic and grey literature. Our review and analysis of such extant work show that exact figures for all sending and receiving Member States and for the nationality of the TCNs and their sectoral distribution are not systematically available. The partial data available still provide a picture of this growing trend and its characteristics. In 2022, on average, one out of four of incoming posted workers was a TCN (European Commission: Directorate-General for Employment, Social Affairs and Inclusion et al., 2024a) <sup>(83)</sup>. TCNs come from various source countries with the main flows being Ukrainians and Belarusians entering through Poland and Lithuania (ELA, 2023a), Brazilians through Portugal (ELA, 2023a), and those from Bosnia and Herzegovina and other citizens of the Balkan region through Slovenia (ELA, 2023a). In general, the main destination countries of posted TCNs are Belgium, Germany and the Netherlands (Heinrich, Shire and Mottweiler, 2020; Lillie, N., Ndomo, Q. Kärkkäinen, K. Gheorghiev, O. and Danaj, S. 2022, unpublished data; Mussche and Lens, 2018). Slovakia is also increasingly becoming a receiving country of posted migrant workers from non-EU countries such as Serbia, Bosnia and Herzegovina and Ukraine (Danaj et al., 2023a; Hollan and Danaj, 2018; Kresal, 2021).

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<sup>(81)</sup> Eurostat, migr\_resfirst series, data accessed 11 February 2025.

<sup>(82)</sup> Eurostat, migr\_resfirst series, data accessed 11 February 2025

<sup>(83)</sup> One of the main statistical data sources on the posting of workers is data from the national prior declaration tool of the receiving Member States.

**Poland is one of the leading countries from which workers are posted, while Portugal and Slovenia, although smaller in scale, are also becoming increasingly important sending countries.**

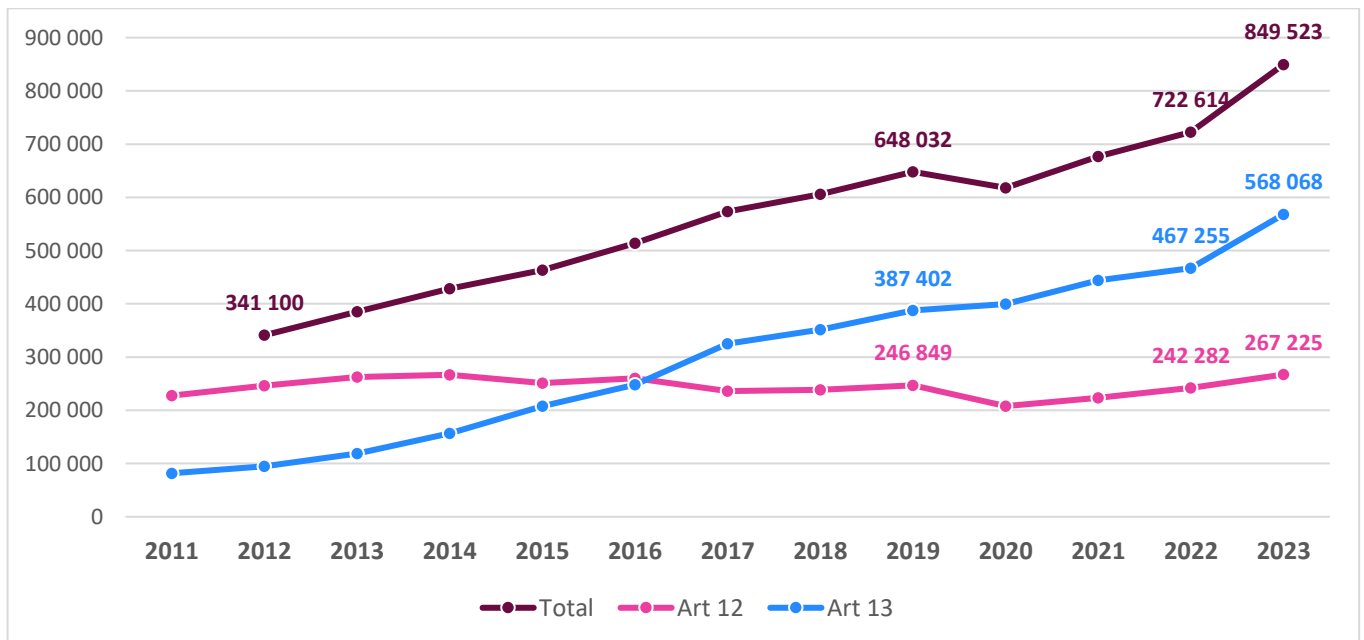
**Poland**

In the analysis of the dynamics of posting flows in the three cases, existing studies identify Poland as one of the largest sending countries for the TWA workers mostly being sent to Germany and the Netherlands (Heinrich, Shire and Mottweiler, 2020). Other sets of data <sup>(84)</sup> indicate that, in 2022, TCNs were most frequently sent from companies established in Poland (30 %) (European Commission: Directorate-General for Employment, Social Affairs and Inclusion et al., 2024a). According to the data collected through the number of PDs A1 <sup>(85)</sup> issued by a given state, Poland is one of the two leading Member States from which workers are posted (along with Germany). In 2023 Poland issued almost 850 000 PDs A1. Together, these two Member States issued more than 50 % of all PDs A1 in 2023.

Notably, the increase can be analysed in relation to the number of PDs A1 issued under Article 13 of Regulation (EC) No 883/2004 on social security coordination to persons who pursue an activity as an employed/self-employed person in two or more Member States. In 2023, approximately 1.7 million PDs A1 were granted under Article 13, covering roughly 1.5 million people. One third of these PDs A1 were issued by Poland (568 068 PDs A1) (see Figure 1). The main Member State issuing PDs A1 under Article 13, Poland, shows another year of strong growth in that more than 100 000 PDs A1 were issued in 2023 than in 2022. This means that the number has continuously been on the rise from 2010 to 2023, even during the COVID-19 pandemic.

The top five destinations for postings from Poland (based on the number of PDs A1 issued under Article 12 of Regulation (EC) No 883/2004) have consistently been Germany, France, the Netherlands, Belgium and Sweden. The latest data indicate that, in 2023, 86 % of all PDs A1 issued by Poland under Article 12 involved these five countries (146 073 to Germany, 22 085 to France, 24 746 to the Netherlands, 19 946 to Belgium and 11 960 to Sweden) (European Commission, 2025: 26).

Figure 1: Number of PDs A1 issued by Poland, 2011–2023



Source: European Commission, 2025: 20, 29, 40.

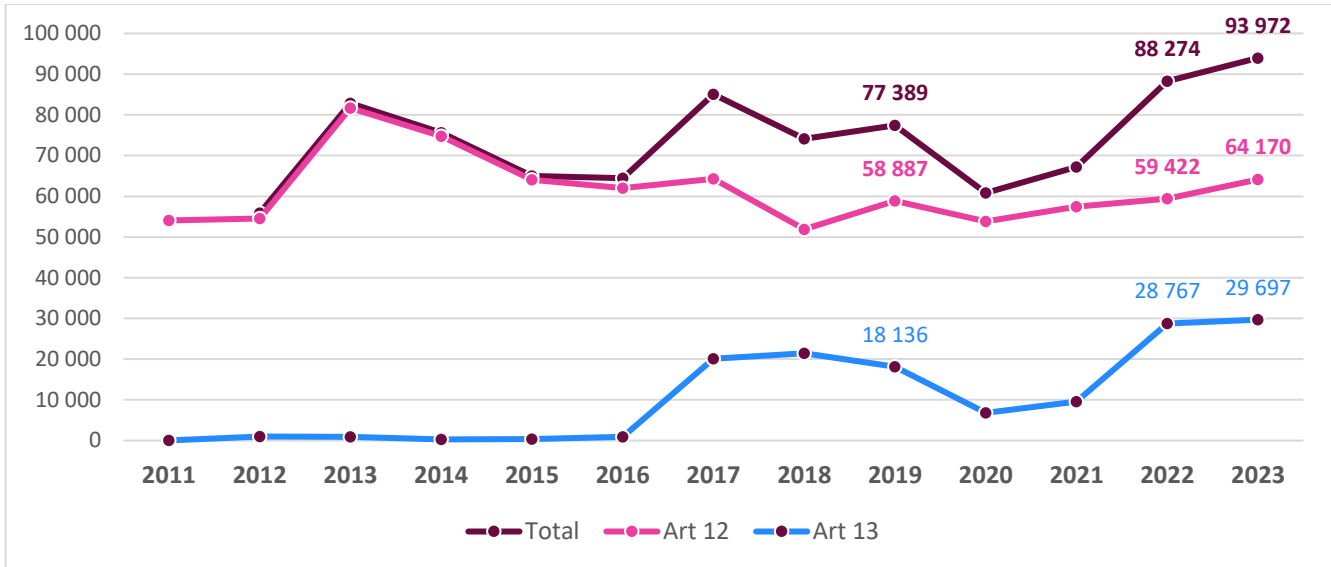
<sup>(84)</sup> Data from the prior declaration tools for the reference year 2022.

<sup>(85)</sup> PDs A1 are issued to various groups of people but mainly to 'posted' workers and the self-employed persons (see Article 12 of Regulation (EC) No 883/2004) and to persons who pursue an activity as an employed/self-employed person in or more Member States (see Article 13 of Regulation (EC) No 883/2004).

## Portugal

In terms of posting, Portugal is also primarily a sending country. In 2023, the total number of PDs A1 issued by Portugal was 93 972, a 6.5 % increase compared with 2022 (88 274) (European Commission, 2025: 24). The increase was driven by the rising number of PDs A1 issued under Article 13 which covers employed and self-employed people active in two or more Member States (see Figure 2). In 2023, the top five Member States receiving posted workers from Portugal were, in order of importance, France, Belgium, Spain, Germany and the Netherlands. France, Belgium and Spain accounted for 82 % of the total number of PDs A1 issued under Article 12 (European Commission, 2025: 52).

Figure 2: Number of PDs A1 issued by Portugal, 2011–2023



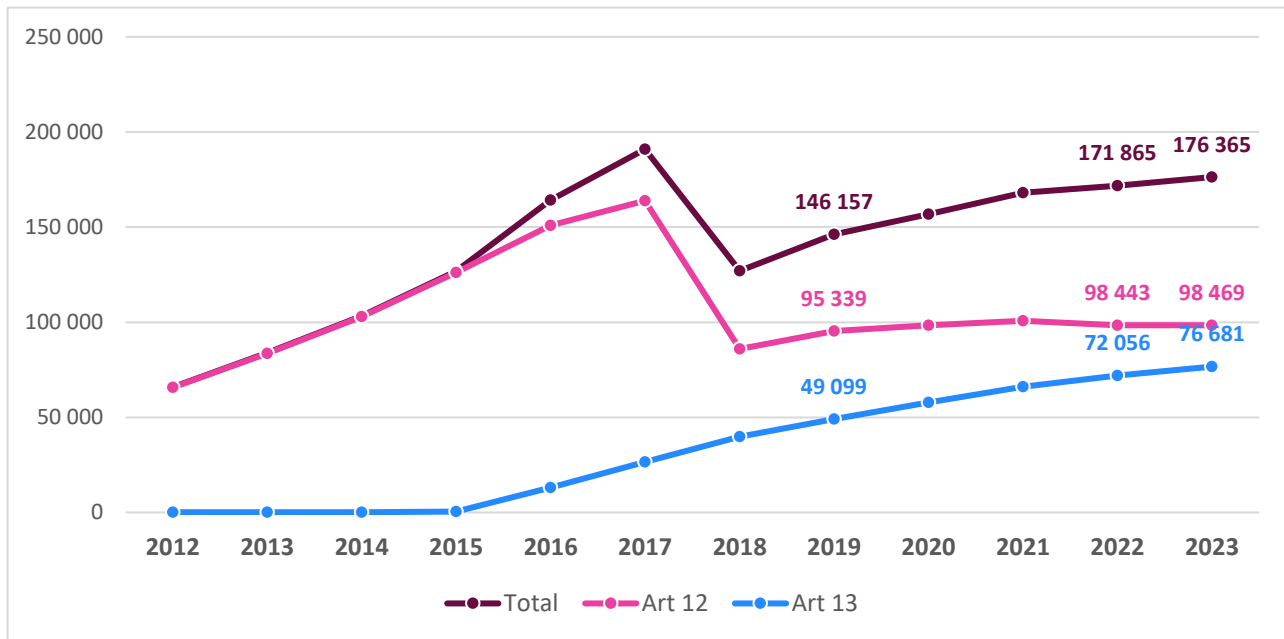
Source: European Commission, 2025: 20, 29, 40.

## Slovenia

Slovenia is also one of the main countries posting workers within the EU, a trend that continued to grow even during the first year of the COVID-19 pandemic. The total number of PDs A1 issued can be compared with the total number of employed people in the issuing Member State. In 2023, a PD A1 was issued to the equivalent of 2.1 % of the employed population. The importance of the posting of workers for Slovenia can be observed in the share of total employment. In figures for 2023, Slovenia and Luxembourg stand out with a share of 16 % of the population each (European Commission, 2025: 23). While the number of PDs A1 issued declined in 2018 but rose again in the following year, the increase was more significant in the number of PDs A1 issued under Article 13, that is, for workers operating in more than two other Member States (see Figure 3). The number of PDs A1 issued under Article 12 remained almost the same as in 2022. The main receiving countries in 2023 were Germany, Austria and Belgium, followed by Italy, Croatia and the Netherlands. Germany was by far the main receiving country having received almost 60 % of all postings (European Commission, 2025: 52).



Figure 3: Number of PDs A1 issued by Slovenia, 2011–2023



Source: European Commission, 2025: 20, 29, 40.

**Ukrainians play a significant role in the posting supply chain and are predominantly posted from Poland, whereas more than 70 % of posted workers from Slovenia are TCNs, with the majority being citizens of Bosnia and Herzegovina. There are limited data available on posted TCNs from Portugal.**

### Poland

Among posted TCNs, previous studies noted that Ukrainians account for the majority of recent incoming postings in several Member States. Around 80% of TCN workers posted from Poland had the Ukrainian nationality in 2021 (ELA, 2023a:92,93). In several Member States, more than a quarter of the posted TCNs have the Ukrainian nationality (Belgium, Lithuania, the Netherlands, and Austria) and third country nationals were most frequently posted by companies established in Poland (30%) (European Commission: Directorate-General for Employment, Social Affairs and Inclusion et al., 2024a:10). Poland seems to be by far the main country from which these workers are entering the posting supply chain (Danaj et al., 2023a). In past empirical work, Poland has been referred to as a 'recruitment agency' for posted TCNs (Lens, Mussche and Marx, 2022), but as shown by Danaj et al. (2023a) most of these workers continue to be based in Poland (similar to nationals of Bosnia and Herzegovina in Slovenia), suggesting that posting is not the main reason these workers come to certain countries, particularly in central and eastern Europe. It is notable that, since the military conflict in Ukraine began in 2014, the number of Ukrainian citizens resident in the EU has increased rapidly (Kall et al., 2020).

The nationality of posted workers is not made publicly available and must be requested from the Polish Social Insurance Institution. Research shows that, in 2021, under Articles 12 and 13 of Regulation (EC) No 883/2004, Poland issued 115 240 PD A1s for TCNs (Kielbasa et al., 2022). This appears to be a notable upwards trend in the issuance of PDs A1 to TCNs from Poland, as evidenced by a comparison with figures from 2018 (23 269 PDs A1 issued to TCNs). These data indicate a threefold increase in the total number of PDs A1 issued to TCNs. Notably, among the TCNs posted, Ukrainians are identified as the most prominent group (Danaj et al., 2023a). In 2021, 79.8 % of the PDs A1 issued for TCNs were for Ukrainians (91 960 PD A1s). This trend has been consistent in the data reported over the past years. Belarusian nationals follow Ukrainians, although the number of PDs A1 is much smaller (18 233 PD A1s in 2021). In 2021, PDs A1 issued to TCNs were mainly in relation to Germany (6 125 PDs A1 under Art. 12), followed by Belgium (3 043) and the Netherlands (2 765) (Kielbasa et al., 2022).

### Portugal

There are limited data available on posted TCNs, and there appears to be an overall scarcity of studies and research on this topic in Portugal. According to the literature on posting, in 2021, Brazilian workers were reported as one of the main TCNs posted by Portuguese companies to Belgium (European Commission: Directorate-

General for Employment, Social Affairs and Inclusion et al., 2024d: 26) and France (Munoz, 2022). According to De Smedt and De Wispelaere (2024), in 2023, there were 6 965 Brazilian workers posted from Portugal to Belgium (representing 14 % of all TCNs posted to Belgium in that year), mainly to the construction sector. In the case of France, the number of Brazilian workers posted to the country increased from 550 in 2017 to 2 593 in 2020, becoming the third largest nationality within the group of posted TCNs (Munoz, 2022). Lastly, in the Netherlands, TCNs accounted for 9 % of all posted workers received from Portugal in 2021 (Heyma, Bussink and Vervlier, 2022) <sup>(86)</sup>.

### **Slovenia**

Examining the characteristics of workers posted from Slovenia, since 2019 the majority have been TCNs. The total share of TCNs posted from Slovenia has increased from 44 % in 2018 to 71 % in 2023. Among TCNs, workers from Bosnia and Herzegovina represent the largest group of TCNs posted from Slovenia, accounting for 84 477 <sup>(87)</sup> out of the total 125 488 TCNs posted, or more than 67 %. They are followed by Serbians (16 %) and Kosovans (12 %). The number of Serbians has more than doubled since 2018, reaching more stable numbers since 2021, whereas the number of Kosovans has continued to grow from 2 837 in 2018 to 15 067 in 2023. Although the absolute numbers are still small, it is worth noting that the number of TCNs from Montenegro and North Macedonia more than doubled between 2018 and 2023. Additionally, the number of Albanians and Bangladeshis increased more than 12-fold in the same period (see Table B4 in Annex B).

### **Data is lacking on the posting of TCN workers in the EU, but construction and transport seem to be the leading sectors where TCN posting takes place across the EU.**

From a sectoral standpoint, construction is one of the main sectors employing posted TCNs in the EU labour market (ELA, 2023a, 2023b). Data on the total number of postings at the EU level in 2023 show that the EU-13 <sup>(88)</sup> issues a high share of PDs A1 in the construction sector (44.6 %) compared with the EU-14 <sup>(89)</sup> (8.4 %). For example, Slovenia (55.9 %) issues more than one in two PDs A1 for activities in the construction sector (European Commission, 2025: 31). While quantitative data are limited, estimates for 12 Member States indicate that a significant number of incoming posted TCNs are employed in the construction sector in Belgium, France and Austria. The total number of these workers ranges between 3 800 and 24 000 (Danaj et al., 2023b). The share of TCNs employed in the construction sector overall (not specific to posting) appears to be generally small, except in Belgium, where they account for a significant share (4.34 %) of total employment in the construction sector (Danaj et al., 2023b). Previous research has identified three main posting flows or corridors for TCN construction workers: citizens of Western Balkan countries, mainly from Bosnia and Herzegovina, North Macedonia, Serbia) via Slovenia to Austria and other Member States; Ukrainians via Poland to the Nordic countries and other Member States; and Tunisians and Moroccans, as well as other non-EU European workers, via Italy to central and western European countries (Cillo and Perocco, 2020; Danaj et al., 2020, 2023b; Kall et al., 2020).

### **Poland**

The main economic sectors employing the total number of workers posted from Poland are construction, transport, and health and care services. In terms of sectors and branches relevant to posting workers from Poland, under Article 12 of Regulation (EC) No 883/2004, approximately 45–50 % of all postings over the past five years have been in the construction sector (40.8 % in 2023). This is followed by postings in TWAs (9.8 % in 2023), health and social care (6.9 % in 2023) and agriculture (3.2 % in 2023). Turning to postings considering PDs A1 issued under Article 13, the leading sector is transport, specifically freight road transport, which accounts for almost half of all PDs A1 issued annually (40.3 % in 2023). It is followed by construction (27.8 % in 2023), health and social care services (9.8 % in 2022), and TWAs (1.5 % in 2023) (European Commission, 2025: 32, 41). Concerning TCN postings, according to previous research, although their absolute number were increasing, they remained a relatively small proportion of all postings from Poland. In 2021, of all PDs A1 issued for TCNs, 35.4 % were in transport, 10.6 % in construction, 16.6 % in TWAs and 2.7 % in health and social work. The majority of the TCNs posted from Poland were Ukrainian nationals, which was consistent across various sectors (Danaj et al., 2023a).

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<sup>(86)</sup> The figure refers to all sectors except road freight transport.

<sup>(87)</sup> Authors' calculations based on data from the Health Insurance Institute of Slovenia.

<sup>(88)</sup> EU-13: Bulgaria, Czechia, Estonia, Croatia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Romania, Slovenia and Slovakia.

<sup>(89)</sup> EU-14: Belgium, Denmark, Germany, Ireland, Greece, Spain, France, Italy, Luxembourg, the Netherlands, Austria, Portugal, Finland and Sweden.

## **Portugal**

In Portugal, in terms of PDs A1 issued under Article 12 of Regulation (EC) No 883/2004 in 2023, the main sector where workers are posted abroad is industry (almost 80 %), primarily construction (49 %), followed by services (20 %). TWAs employ a relatively high percentage of workers within the services sector. In 2023, they represented 12.3 % of PDs A1 issued by Portugal (European Commission, 2025: 32). The number of postings by TWAs has increased over the years, reflecting a more general trend of supplying labour through outsourcing and private LMIs, as evidenced in the Portuguese construction sector (Marques, Veloso and Oliviera, 2021). No systematic data exist on TCNs posted from Portugal in various sectors.

## **Slovenia**

Posting from Slovenia is dominated by TCNs operating in sectors like construction and international freight transport. Overall, data on postings by sector indicate that the main sectors of activity for posted workers are construction followed by services, and transport and storage. In 2022, while most PDs A1 in the construction industry were issued under Article 12, for the other two industries almost all PDs A1 were issued under Article 13. TWA posting from Slovenia was reportedly zero (European Commission: Directorate-General for Employment, Social Affairs and Inclusion et al., 2024c: 34, 43) More recent data for 2023 indicate that 99 % of PDs A1 issued under Article 12 were for industry, of which almost 60 % were for construction (European Commission, 2025: 32). TCNs are posted mainly in the construction industry. Data from 2021 show that 74.5 % of PDs A1 issued in the construction industry were for TCNs. TCNs were also issued for 69.5 % of PDs A1 in international freight transport, 68 % in installation/assembly and servicing and 61.7 % in other industry sectors. Nationals of Bosnia and Herzegovina were the main group in each of these sectors, with a share of 47.2 % of the total PDs A1 issued in construction, 49.9 % in installation/assembly and servicing, 42.7 % in international freight transport and 46.6 % in industry (Danaj et al., 2023a; Vah Jevšnik, Cukut Krilić and Toplak, 2022).

## 3. TCN recruitment and posting

The recruitment of TCNs, which involves their entry into the EU labour market through their first employment contracts, and their subsequent entry into the EU posting supply chain, spans multiple domains of study. The key focus areas include their initial **entry into the EU labour market** via a Member State and their **recruitment into the posting supply chain** within the EU labour market. In this chapter, we present the findings from the three case studies, covering both the entry of TCN workers into the EU labour market and their entry into the posting supply chain, and discuss how the focus areas intersect where relevant.

### 3.1. Experiences of posted TCN workers in the sending country

**Recruitment of TCNs into the posting supply chain in Poland and Portugal typically occurs after they have spent some time working in these countries following their entry into the EU. This is also partly true for TCNs in Slovenia.**

Evidence shows that TCN recruitment into the EU labour market and posting supply chain can occur either in non-EU countries of origin, such as China, Moldova, the Philippines or Ukraine, or within the EU after they have entered the labour market (Ceccagno and Sacchetto, 2020; Danaj et al., 2023a: 85–110). Bilateral agreements could also serve as a significant pathway for recruiting workers who then enter the posting supply chain (see Section 2.2). Two of the country case studies provided evidence that, indeed, facilitated access for certain TCNs to Poland and Portugal served as the primary route for workers accessing the EU. They were then recruited into the posting supply chain once they were already living and working in the EU.

#### **Poland**

A significant part of the recruitment of Ukrainians into the posting supply chain from Poland seems to take place during their legal stay in Poland after they have already obtained relevant permits and started their first job. As reported by all stakeholder respondents, including experts and representatives of trade unions, employer associations and public authorities, considering the facility of obtaining documentation for and entry to Poland (even before the Russian war of aggression), Ukrainian citizens typically enter Poland through their first job, which may not necessarily include any conditions on posting, and their status in Poland is legalised through the declaration of entrustment of work permits. In the construction sector, the workers interviewed (three Ukrainians and one Belarusian) reported that they had entered Poland through a permit allowing Ukrainians who live in the border zone between Poland and Ukraine facilitated entry (*Mały Ruch Graniczny*)<sup>(90)</sup> or through the declaration of work or via the visa-free regime applied to Ukrainian citizens. Interview findings suggested that Ukrainians arrive in Poland and begin working in an initial job, and it is only later that they either leave their first job and transition to another employer who posts them or their initial employer offers them posting as an opportunity to earn more. This indicates that posting for the workers interviewed could have been an appealing opportunity and an opportunity to earn more than if they continued to work in Poland. The quote below illustrates this:

*I had my contract of mandate in Poland and the employer paid me about EUR 50 extra a day. It was a lot at that time, I don't know how it was settled, they transferred this money to my account. (Posted TCN, construction worker, PL6)*

The facilitated access to the Polish labour market may indicate that LMIs did not need to recruit Ukrainian workers directly from their country of origin, even before the conflict. Instead, when looking at the employment records of the workers interviewed, a trend that emerged is that TCNs' first jobs in Poland, Portugal and Slovenia were secured through acquaintances and social connections. In a few cases in Poland and Slovenia, online job platforms (e.g. the OLX<sup>(91)</sup> in Poland) were cited. In line with this, the representatives from TWAs suggested that recruiting from Ukraine is not their primary business model at present because Ukrainians are able to arrive and find employment and become integrated into the local labour market in a relatively easy way. This was confirmed by the workers interviewed, as illustrated by the following quote from a Ukrainian worker who moved to Poland in 2018:

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<sup>(90)</sup> <https://www.gov.pl/web/ukraina/maly-ruch-graniczny-informacje-ogolne>.

<sup>(91)</sup> <https://www.olx.pl/>.

*I think it was May 2018. I was sitting with my family at the time [in Ukraine] ... in June or July a colleague from Warsaw called to say he had a job for me, they needed someone to do finishing work near Warsaw. I asked about the visa, this colleague told me that the employer would arrange everything. And so, it was. In a fortnight I had a phone call, I waited a few more weeks for the documents. And at the beginning of September, I came to Poland. It was also a big construction company. At first there was a contract of mandate, the rate was already higher, PLN 18 net, but without a flat. (Posted TCN, construction worker, PL7)*

The fieldwork indicates that, in both the care and construction sectors, the posting of Ukrainians from Poland to another Member State takes place at a later stage. This finding may be partially generalisable to workers from other post-Soviet countries with the same work and stay regulations in Poland. However, some substantial variation in recruitment exists across different sectoral dynamics, which are discussed further in the next subsection (on paying intermediaries or employers for services).

### **Portugal**

Similar to the situation in Poland, Portugal's labour mobility agreements facilitate the recruitment of TCN workers in a safe and legal way from key origin countries. One formal channel that companies can use for recruiting TCNs abroad is the labour mobility agreements between Portugal and non-EU countries, which are managed and coordinated by the national public employment service. The service has also signed agreements with Cabo Verde, India, Morocco and Mozambique, offering a legal and safe labour migration pathway for TCNs from these countries.

According to the employer organisations interviewed, as far as the construction sector is concerned, intra-company transfers and direct recruitment abroad are methods frequently used by large Portuguese companies to bring TCN workers to Portugal. Many of these companies have direct links to local labour markets through their established branches mainly in Brazil and Portuguese-speaking countries. Employer associations themselves play an active role in facilitating recruitment. For instance, the Employers' Association of Civil Construction and Public Works Industry (AICCOPN) recently started a programme in which TCNs are recruited and allocated to the organisation's own training centres with the prospect of an employment contract in Portugal. They are typically low-skilled TCN workers who are already employed by Portuguese companies in the source countries. The AICCOPN also acts as a direct liaison between government agencies and its member companies, initiating recruitment through targeted missions. One frequently utilised partner is the Portuguese Agency for Trade and Investment, which maintains an established network with similar agencies in non-EU countries. These missions are very much targeted at large companies and, admittedly, relatively modest in scale:

*We are talking about operations with a minimum of 25 workers involved because you need to have a certain scale to make the thing work. So far, the biggest was an operation in which a programme was set up for 45 workers in one go, but the average normally in this kind of actions is 18 to 22 workers. (Employer association representative, Portugal)*

According to AICCOPN, although the primary goal of these formally established channels and initiatives is to address labour shortages in the Portuguese labour market, when TCNs commence employment in Portugal with a company, they can be posted abroad if they are willing. In fact, as explained by the representative of the Institute for Social Security, it is common for employment contracts in the construction sector to include clauses that allow the movement of workers to other places of work, both inside and outside the national territory. The existence of such clauses, however, does not in itself indicate that workers are being hired for the purpose of being posted to another Member State, but rather this is often a matter of caution on the part of the employers in case they need to post such workers to provide services in another Member State. For example, Brazilian nationals do not need a tourist visa and can benefit from the support and social network provided by the Brazilian community in Portugal. Many of them already have family members or friends living in the country. They assist them in finding a job and obtaining a residence permit. This was the case for all the Brazilian posted workers interviewed. Their main motivation for migrating to Portugal was economic, although safety and a better quality of life were also mentioned. They either already had (the promise of) an employment contract or promptly secured a job upon their arrival through friends or acquaintances, mainly in the service or hospitality sector. In their initial job in Portugal that did not involve posting, they were typically employed informally (i.e. without a formal contract or paid social security contributions). It took some time for their employment situation to be formalised, as illustrated by the quote below:

*I went to see if there were any contributions paid, unfortunately there weren't, there was no record in my name and that's when I changed jobs and from the first month that I was in my second job I saw that there were already contributions paid, and I realised that I was already in a better situation. (Posted TCN from Brazil, construction worker, PT2)*

Overall, in the cases of Portugal and Poland, TCNs are often recruited into posting following arrival and some time spent working in the national territory of their entry Member State, as became apparent from the worker interviews. In practice, entering Portugal as tourists and regularising their status after arrival has been the most common entry pathway for many TCNs, including Brazilians. From a legal point of view, they are not considered irregular migrants if they find a job and apply for a residence permit before their tourist visa expires. Similarly, entering Poland for Ukrainians, is particularly accessible, and the process of regularisation is relatively straightforward if they have an employer in Poland. From the companies' perspective, there are several advantages, including reduced bureaucracy. It is also more efficient for employers to directly hire workers who are already in the country, rather than recruiting from source countries.

### **Slovenia**

In the case of Slovenia, recruitment of TCNs into the Slovenian labour market is the result of a combination of public and private operators, especially in the case of workers from Bosnia and Herzegovina and Serbia recruited through bilateral agreements. The Slovenian public employment services are responsible for addressing labour market demands in Slovenia. They review individual applications from employers based in Slovenia and forward the profiles or the job advertisements to the public employment services in Bosnia and Herzegovina (or Serbia). These services then refer suitable candidates to be considered for the positions. In practice, often the company has already established contact with its chosen candidate, typically through informal social networks or online platform advertisements. Recruiters approach potential workers through word of mouth, informal networks, billboards in border areas and online platforms. The primary method of recruitment, as reported by workers, is through acquaintances, friends and family members. One of them reported having secured employment online. In addition, the Slovenian public employment service has also organised job fairs in target countries, originally in Bosnia and Herzegovina and Serbia and more recently in Montenegro and North Macedonia. Slovenian companies participate in these fairs and make offers to potential workers. For workers from Bosnia and Herzegovina and Serbia, companies must comply with the procedures stipulated in the bilateral labour migration agreements.

Informal recruitment channels were mostly used while workers were residing in their country of origin, Bosnia and Herzegovina, with some being recruited during their stay in other countries where they previously resided or worked, such as Italy or Switzerland. Some workers also reported having themselves acted as intermediaries in the recruitment of other workers from Bosnia and Herzegovina to Slovenia. One of them claimed that he had facilitated the hiring of 40 drivers from Bosnia and Herzegovina in Slovenia, for his company and others. The recruitment occurs both ways: employers ask their employees if they know of any suitable candidates, and the employees recommend individuals they know as potentially good workers to their employers.

In the Slovenian case, based on the fieldwork conducted, there seems to be a distinction between how TCN workers are recruited in practice and the formal procedure. Regardless of whether the employer and the workers have been connected by an informal intermediary or a formal one (public employment service or recruitment agency), the public employment services in both countries must be involved as per the bilateral labour agreement between Slovenia and Bosnia and Herzegovina or Serbia. Once they have the candidate for the job, the employer must go through the procedure of getting an approval and eventually a permit for the worker through the Slovenian public employment service. The interviews with various stakeholders, especially the representative of Slovenia's public employment service, demonstrated that the procedure is followed properly; however, in almost all cases, employers have already identified the candidate they want before they submit their request to the office.

While recruitment through public authorities aims to address the needs of the Slovenian labour market, private formal and informal operators facilitate the recruitment of TCN workers for Slovenian companies, for both the national market and the posting supply chain, which explains the significant share of TCNs being posted (see Section 2.3). Some of the stakeholders and workers interviewed stated that some TCN workers are recruited to be posted from Slovenia. Some stakeholders noted that Slovenian companies recruit TCNs, because local workers are unwilling to be posted. Based on the fieldwork, most TCN workers in the construction and road transport sectors are reportedly recruited to be posted, although their contractual arrangements do not necessarily

reflect that. At the same time, the interviews showed that not all workers interviewed were posted by their first employer, although some were and this had been made clear to them during the recruitment process. It is not only employers who ask workers to agree to being posted abroad; sometimes it is the workers who accept job offers on the understanding that they will actually be working in other Member States like Germany or Austria.

**Some TCN workers may have paid intermediaries or employers for services like visas, administrative procedures and documentation, except in jobs in high demand like professional drivers, as evidenced by the case of Slovenia.**

TCNs being hired, implicitly, for the purpose of being posted via private operators is an area of previous research, arguably since this is where most vulnerability and precarity arises for the workers (FRA, 2019; Lillie and Wagner, 2015). Moreover, there are other emerging risks associated with this type of recruitment of TCNs from abroad, such as illegal payments demanded by intermediaries from workers in exchange for securing them employment in the Member State. Evidence of such practices on the part of LMIs and private operators was collected from the fieldwork conducted in Slovenia.

Most workers from Bosnia and Herzegovina interviewed reported that they did not pay for obtaining a job in Slovenia or for their visa, although nearly all mentioned knowing individuals who had made such payments. The visa processing fee for an employed worker is EUR 102 if the application is submitted at a Slovenian diplomatic mission or consular office abroad. If the application is lodged at the administrative unit in Slovenia, the fee is EUR 74.50 (which includes the EUR 4.50 additional fee for the application), plus a charge of EUR 15.47 for the residence permit in both cases (OJ of RS, No 134/23). Yet, three workers were charged different amounts by their employers, namely EUR 450, EUR 600 and EUR 800. An NGO representative reported that Kosovan workers paid their employers at least EUR 500 for the entry visa, and they also dealt with cases where the payment was between EUR 3 000 and EUR 3 500. This amount is either deducted from the worker's salary or they are asked to pay it in cash, so that there is no paper trail for these payments. The quote below illustrates both the amount and the method by which the money is retrieved from workers:

*Unfortunately, I paid for the first visa. The first company I worked for took EUR 600 for the visa, but we know that the visa cost about EUR 100–200. I wasn't the only one to pay, several colleagues did (I know, at least 10 of them who did). They took these EUR 600 from our pay. (Posted TCN, construction worker, SI4)*

Apart from visa expenses, workers are also charged for other services. One worker explained that some employers charge workers from Bosnia and Herzegovina EUR 300–600 for registering them at an address in Slovenia, which is a requirement for their residence permit applications and renewals and tax residence status. Referring to cases where workers are not actually working but are just waiting to meet the formal criteria before being posted, a trade union representative claimed that, since TCN workers must be registered in the Slovenian social security system for a month before they can be posted, some employers require these workers to reimburse them for contributions the employer paid to the state during this waiting period. In addition, some workers interviewed reported that they had heard of certain workers from Bosnia and Herzegovina paying about EUR 1 400–1 500 for finding a job, usually to informal brokers.

In the transport sector, these practices appear to vary depending on when TCN workers moved to Slovenia for work and on their nationality. A worker from Bosnia and Herzegovina mentioned that payments to the employer for obtaining a job or other services like visas were common in the transport sector between 2013 and 2018 when there were more drivers than jobs available. Currently, the market dynamics have changed, with the demand for professional drivers exceeding the supply. As a result, employers or informal intermediaries are no longer charging workers, as they now have alternative job offers to consider.

This change may also result from international road transport drivers having to obtain an EU driving licence and the CPC, and the latter being issued only by the Member State after a period of training. Indeed, according to the trade union representatives interviewed, some employers are now also covering the costs of drivers' code 95 entitlement<sup>(92)</sup>, which is the qualification card required for professional drivers to practise their profession. In some instances, workers reported that those who refer a candidate who is eventually hired receive a bonus from their

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<sup>(92)</sup> See Directive (EU) 2022/2561 of the European Parliament and of the Council of 14 December 2022 on the initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods or passengers (OJ L 330, 23.12.2022, p. 46).

employer, typically ranging from EUR 100 to EUR 200. However, the representative of the Independent Workers' Union of Slovenia claimed that there are stark differences between drivers from Slovenia, Bosnia and Herzegovina and South-East Asia. The interviewee mentioned that the last group often pay to come and work in Slovenia and typically receive lower salaries, usually the minimum wage, than the other two categories.

**TWAs do not generally recruit TCNs in countries of origin to post them due to national labour market supply options or stringent or restrictive TCN posting requirements.**

As Chapter 2 described, the three case studies highlight differences in how TWAs can be involved in the posting of workers. TWAs in Poland can recruit TCNs from their countries of origin. However, this may not be their preferred approach due to the ease with which Ukrainians and other nationalities eligible for entrustment of work can access the Polish labour market, as well as the complexity of the rules in the case of their main target country, Germany. In Poland, TWAs sign contracts and obtain entry visas and work and residence permits for workers entering the Polish labour market in low- and medium-skilled occupations where there are labour shortages, particularly in the construction, care and services sectors. As discussed above, the practice of TWAs hiring TCNs from their country of origin in order to be posted does not seem to be a widespread phenomenon among Ukrainians. As noted by the stakeholder respondents in the fieldwork, this is due to the relative autonomy and freedom that Ukrainians experience in the Polish labour market, negating the need for TWAs, especially for making the initial entry into the Polish labour market. Furthermore, the need for a Vander Elst visa and its requirements to post TCN workers from Poland to Germany has made certain intermediaries, like the ones we interviewed, reluctant to engage in the posting of TCNs from Poland <sup>(93)</sup>, as the quote below illustrates:

*... related to the Vander Elst visa and other problems we are facing with this case ... we have this problem, and we cannot post Ukrainian workers to Germany for example even though it's a big market for our association. Because of this issue with respect to Germany, live-in carers, for instance, could not be posted to Germany. Many businesses stop posting TCNs because it is so difficult and focus on Polish citizens. (TWA association representative, PL5)*

Overall, the companies and the organisation representing them that we interviewed noted that, considering the high demand for labour in Poland, their operations play a crucial role in recruiting workers from non-EU countries. The biggest challenge they face is obtaining legal entry visas and work permits. Additionally, they reported complications in obtaining visas for certain countries of origin. The costs associated with the legalisation process for each worker are also considered high by the companies.

While TWAs and other private agencies in Portugal can recruit TCN workers in countries of origin to post them, the fieldwork showed that they typically do not engage in this practice, especially in the case of Brazilians, as they are already present in large numbers in the country. In the case of Slovenia, recruitment of TCNs by TWAs is restricted by law to TCNs who already have free access to the Slovenian labour market, have a valid single residence and work permit or are EU Blue Card holders.

Private agencies also facilitate the recruitment of low-skilled workers from Asian countries in Portugal. While private agencies do not recruit Brazilians from abroad but hire those already in the country and post them to other Member States, their recruitment practices are mainly focused on other parts of the world to meet domestic labour market needs. Many of their clients are small and medium-sized companies that lack the resources and necessary institutional networks to reach potential workers in non-EU countries. Instead, they often hire TCNs by referral (e.g. through their employees) or rely on private recruitment agencies. Several stakeholders interviewed mentioned that the use of private agencies specialised in recruiting TCNs from abroad has become a common practice, especially in key sectors experiencing labour shortages, such as construction, tourism and agriculture, where vacancies need to be filled quickly. Many of these agencies, although legally established in Portugal, have not obtained a temporary work licence and are involved in illicit recruitment of migrant workers who, as a result, end up in irregular or illegal situations.

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<sup>(93)</sup> On the issues raised by the German Vander Elst visa, see also Section 5.1.



### 3.2. Entering into posting by TCN workers

Having discussed the experiences of posted TCN workers in the three sending countries, we now turn to some of the key findings emerging from the selected cases with respect to hiring practices in the posting of TCNs. Across the three countries studied, it can be observed that, although their initial experiences were not related to posting, especially in Poland and Portugal, the particular TCN workers interviewed eventually decided to enter the posting supply chain for one reason or another. Various informal and formal private operators and channels are involved in the recruitment of TCN workers for posting. The specificities of each case are presented in this section.

**Posting of Ukrainians from Poland can form an integral part of workers' trajectory in the EU but constitutes only a limited part of their work experience, the rest being 'typical' work for a Polish employer.**

When we look at Poland, the strategic choices of those involved, including the workers, intermediaries and companies, and the socioeconomic push–pull factors between the two countries seem to sustain the prominent role of Ukrainians in the posting supply chain. The Ukrainians interviewed in both the care and construction sectors were hired by Polish companies through contracts of mandate and were later recruited into the posting supply chain by their employer or an LMI. More generally, interviews with one care services agency and two TWAs all indicated a preference for working with Ukrainian nationals due to their cultural, social and geographical proximity to Poland. Notably, the language barriers are lower, as Ukrainian nationals often have some linguistic competences in Russian, Polish, German or English, which facilitates their integration into the Polish labour market and their work performance in another Member State, especially Germany. Likewise, the workers interviewed also expressed their preference for working relationships involving residing in Poland over other Member States, despite knowing that salaries and certain conditions might be better elsewhere. This creates suitable conditions for posting, as the Ukrainian workers' desire to earn more in western Europe for a temporary period coincides with the economic advantages gained by the user and sending companies. Importantly, the high and often urgent labour demand in the domestic care sector in Germany and in the construction sector in western and northern Europe, more broadly, seems to contribute to the increasing numbers of Ukrainians being posted from Poland:

*I wanted to go to Germany to work for a long time. But it was always because we are not in the European Union, Ukraine, and it was difficult to get to Germany, there were difficult conditions. Because there was no such thing as Germany wanting to employ people, there were always problems with visas ... I met this man, purely by chance, and we started talking. And I said that I was just working in Poland, that this is how much you earn there, and so on. And he suggested that there were some care companies, that you could go to Germany for care. So that's how I ended up in one, in one of those companies, who then got me a residence card. (Posted TCN, care worker, PL4)*

In the case of workers in the construction sector, and specifically for the Polish case study, while their initial jobs in Poland may not have been in the construction sector, once they were employed by a Polish company in construction, woodwork or building, the employer offered to post them to another Member State. Based on the interview sample, workers were mostly sent to Germany, Switzerland, the Netherlands and Belgium.

A common finding among all interviewees in the construction sector is that the employer's offer of posting had been made relatively informally without any obligation attached to it, which was characterised, for instance, by one of the workers as 'spontaneous'. The workers' first contract was a civil law contract with the company with no clear posting clause added initially. Interviewed workers reported that once they received the offer of providing services in another Member State, within a range of days up to a month, they were already posted and were performing services in the receiving country. In some extreme cases, workers were posted without any clear contractual agreements about the posting or the employment:

*At the last moment, he handed me a blank form for the contract of mandate. And I just signed it ... I will say that I was put in front, I was surprised. And my situation was, let's say yes, poor. Because I was dependent on this employer. (Posted TCN, construction worker, PL8)*

Transitioning to the care sector, all four Ukrainian workers reported that their recruitment into the posting chain occurred while they were still in Poland. Initially, their first jobs in Poland did not include the provision of services in another country. However, the workers interviewed were subsequently hired by care service companies or agencies in Poland and offered opportunities to work in Germany. The agencies explained that the jobs in

Germany were temporary but offered better pay than those in Poland. In many cases, the details of the offers in Germany, such as working hours, the condition of the care recipients, and the housing provided and living conditions, were not outlined during the recruitment process. Our interview with a care agency providing services in Germany also confirmed that most Ukrainian care workers are recruited within Poland. However, the respondent explained that companies and contacts established in source countries, such as Georgia, Moldova and Ukraine, acting as intermediary companies do, in fact, facilitate the recruitment of care workers into Poland, often with the intention of either hiring them directly as carers in Poland or in other Member States:

*We have two Moldovan women, mainly Ukrainian women, and there was one Belarusian woman. From Moldova it is very difficult, so to speak, to get a carer. In Georgia, there are, of course these intermediary companies that take a very big stipend from Georgian women, not from us ... So, this is where the Ukrainians appealed to me the most. Maybe it's because [name of business partner] is also Ukrainian ... And maybe we will open up to the Belarusian market, which I hope for. Because you have to say, there is still such a barrier as language. Not every Georgian knows Russian well, not every Georgian knows German well. So, it was difficult to communicate. With Ukrainians, it's good because I knew the language a bit earlier. (Poland, stakeholder interview, 10)*

In the care sector specifically, service provider agencies appear to play a major role in recruitment into the supply chain. Personal connections and co-nationality links are important in the recruitment process and in building trusting relationships. Moreover, the offers of providing services in another Member State are often presented to carers with some notable experience at a particular agency in cases where both parties understand each other's work and expectations. However, even without established work relations, friends or acquaintances may refer carers to an agency that sends them abroad. In such cases, according to the fieldwork findings, communications are handled almost exclusively via phone calls without any in-person visit or communication before being sent to Germany. Interviews with potential employees are usually conducted by phone and video to assess their language skills and profile. It was also reported that online forums, Facebook and specialised portals in Ukraine are used to match childcare and domestic elderly care providers with receivers.

In the construction sector, while there is already a significant demand for construction workers in Poland, as noted by the stakeholders we interviewed, Polish companies are also offering Ukrainian workers opportunities to provide services abroad. In the case of smaller companies, interviews with workers revealed that both the owner and most of the staff travel abroad to provide services relatively soon after receiving such offers. In two interviews with construction workers, it was noted that some of the jobs involved simple installations completed within one or two weeks without contractual adjustments typical of posting but including additional cash payments.

### **Social contacts and online job advertisements appear to be relevant channels for Brazilians who are recruited into the posting supply chain from Portugal.**

The recruitment of the Brazilian workers interviewed to their first posting assignment (with one exception, all had been posted more than once) occurred in different ways. Four were recruited by a friend or acquaintance who had been posted before by a posting company, while the other two workers were looking for an opportunity to work outside Portugal and responded to an online job advertisement. At that time, the workers had already been residing in Portugal for at least a couple of years and possessed residence permits allowing them to be posted abroad. All of them had an interview with either the company or the TWA, during which they were informed about the duration, location and content of the assignment, the documentation required and the salary, which was higher than what they were earning at the time:

*He asked if I was interested and I said yes, but I would have to know the salary and how things worked ... And when I saw that the salary was much higher than what I was getting in Portugal, I immediately accepted. (Posted TCN from Brazil, construction worker, PT3)*

According to the interviewed TWA representative from Portugal, online job advertisements, including through social media channels, are commonly used to attract and recruit TCNs to be posted abroad. Although that company has permanent offices so that interested workers can approach them, the Portuguese trade union representative mentioned other companies' practices for recruiting TCNs:

*They often have an office in a shopping mall, for instance, but most of the time they are closed, and once a week they open to recruit the workers and then post them to other European countries. (Trade union representative, construction, Portugal)*

### **Informal contacts, often people with a TCN background themselves, and formal undertakings recruit workers from Bosnia and Herzegovina for posting from Slovenia.**

For workers from Bosnia and Herzegovina in Slovenia, recruitment for posting follows different patterns depending on the migration phase of the worker. While the workers interviewed had worked for different employers during their time in Slovenia, the pattern experienced was usually that a company owned by co-nationals from Bosnia and Herzegovina had hired and brought the workers to Slovenia. After initial experience, usually of one to two years, workers had moved to other employers. Some workers had been posted by their first employers at the start of their migration experience to Slovenia, while others were posted only by subsequent employers after the first year of residence in Slovenia, and yet others have had posting experiences with diverse employers with ethnic backgrounds from both Bosnia and Herzegovina and Slovenia. The process of recruitment for posting was not different from general recruitment, since the same informal or formal private channels were involved, such as personal contacts or referrals and online advertisements. Only one worker interviewed mentioned finding a job in Slovenia through the internet. However, some stakeholders noted that social media is an important channel for promoting these jobs and recruiting TCN workers, especially from their country of origin. One worker mentioned that he approached a company directly and offered his services after learning from friends that the employer provided favourable terms and conditions.

Most workers indicated that their first jobs in Slovenia were on one-year contracts. Additionally, 2 out of 10 workers mentioned that their first jobs abroad, one in Slovenia and one in Germany, were completely informal. Most of them stayed with their first employers for one to two years, even when terms and conditions were poor, because of the requirements of their temporary permits. Some workers from Bosnia and Herzegovina also preferred to transition to self-employment and establish their own companies, once their migration status was consolidated, and they built their own labour market network. The representative of the Chamber of Craft and Small Business of Slovenia explained that some of the TCN workers prefer to transition to self-employment or establish their own businesses as soon as possible, with the aim of operating independently in the broader European market. An example of this practice was provided by one of the workers interviewed:

*After the first job, my relative open[ed] his own company, so I started working for him because he offered me a job. That job lasted for about nine months, and everything was okay, but I left him because I opened my own company in January of this year. The company is registered in Slovenia. (Posted TCN, construction worker, S17)*

Such a change in employment status, from employee to self-employed, was supported by other stakeholders and is consistent with the finding that many employers of TCNs are themselves TCNs.

### **3.3. Contractual arrangements for TCN workers during posting**

There is little information in the existing literature about the contractual arrangements for and obligations of posted TCN workers. Partial information relates to their migration status and social security contributions. One such example is the case of workers from Bosnia and Herzegovina and Serbia, who receive three-year permits in Slovenia, requiring a minimum one-year contract. Additionally, TCN workers must have made social security contributions for a minimum of 30 days in the country where they hold their residence permit in order to be eligible for posting (Danaj et al., 2023a), and for those working in international road transport additional obligations related to qualifications (such as the CPC) have to be fulfilled in order to provide services abroad. This section offers insights into the contractual arrangements for posted TCNs as reported by the workers themselves and by the stakeholders interviewed during the fieldwork.

**Information in writing, ‘posting contracts’ or addenda to employment contracts were not always provided to posted TCN workers, and, even when they existed, the contractual terms of posting could sometimes be vague.**

## **Poland**

All eight TCN workers interviewed in Poland were employed under a contract of mandate or civil law contract, regulated by the Polish Civil Code. As discussed above, contractual arrangements within civil contracts lack several key elements of Polish social security, are easy to terminate and are subject to less monitoring. Notably, none of the workers interviewed during the fieldwork reported that their initial contracts with the employer or agency that posted them included any clause regarding posting. In both the care and construction sectors, several workers reported that their contracts were not changed, nor did they sign new contracts to provide services abroad. Only in two workers interviewed from the care sector indicated that a contract outlining their posting conditions was signed in addition to their initial contract within Poland. At the same time workers were not completely without information prior to their posting; while it was often not documented in a written agreement, workers received information about their daily or hourly rates of pay and the posting duration, location, tasks and general conditions. Travel and accommodation were also often handled and arranged by the sending company or agency.

Regarding Ukrainian nationals, the legalisation of their stay in Poland through a declaration of work seems unproblematic. However, in all cases, interviewed workers reported delays in obtaining their residence permits, resulting in them starting work without it. Concerning social security coordination, the workers had some knowledge of PDs A1 and were still working under the social security regulations of Poland. However, both the workers and the relevant public authorities interviewed in Poland reported that it was unclear whether the PDs A1 were correctly filled out by the employer for each specific posting period.

## **Slovenia**

In Slovenia, according to the public authorities interviewed, TCN workers are frequently recruited from Bosnia and Herzegovina without a posting clause in their initial contracts. Once TCN workers have received the permits, started work and paid social security contributions in Slovenia for at least one month (or two for the self-employed), they can be posted abroad. According to the workers interviewed, although it was not mentioned in their contracts, they were already aware that they would be working across the EU, that is, in countries other than Slovenia. Indeed, since international travel is inherent in working in the international road transport sector, it is expected that these workers plan to work as international drivers in the future after obtaining the necessary permits and qualifications. However, some stated that they had never actually lived in Slovenia and only visit the country when they need to handle paperwork, such as permit applications and renewals.

Interviews with stakeholders confirmed this and, although national legislation requires people to work in Slovenia for at least a month before being posted, and this time frame would be longer for those intending to work as drivers in international road transport, most posted TCN workers reportedly meet this requirement only on paper while either still living in their country of origin or already being in the receiving Member State with an undeclared status until the paperwork is sorted. Once legally posted, workers might receive a revised contract or an addendum to their contract with posting details. As discussed in the next section on pay and social security coverage, this is not always the case.

## **Portugal**

Unlike the other two countries, in the case of Portugal, the Brazilian workers reported that both their current and previous posting experiences included a written employment contract or a posting clause/addendum to their contract with the Portuguese posting company / TWA. This documentation provided details of the working hours and salary, as well as their travel and holiday allowances. While the workers reported having been generally well informed about their contract and the conditions of their posting, one worker expressed uncertainty regarding the travel allowance:

*Well, it's a bit confusing for me to this day. When I was hired, they gave me the contract. It says in the contract that I have EUR X per month for this travel allowance. This is for when I go back to Portugal on vacation and come back again. But it's something I don't count on. It's not something that comes when I go back to Portugal. It's said that it's put on our account every month and I see it on the receipt, but I don't even check any more. (Posted TCN from Brazil, construction worker).*

The workers had some knowledge of the PDs A1 and their social security coverage and were informed about the accommodation provided during their posting assignment, which was arranged and paid for by the posting

company / TWA. Their employment contracts were typically one year in duration, with a possibility of renewal or automatic extension for an additional year.

### **Linked to their employment status and contractual arrangements, some posted TCN workers experienced vulnerabilities regarding pay and social security coverage.**

While most TCN workers received formal contracts during their postings, some reportedly experienced vulnerability regarding their pay, social security coverage or living conditions. While most of these are detailed in Section 5.1, here we focus on potential inconsistencies linked to their employment status and contractual arrangements.

The most illustrative cases were reported in Slovenia, where, although workers in both construction and international road transport were aware that their employment would involve posting, their contractual arrangements did not necessarily specify that. One worker mentioned signing blank papers, whereas another worker noted that a lot of relevant information was missing or misrepresented in both the contract and the PD A1:

*I have a contract but it's a ridiculous contract. It doesn't say anything it should say – for example, it says we get minimum wage, but we don't. We also have A1, but on this form, it doesn't say if we are registered somewhere. If the police catch us, we will have to leave Germany and will not be allowed to return to work here. Our A1 form only contains the information of the company we work for, not the address where we are registered. (Posted TCN, construction worker, SI5)*

A recurring issue for posted TCN workers from Slovenia was conditions of pay. According to their written contracts, TCN workers would receive the minimum wage. In some cases, initially, they were paid the minimum wage, as specified in their written contracts. For others, as well as later in subsequent contracts, a verbal agreement was established between the workers and the employers regarding remuneration. This included payment per hour for construction work and per day or per kilometre for international road transport. Thus, while the official written contracts included the minimum wage, the rest of the workers' earnings were listed in their payslips as allowances and/or expenses. Some workers might have signed these contracts because their migration status depended on their employer. Sometimes they signed without knowing the other terms of employment, such as whether annual leave, transport and accommodation would be paid. A TCN construction worker posted to Belgium explained:

*The hourly wage was low – EUR 7–8 in Belgium, where you do not have other benefits like the annual leave payment, but the transport and accommodation are paid. These were the beginnings when I did not know my rights. When I went to the boss of this company, I even had to sign blank papers. But you're forced to do it – when you have to prolong your visa, you have to be employed, which means you have to sign, if not you will get fired. Then you have to find another job, and after a month without a job, you lose your visa. (Posted TCN from Bosnia and Herzegovina, construction worker, SI1)*

Contracts in international road transport also reportedly included minimum wages along with pay per kilometre and other tasks:

*My contract at my current company says I am getting minimum wage, so they pay minimum social contributions and my wage on the contract is like EUR 800 or EUR 900. But in reality, our starting wage is EUR 650, and then we get 8 cents per kilometre (it used to be 7, but he now raised it to 8), our per diem is EUR 40, and we get EUR 5 for each loading/unloading (with the exception of the first one). If you work on a Sunday, you get another EUR 100. In the previous two wages, I made about EUR 3000. I don't hide this; it's written on my pay cheque. (Posted TCN from Bosnia and Herzegovina, truck driver, SI10)*

Meanwhile, in the case of Poland, the primary limitation associated with contractual arrangements, as reported by the workers interviewed, was related to social security coverage. An employment contract governed by Polish labour law ensures registration for and entitlement to all branches of social protection, namely healthcare, social assistance, unemployment benefits, family benefits and pensions. However, in the case of contracts under civil law, various branches of such security entitlements can be excluded. According to data from 2023, 66 % of the contracts notified for Ukrainian citizens were contracts under civil law (MRPiPS, 2024). This was the situation reported by all interviewed workers, who indicated that there might be significant gaps in their social security coverage:

*I found a job with a construction company, it was a contract job, here in Poland. After a couple of weeks, the employer asked if I wanted to go to a construction site in Germany for a few weeks. I immediately said that I wanted to work legally ... He explained to me why I should go to Germany and on what terms. He didn't call it a posting, he talked about a business trip, as part of my normal assignment contract. It was the first time I had encountered this. The employer didn't explain the details though, he gave me some documents as I was leaving. I think there was something like an A1 form there, but I have no idea what that document was. It wasn't until later that I knew it was about social security. (Posted TCN, construction worker, PL6)*

Polish trade union representatives noted that workers under a civil contract face challenges in negotiating improvements in their social conditions due to the legal framework of such a contractual relationship. Additionally, in the case of self-employed individuals, both unions and labour inspectorate respondents added that monitoring and regulating the social conditions becomes even more difficult. In general, however, it was observed by many of the stakeholders that, for TCNs, rather than being self-employed, contracts under civil law seem to be the predominant form of employment, including when they are posted abroad (see Box 2 in Chapter 2).

In general, interviewed workers reported having limited knowledge about their public social insurance coverage. In the case of workers from the care sector, they were informed by the care agency sending them to Germany that they could contact the agency's representative in the country about any medical emergencies. Most of the care workers interviewed already had private insurance coverage in Poland, which they relied on during their employment. Similarly, the construction workers interviewed also reported making private payments for any essential medical expenses or purchasing health insurance for tourism purposes during posting periods. One interviewee working in a care agency in Poland that sends workers to Germany noted that, from their perspective, the aim is to minimise costs in order to remain competitive in the market. Therefore, the agency prefers to provide competitive wages for carers, instead of paying higher social security contributions, while also offering competitive prices for customers in Germany.

Potential ambiguities about social security coverage were also identified by the Brazilian workers in Portugal and workers from Bosnia and Herzegovina in Slovenia. Brazilian workers were aware that their Portuguese social insurance was to be paid by their posting employer, and they generally relied on the company to handle the payment of contributions. However, one worker mentioned that the company paid the minimum required for Portuguese companies. Another worker, who received treatment for a work-related accident in hospital, reported being charged a large amount, despite having a health insurance card, but stated that the company later handled the payment.

Workers from Bosnia and Herzegovina reported that their employers declared that remuneration would be at the minimum wage. As a result, the contributions paid by the companies were based on this level, leading to underdeclared social security contributions and minimum social security protection.

# 4. Actors, intermediaries and supply chain configurations in posting

## 4.1. Actors and intermediaries

LMIs are already identified in the literature as part of the labour supply chains in the EU. Their primary function is to operate as the go-between for workers and firms to match the labour supply to the demand and to regulate the functioning of this triangular form of employment relationship (Andrijasevic and Sacchetto, 2017; Autor, 2009; Danaj et al., 2023a; Popivanov and Kovacheva 2023). While quantifiable data on intermediaries are fragmented, the research available suggests that a significant share of the workforce is employed via intermediaries (e.g. Ceccagno and Sacchetto, 2020).

Data available from Member States indicate that posting by a TWA or placement agency to a user company established in another Member State occurs to a notable extent. For example, 3.9 % of the total number of PDs A1 issued under Article 12 of Regulation (EC) No 883/2004 in 2022 were under the category of employment agency<sup>(94)</sup>: 9.8 % of the PDs A1 issued under Article 12 by Poland and 10.7 % of the PDs A1 issued under Article 12 by Portugal but none of the PDs A1 issued under Article 12 by Slovenia (European Commission: Directorate-General for Employment, Social Affairs and Inclusion et al., (2024c: 34)). In recent decades, the number of such intermediaries, especially TWAs or employment placement agencies facilitating intra-EU labour mobility, has reportedly been growing (Cremers, 2021; Danaj and Meszmann, 2024; Lillie and Wagner, 2015; Stojanov et al., 2022).

**LMIs involved in the recruitment and/or posting of TCN workers ranged from informal brokers to various private and public actors.**

The case study research identified a wide range of LMIs involved in the recruitment and posting of TCN workers into and across the EU. These actors can be categorised according to their legal status and location. The types of LMIs include informal brokers, either individual acquaintances or family members or organised entities, private actors such as recruitment agencies, placement agencies, TWAs and companies, and public employment services where required by national law (see Section 2.2 on Slovenia). In terms of location, these entities can be based in the country of origin, the country of first entry for the TCN workers, the countries sending TCNs for posting or the countries receiving posted TCNs. They can operate online or offline or in combination. And, lastly, there is often a network of organisations operating in a chain, supplying labour to a user company in the receiving country. This chapter presents a typology of the LMIs involved in the recruitment and posting of TCN workers, as evidenced by the fieldwork, followed by a description of their profiles and the organisational networks in which they operate within the posting contracting supply chain, as discovered from the three case studies.

### ***Informal brokers***

Informal brokers played a significant role within the case studies in all three countries, although there are differences based on sector or country. In Poland, informal brokers primarily facilitated the recruitment of care workers into posting, while this method was not prevalent in the construction sector. In Portugal, informal brokers served as the main channel through which Brazilian workers were recruited into the posting supply chain. Meanwhile, in Slovenia, informal brokers were the main recruiters in both construction and international road transport. Across all three countries, these brokers typically referred to individuals they knew personally, such as a friend or acquaintances, who mediated between the formal direct employer and the TCN worker.

### ***Private actors***

The private actors included recruitment or placement agencies, TWAs and other undertakings or companies without a specific typology. Recruitment or placement agencies were not significant for the recruitment of the TCN workers interviewed in this study, namely Ukrainian workers in Poland, Brazilian workers in Portugal and workers

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<sup>(94)</sup> General industrial classification of economic activities within the European Union (NACE) group 78.2.

from Bosnia and Herzegovina in Slovenia. However, the Portuguese trade union representative interviewed indicated that these agencies are actively involved in posting workers abroad in the construction sector, although not TCNs specifically. Among the workers interviewed, there was also only one example of a recruitment agency involved in the posting of a worker from Bosnia and Herzegovina from Slovenia to Germany.

TWAs<sup>(95)</sup>, as evidenced by the data on TWA postings, as well as the fieldwork findings from both worker and stakeholder interviews, played a significant role in the posting chain in Poland and Portugal. Nonetheless, while Polish TWAs reported that they were reluctant to post TCN workers due to the added layers of bureaucracy and scrutiny, also referring to the Vander Elst visa requirements<sup>(96)</sup>, the majority of the Brazilian workers interviewed had a TWA as their first employer in the posting supply chain. Unlike the other two countries, as already mentioned in Chapter 2, TWAs in Slovenia cannot legally recruit workers directly from their countries of origin to post them and can do so only if they have free access to the Slovenian labour market; this might be the reason why posting by TWAs was reportedly minimal in Slovenia.

### **Other actors**

The third category consists of 'other companies' that post workers. Genuine posting means that these companies conduct a substantial part of their business activity in the country of establishment and post their workers as part of their wider activity<sup>(97)</sup>. Many TCN workers interviewed in all three countries had posting experiences with 'typical' companies. All TCN workers interviewed had been posted from Poland by companies, although only those in the care sector were recruited specifically for posting. Likewise, all workers from Bosnia and Herzegovina were posted by companies, and, while some were hired specifically to be posted in both construction and international road transport, others were posted as part of their normal employment with the company, which means that the company in question also had business activity in the sending country. In Portugal, workers who were not posted by TWAs were posted by other types of companies. For instance, in one case the posting of a worker was conducted through a Portuguese logistics company that hired workers to be posted abroad. In another case, the worker was at the time employed in Portugal as a plumber and provided services abroad as a subcontractor for a company that was co-owned by a Brazilian national in Belgium. In this case, the worker was posted together with his boss.

In Slovenia, the public employment services<sup>(98)</sup> play a decisive role in the recruitment of TCNs to the national labour market, the issuing of the single residence and work permit, and the monitoring of whether these workers are employed or registered in the national social security system. As explained in Chapter 3 on recruitment, due to the procedures stipulated in the bilateral agreements with Bosnia and Herzegovina and Serbia, the Slovenian public employment services, in collaboration with the employment services in the countries of origin, are involved in facilitating the matching the demands of the Slovenian labour market with the workforce available from the countries of origin.

In the case of Portugal, the public employment service is involved in providing a legal labour migration pathway to workers from Cabo Verde, India, Morocco and Mozambique, with which Portugal has signed bilateral agreements. More details on their practical involvement were provided in Chapter 3.

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<sup>(95)</sup> Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work (OJ L 327, 5.12.2008, p. 9). The temporary work agency directive is the only EU instrument addressing the role of intermediaries in the labour market. However, its scope of application is limited to public and private undertakings that operate as TWAs or user undertakings engaged in economic activities, regardless of whether they operate for gain. Article 1(2) defines its scope by focusing on undertakings that mediate labour relationships in which the worker is directly employed by the agency itself. It is worth noting that other intermediaries mentioned above, such as informal brokers or unregulated actors, are not explicitly covered by this directive.

<sup>(96)</sup> On the issues raised by the German Vander Elst visa, see also Section 5.1.

<sup>(97)</sup> Article 1(3) of the posting of workers directive and Article 4(2) of Directive 2014/67/EU.

<sup>(98)</sup> At the EU level, the European Network of Public Employment Services was established following an EU decision – amended in 2020 – aimed at maximising the efficiency of public employment services (Decision No 573/2014/EU of the European Parliament and of the Council of 15 May 2014 on enhanced cooperation between Public Employment Services (PES) (OJ L 159, 28.5.2014, p. 32)). The network comprises Member States, Iceland, Liechtenstein and Norway and the European Commission. The PES network facilitates cooperation among Member States to support the implementation of the EU's employment policies, aligning with the European Pillar of Social Rights, the European Green Deal, and the UN sustainable development goals. Its key objectives include benchmarking PES's performance, identifying and sharing evidence-based good practices and modernising service delivery. As outlined in Article 3(d)) of Decision No 573/2014/EU, the objectives of the network also include the identification of skills shortages and the provision of information on their extent and location, as well as better matching of the skills of jobseekers with the needs of employers.



**The profile of TCN employers is diverse, but small subcontractors, often with TCN background themselves, seem to dominate across the three case study countries.**

All workers interviewed in the three countries were employed by small and medium-sized companies or TWAs, and in one case a Brazilian worker was the only worker posted with his employer:

*A friend of mine was working in Belgium and asked if I wanted to go, and I said that I would only go through this boss of mine that I already know. I asked him if he wanted to go with me. He said yes. He did. He made a deal with this Belgian company. So, they came to an agreement, my boss paid me, and I worked there with him in Belgium. (Posted TCN from Brazil, construction worker)*

In many cases, subcontractors that employ TCN workers directly often have a migrant background, which is usually the same ethnic background as the workers. The workers interviewed reported that their employers in Portugal and Slovenia were mostly of the same ethnic background. For example, most of the Brazilian workers interviewed were posted by a TWA owned by a Brazilian, all workers from Bosnia and Herzegovina interviewed had been hired by companies owned by those from Bosnia and Herzegovina on arrival in Slovenia, and many of the companies that posted them were also owned by those from Bosnia and Herzegovina. Workers from Bosnia and Herzegovina reportedly often transition from working for a company owned by a co-national to establishing their own business, once their migration status is stable, which explains why so many TCNs work for their co-nationals. In the case of TCNs in Slovenia, this was particularly the case when workers were hired directly from the country of origin.

In contrast, none of the TCNs interviewed in Ukraine was employed or posted by a co-national, although previous research indicates that many companies or TWAs hiring Ukrainians are often owned by their co-nationals (e.g. Danaj et al., 2023a). However, in some other cases, even if the employer might not be of the same ethnic background, workers reported, for instance, that individuals in supervisory roles, such as the site supervisor are usually their co-nationals.

Other types of direct employers included local companies and agencies, or branches or subsidiaries of companies/TWAs based in other Member States that have registered a branch in one of the sending countries. The practice of registering subsidiaries in other Member States with more flexible regulations and lower labour costs has already been discussed in the literature (Arnholtz and Lillie, 2020; Cremers, 2011; Sørensen, 2015). In the fieldwork, one worker in the transport sector interviewed reported having worked for an Italian company that had registered a branch in Slovenia, presumably to reduce costs:

*They were like a subsidiary of the Italian company, but these companies all open Slovenian branches because it's more profitable and drivers in Italy make more money. (Posted TCN, truck driver, SI8)*

Furthermore, a trade union representative highlighted the example of French companies establishing branches in Portugal primarily to recruit workers for posting abroad. This practice was noted as a more cost-effective strategy than relying on intermediaries. However, a Ukrainian care worker might have been posted by an establishment resembling a letterbox company:

*I only contacted the company by phone, [there was] no real location. (Posted TCN from Ukraine, care worker, PL2)*

The subsidiaries might at times be letterbox companies registered as part of cost-saving tactics. The group of labour suppliers consists of legitimate TWAs, which, as previously discussed, face restrictions on the posting of TCNs.

Lastly, a characteristic of these subcontractors is that LMIs that post TCN workers abroad have connections with their counterparts in the receiving countries, which may be small or larger organisations, that facilitate ties between the workers and the user companies. This was evidenced in the case of the care sector, where Ukrainian caregivers connect with the care receiver in Germany, and their needs are managed by an intermediary. The German business counterpart is also often responsible for monitoring the situation of the care worker while abroad. Portuguese TWAs also reported having a contact in the receiving country, which mediated between posted TCN workers and the user companies.

## **According to the fieldwork, some companies specialise in the supply of labour in cross-border contexts without being registered as TWAs.**

Additionally, there is a second group of entities that, while legally registered as companies with economic activity, primarily specialise in the supply of labour, that is, in practice, they operate as TWAs and provide workers based on business cooperation agreements or service contracts. One of the stakeholders interviewed in Slovenia indicated that registering a company and recording several activities in the business registry in Slovenia is straightforward. As a result, some of these companies list diverse activities such as construction and human resources, although the latter is not declared as their main activity. Concerning practices encountered in Slovenia:

*The main observation of the state in this field is that some Slovenian employers recruit foreign workers for the sole purpose of illegal provision of workers in other Member States. They are not regular agencies for recruitment, but they are regular employers, but they provide the work of their workers in other countries, not truly providing services, but through provision of workers. This is illegal provision of workers because their employers are not registered as employment agencies. (Representative of the Ministry of Labour, Family, Social Affairs and Equal Opportunities, Slovenia)*

In some cases, as documented during the fieldwork in Portugal, such companies might have already applied for a licence to operate as a TWA but have not actually been granted one. As one representative of the Portuguese labour inspectorate stated:

*What happens is that sometimes they post a worker although they are not legally registered to do that, they do not have the licence to do that. Sometimes they have asked [for] it but they don't have it already and they start posting before they are allowed to do that. It is not our competence to monitor that, but we do know that because IEFP is the Institute that controls that, that monitors that compliance, and they communicate with us. That happens, and I know that sometimes it happens that companies post workers, and they can't do that because they do it as a [TWA] and they are not registered. They don't pay the caution that they must and the other things that they do have to comply. (Labour inspectorate representative, Portugal)*

Worker interviews in Portugal also revealed questionable company practices. One worker, for instance, referred to the 'strange' arrangements of a previous posting employer:

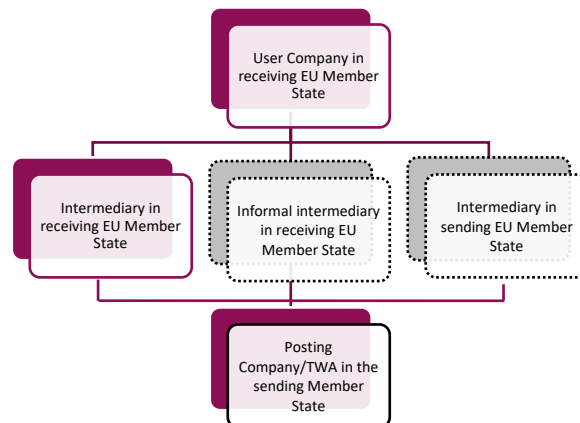
*It was a Portuguese company too, but the owner of the company was Turkish and the guy in charge was Italian. It was a very crazy scheme they were running. They hired you to work and they paid you every week. They gave you accommodation, but every now and then you had to change accommodation quickly. (Posted TCN from Brazil, construction worker)*

## **4.2. Supply chain configurations in posting**

**The basic formula of the posting supply chain configuration, as suggested by the fieldwork, is a three-tier system comprising one main contractor or user company and two levels of subcontracting, but further layers may also be present.**

The basic formula of the posting supply chain configuration was a three-tier system comprising one main contractor or user company and two levels of subcontracting. The contractor that supplies the TCN workers is based in the sending country and is hired as subcontractor by a company or TWA in the receiving country that operates as the go-between for the posting company / TWA and the user company. The middle tier can be a genuine entity or a subsidiary, a letterbox company or an informal middleperson. The middle tier, whether formal or informal, is reported to be mostly based in the receiving country, but sometimes it can also be in the sending country (see Figure 4). According to one TCN worker in the transport sector interviewed in Slovenia, these go-between entities are set up to 'shield' the user company from any responsibility. However, the TWA interviewed in Portugal argued that user companies prefer to conduct business with companies or TWAs based in their own country due to a higher level of trust and a shared language, even if this results in higher costs than dealing directly with the suppliers. The insights received from both stakeholders and workers in all three countries suggest that the formation of chains might be driven by the user companies in the receiving countries as a way of reducing costs and liabilities, by involving smaller companies in the sending and receiving countries.

Figure 4: Three-tier posting supply chain typology



Our case study on Portugal also demonstrates that there are various configurations in which TWAs are involved in posting TCNs to other Member States. One such configuration is when the TWA collaborates through a formal cooperation agreement or an informal arrangement with other TWAs in the destination country, which then request their services for a user company in that country. The posting TWA then sends the workers to the user company and pays a fee or commission to this other agency. The TWA representative interviewed in Portugal noted that TWAs from other Member States frequently contact them with requests to hire workers for their user clients:

*We have many temporary work agencies from the Netherlands also from Belgium, they contact us, and they want direct hire. They want us to provide workers to them. So, we explain our method. What we do is, we can do it like this, we employ them, we send them, we send them there, and you receive a commission. (TWA representative, Portugal)*

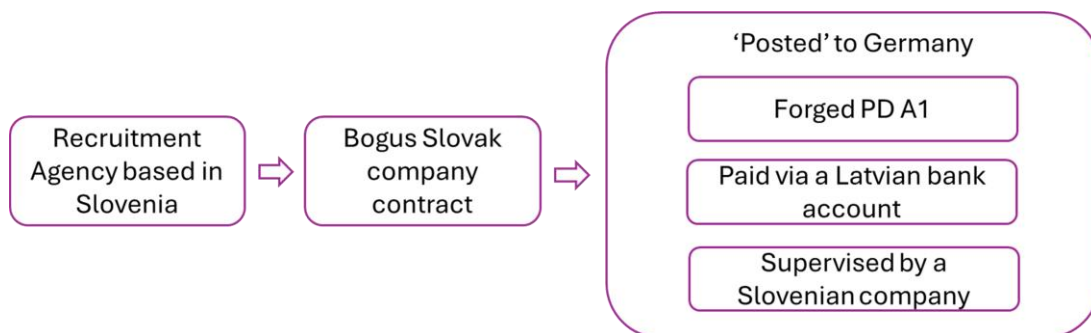
In Poland, some evidence of the three-tier system was observed only in the care sector. In these cases, the intermediary in the receiving country appeared to be either an employee of the posting agency or an intermediary based in Germany. The formal or informal status of this intermediary remains undefined, as illustrated by this quote:

*There was an agency person there in Germany who escorted me from Poland. They had their own person there who took us in Germany. Later he drove us to the flat, because also at that time it was still ... this pandemic was. We had to do all these examinations, these coronavirus tests, all that, everything, so that it was taken care of. They also brought us to these company flats first, to be there, and then the next day we were sent to these, to these families where we were supposed to look after. And this person would give me the money in hand. And in Poland here it was in a bank account, and she was paid once a month. (Posted TCN from Ukraine, care worker, PL1)*

Lastly, in the Slovenian case, a potential intermediary based in Slovenia who hires a subcontractor along with their TCN workers and posts them abroad was mentioned by one of the workers interviewed. Apart from the commonly described model, networks comprising small operators among whom workers are repeatedly registered or transferred while posted were evident in Slovenia. The Slovenian labour inspectorate reported cases in which a worker was posted by one company for a period and then by another company on paper to continue the same job in the same workplace. The representative of the Counselling Office for Workers gave the example of another company registered in Slovakia that posted workers to Slovenia as part of a complex subcontracting chain that included companies registered in various countries such as Bosnia and Herzegovina, Slovenia and the United Kingdom. The representative of the Association of Free Trade Unions of Slovenia also mentioned letterbox companies that are eventually left insolvent, while their owners open new companies using various individuals as company front names. These configurations can often intersect with fraudulent practices that have serious consequences for TCN workers who are caught up in these situations (see Box 3).

Box 3: Examples of complex fraudulent posting supply chain practices and their implications for TCN workers

One example of how supply chains are constructed through fraudulent practices and their implications for TCN workers was provided by the representative of the Association of Free Trade Unions of Slovenia. The TCN worker in question saw a billboard advertisement placed at the border between Slovenia and Bosnia and Herzegovina for a job posting. He called and went for a face-to-face interview with ‘one of the bosses’ of the recruitment agency that had advertised on the billboard. After agreeing on terms verbally, he was asked to sign a Slovak contract with the explanation that this was being done to lower costs. Although he signed the contract, he did not receive the countersigned copy but was promised that this would be sent to him later. The worker was sent to Germany where he worked for two months without receiving the contract. In the meantime, he was paid through a Latvian bank account and was working under the supervision of a Slovenian company, although officially not employed by it. As he became suspicious about the circumstances of his employment, he asked for the assistance of the trade union, which in its investigation found out that the worker had been registered only the last 10 days of his work in Germany but not during the previous 6–7 weeks. Later it was also discovered that the PD A1 that was supposedly issued to him was forged. Furthermore, since his contract did not fulfil the necessary legal requirements, it was also discovered to be bogus (see the figure below). Apart from the irregularity of his employment, this situation was exacerbated by the worker having a health condition and discovering that he had no health coverage in Germany, Slovenia or Slovakia.



Bogus posting may occur not only from the perspective of the sending country but also that of the receiving country. Two stakeholders mentioned examples of companies registered in Slovakia that post workers to Slovenia formally, but the workers have never been in Slovakia. Under the justification of reducing costs, TCN workers are persuaded to sign Slovak contracts. However, some have discovered that their contracts were not registered in the Slovak social security system, resulting in a lack of health insurance coverage.

Another similar practice identified in the transport sector involved registering multiple small businesses under the ownership of either the same person or different people from the same family. Each of these companies reportedly operates a small fleet of trucks, which are often parked in the same location. During inspections, if the authorities discover that a driver is operating a truck not registered with the company that employs them, it qualifies as undeclared work. Lastly, during fieldwork, it was reported that there are also cases within the transport industry in which the companies exist only ‘on paper’ and are used to receive and transfer funds between different accounts.

# 5. Challenges reported by posted TCNs: monitoring, enforcement, and non-compliance risk factors

## 5.1. Challenges reported by posted TCN workers

While previous reports have identified some possible challenges affecting the working conditions of posted TCNs such as increased exposure to abusive practices, fraudulent posting, labour rights violations, precarious working conditions, irregular payment and non-payment of social security contributions, remuneration below what should be paid, and precarious living and working conditions (European Commission, 2024a 11), this section lists the most problematic issues identified during the fieldwork carried out for this study. These challenges could then help in facilitating targeted enforcement efforts in cooperation between the ELA and Member States.

**Some posted TCN workers reported experiencing some level of irregularity with their migration or employment status both in the Member State of entry and residence and across other Member States where they work.**

Posted TCN workers often reported some level of irregularity regarding their migration and employment status. In addition to such irregularities of status, some workers in the Slovenian case study reported having to pay their employers in the sending country for services like visas and administrative procedures and for finding and being placed in the job they are hired to do. This is illustrated by many workers from Bosnia and Herzegovina in Slovenia reporting the amounts paid, although they are relatively small (i.e. less than EUR 1 000).

In addition, in all three country case studies, some of the posted TCN workers interviewed had experienced some form of irregular employment, sometimes while also being irregular migrants. Their irregularity of employment could arise from multiple sources. One common pathway into irregularity was starting work in the first sending country while not having the full amount of documentation needed to work or while their permits were still pending. Concerning their posting experience, some Ukrainians posted from Poland reported that their entrustment of work declarations could be used as grounds for establishing legal residence in Poland but that their posting assignments were not always declared in the receiving Member State, which made them doubt whether they had a right to work in the place of their posting assignment. The quote below from a Ukrainian care worker illustrates the lack of information and support being provided by the employer and the worker's uncertainty about their compliance:

*[Regarding her employment contract with the Polish company to extend her permit] I came to have them make me a statement [for permit extension], but they didn't want to give me one. So now I have to pay PLN 400 to buy an invitation to Poland in Ukraine? For me it is strange ... I want to get a visa and work officially, I have an employment contract, I have insurance, I have a residence card. And I can't get this invitation. They don't give me an invitation. (Posted TCN from Ukraine, care worker, PL2)*

In the Portuguese case study, many Brazilians reported that they had started working in Portugal informally before they regularised their work status in the country. This situation could last for years, and workers reported experiencing adverse working conditions during this time. These adverse conditions might have encouraged them to change jobs to ones that included posting assignments abroad:

*It was awful. I didn't get paid properly. They paid when they wanted to. It was very difficult. The work was very heavy. There was no time to get home. I stayed for two years then I went to work at a hospital and got my residence permit. (Posted TCN from Brazil, construction worker)*

On a few occasions, Brazilians also had temporary jobs in other Member States working for private individuals, such as doing construction work on someone's house in Germany, or doing any other jobs that became available in their destination country when they were between postings:

*I was going to open an independent worker activity in Portugal, but it didn't work out. So, I spent three months working in Germany. You could call it illegal. I was working without a contract. (Posted TCN from Brazil, construction worker)*

*I stopped working and then they cancelled my contract, but I stayed here. I kept working or doing jobs. I got some jobs here with my friend as an electrician where they paid me the same day. I worked like that, trying to find another company. (Posted TCN from Brazil, construction worker)*

Likewise, some of the workers from Bosnia and Herzegovina reported having experienced undeclared work in Slovenia or abroad prior to the current posting experience:

*It was very difficult. I was thinking of returning to Bosnia often. The working conditions in Slovenia were difficult, with the hourly wage of EUR 3–4, the beginnings were difficult. A lot of people work illegally, I worked like this at the beginning too. (Posted TCN, construction worker, SI1)*

Lastly, the national authorities interviewed also reported having witnessed cases with possible irregularities. The representative of the Health Insurance Institute of Slovenia reported that, based on national legislation criteria, companies cannot be issued a PD A1 for the posting of workers without a work permit for Slovenia already having been issued. However, this does not necessarily prevent TCN workers from being sent abroad by their employers abroad:

*According to the rules, we would need to have a work visa for Germany, and we should be registered at an address in Germany. So, we are working illegally, but there are people who have expired visas, and the boss keeps promising them that he will get the visa for the workers, but it never happens. Because of this, some people have already left and returned to Bosnia, they don't want to risk working illegally. (Posted TCN, construction worker, SI5)*

As illustrated by the quote above, a few of the construction workers interviewed confirmed that, when their permit renewal applications were delayed, and they were still waiting for their permits or visas, they were sent or continued to work abroad.

### **Some TCN workers have work permits and/or declarations of entrustment of work issued in Poland or Slovenia but may have not worked in these countries before being posted or at least since becoming posted workers.**

Another key issue that emerged in two of the case studies was that some TCN workers, although officially documented to live and work in Poland and Slovenia, have, in fact, never or barely ever resided in these countries. Instead, all their work experience has been obtained elsewhere within the EU.

Polish stakeholders highlighted the challenges of ensuring that Polish entry visas and legalisation of residence and work are not misused. Representatives from the State Labour Inspection reported significant risks detected during their field operations regarding the inability to control the activities of companies and entrepreneurs when employing TCN workers and sponsoring their employment permits. The practice was described by the labour inspectorate representatives as fraudulent because TCNs hired by certain companies receive permits to stay and work in Poland, or are posted in compliance with the national legal framework, but in reality never actually worked in Poland or were never intended to:

*The risk that we detect during our actions taken in the field control and in the control processes of entrepreneurs is that the people there who are posted within EU are recruited not only in Poland, but also in their country of origin and they apply from here to get only the Polish documents to make their work and residence status with visa and directly transfer abroad. The main reason for them is being transferred abroad and not performing work in Poland. (Representative of State Labour Inspection, Poland, stakeholder interview, PL9)*

In such cases, Polish permits obtained by some TCN workers are reportedly used to provide services abroad directly, which is not in line with the posting rules. Due to the relatively simple process and reduced scrutiny applied to the 'declarations of entrustment work' for certain post-Soviet nationals, including Ukrainians, public authorities noted that some Polish companies might misuse the system.

Such practices were also reported in Slovenia. According to the findings of the fieldwork, certain companies might send workers abroad for extended periods without establishing genuine connections in Slovenia. This was confirmed by some of the TCN workers interviewed in both construction and international road transport in Slovenia. As one of them stated:

*I currently work in Germany, no other countries. We live here, we don't travel back to Slovenia or Bosnia. The company pays for our accommodation and a car to get to the construction site daily – they sign a contract with the main company and send us there. I've been in Germany since I started working for this company, two and a half years. My employer gave me all the details about this job before I went there. (Posted TCN, construction worker, SI4)*

According to assessments by the Slovenian public authorities, in some cases employers may already intend to post TCN workers even when applying for their first work permit. However, this information is omitted in the formal application documents or the employment contract submitted to the Employment Service of Slovenia. Given that application screening is based on the review of documentation, it becomes difficult for the authorities issuing permits to check this information otherwise, although they monitor whether the TCN worker is employed in Slovenia and is registered in the Slovenian social security system once they have issued the permits. Despite such challenges, there have been many cases in which the employment service has rejected visa applications for TCN workers when the employers could not demonstrate that they were genuine companies with legitimate economic activities in Slovenia. The representative of the Employment Service of Slovenia reported that it not only rejects 10–15 % of applications but in 2023 it also revoked 20 % of permits issued to TCNs, who were found not to be employed in the country. Additionally, there have been cases in which the labour inspectorate conducted investigations and requested the Health Insurance Institute to evaluate the company and invalidate the PDs A1 when infringements of the posting regulations were identified.

### **Some posted TCN workers reported having doubts about their status when being posted from Poland and Slovenia to Germany.**

In the case studies, Germany was the main receiving country for posting companies and LMIs based in Poland and Slovenia. Based on fieldwork in Portugal, only one worker had worked in Germany, but his reported experience seemed to be one of private informal employment doing construction work in someone's household; therefore, no official posting from an employer occurred.

In interviews in Poland, the representative of a care agency, who acted as an intermediary in sending workers to Germany, stated that she had consulted both a lawyer and the German consulate about obtaining a Vander Elst visa for a TCN worker, but the answer she received was perceived as dissuading her from trying to get this visa and posting the worker to Germany:

*I called the [German] embassy in Warsaw, I introduced myself, I asked the legal department, the lady spoke to me in Polish, and I said about the Ukrainian carers and so on and so forth, that I would like a Vander Elst visa [for them]. She said: I tell you what, I'll tell you in private, don't waste your money and your time. We have the information that we do not give carers a Vander Elst visa. (Care agency representative, PL10)*

The representatives of TWAs and the TWA association in Poland we interviewed all confirmed the difficulty of obtaining a Vander Elst visa. One TWA representative stated that their requests for this visa were rejected without an explanation from the German embassy. Four of the Ukrainian care worker interviewees and three out of four construction worker interviewees worked in Germany repeatedly to provide services and none of them reported ever having received a Vander Elst visa. Considering the large and increasing demand for domestic care workers in Germany and as evidenced in all four of the interviews with care workers, Ukrainians are sent to work in Germany despite this difficulty. To circumvent checks of this visa by the German authorities, the care agencies reportedly send workers through the German and Czech borders because there are fewer controls than on the other borders:

*You can hire Ukrainians based on a statement. You just have to send a statement to the local office, and you can hire them so, they are issued statements to bring those women here in Poland. They then put them on the buses with tinted windows, without any signs around the buses that there's some company, they are just regular buses and go to Germany through [Czechia] because you have more control between*

*the Polish and German border than the German and Czech border. So, those women were working illegally [in Germany]. (TWA association representative, PL5)*

Workers interviewed in Poland also reported that they had been anxious about encountering police control, and they either were told to say that they were on a family trip in Germany or had to remain in their client's house during their work period to avoid being caught.

The interviews with TCN workers during the fieldwork in Slovenia also indicated violations of the Vander Elst visa. The representatives of the trade unions and the NGO, as well as some of the workers interviewed, reported that TCNs were sent to Germany without the visa:

*All the workers have the same problems, a lot of them are working without a visa even. They promised them they would get them visas, but people are working illegally regardless. According to the rules, we would need to have a work visa for Germany, and we should be registered at an address in Germany. So, we are working illegally, but there are people who have expired visas, and the boss keeps promising them that he will get the visa for the workers, but it never happens. Because of this, some people have already left and returned to Bosnia, they don't want to risk working illegally. (Posted TCN, construction worker, SI5)*

The representative of the Counselling Office for Workers in Slovenia stated during the interview that, based on their experience, posted TCN workers are often not even aware of the administrative visa requirement, which we also noticed in the interviews with the workers themselves, as the quote below illustrates:

*I didn't get any new contract. I only got a health insurance card – I have one that is valid in Slovenia and another one which is valid in EU [Member States]. When it comes to PD A1, I have it. I didn't need a new visa to work in Germany. (Posted TCN, construction worker, SI4)*

Obtaining the Vander Elst visa is the responsibility of the TCN workers. According to representatives of the unions interviewed in Slovenia, sanctions on workers are already being implemented, and TCN workers not only risk being banned from Germany but might also be denied an extension of their residence permit in Slovenia. Some of the stakeholders interviewed also referred to situations in which workers reported having been mistreated by the German authorities and, in some cases, workers being imprisoned or claims of human trafficking being reported.

### **Some interviewed workers reported that their social security contributions were not always paid, and some did not receive their annual leave payments.**

Non-payment of social security contributions has already been identified as one of the challenges affecting the working conditions of posted TCNs (European Commission, 2024b: 33). Among the workers interviewed for this study, several reported experiences with companies that had not paid their social security contributions in all three case study countries. Usually, the non-payment was identified at a later time, as illustrated by a quote from a truck driver from Bosnia and Herzegovina:

*I worked for the first Slovenian company for slightly more than three years and then I started working for another one, because in the first company, they were bullying us – to a lot of the drivers, they didn't pay any social contributions, they didn't pay out the annual leave, we never got the annual vacation allowance, saying we don't have the right to have these things. (Posted TCN, truck driver, SI10)*

Similarly, a Brazilian construction worker discovered that his posting company had only paid his social security contributions for the first month of his assignment as a posted worker in the Netherlands:

*[They] paid one month, didn't pay the next. It was a long time without paying my social security contributions. (Posted TCN, construction worker, PT5)*

Concerning other pay-related issues, some workers from Bosnia and Herzegovina interviewed in Slovenia reported inconsistencies in receiving their annual leave pay. For example, in some instances, employers did not pay it at all, while in cases like Austria, where they were required to pay to the workers, they either adjusted the payslip to show it was paid or paid it and then asked the workers to return the money in cash. The fieldwork revealed instances where final salaries and/or annual leave were not paid to workers who terminated their



employment with a particular employer. In one case, the employer might have attempted to mislead the worker by assuring him that he could claim his annual leave at the commencement of his new employment:

*This first company I worked for didn't pay me anything besides my wage – I didn't get my annual holiday allowance for the five months I worked there, or the BUAK [Construction Workers' Leave and Severance Pay Fund] I had in Austria. (Posted TCN, construction worker, SI5)*

Two workers reported that their employers had not declared their work properly. One worker discovered this practice while filling in his tax returns in Slovenia and the company declined to provide signed payslips for submission to the Slovenian tax authorities. Another worker also discovered that his work for an agency had not been accurately reported by the company:

*When I returned from Berlin, and got employed at an agency, where I worked for a month before the company went into bankruptcy again, which is when I got employed at the second agency, which also stopped working now. In this agency, they also didn't report our work properly – they reported us as working in Austria only one or two weeks, when in reality, we worked there the whole month. (Posted TCN, construction worker, 1)*

In addition, interviews with workers from the three case countries showed that some did not have full access to or information about public healthcare coverage (or lack thereof). Consequently, these workers often acquired private health insurance in the sending country which they then relied upon when providing services abroad.

### **Challenges regarding the issuance of PDs A1 were also reported, while TCN workers continued to be sent abroad to provide services.**

One significant area where posted TCN workers reported difficulties was in their formal social security registration in the sending Member State through the issuance of PDs A1 and subsequent coverage. For instance, in the case of Slovenia, once the worker is part of the national social security system and the company has met the requirement to issue a PD A1, the TCN worker can be genuinely posted. Yet, there have been cases reported in which the authorities suspect that the fulfilment of the criteria for staying and working in Slovenia, for at least 30 days for employed workers and 60 days for self-employed individuals in respect of TCNs coverage in Slovenia's social security system prior to being posted, might not have been followed. One of the workers interviewed reported working in Germany without proper documentation, and another worker mentioned being sent abroad with the assurance that the necessary documentation would be prepared in the meantime. However, when this did not occur the worker chose to leave, fearing potential repercussions:

*Then, I went to Germany to work for a Slovenian company (they have already gone bankrupt now) and later, I got called to court to testify, because I was in Germany without the registered residence or the PD A1 form. I was there for only two months – you could work without the visa for three months, but the company didn't even file my visa form which needs to be submitted so I can keep working. I left after two months. (Posted TCN, construction worker, SI1)*

In other cases, TCN workers reported that they were transferred between different posting employers, sometimes only 'on paper', without a new PD A1 being issued by the posting company. Moving between different posting employers without returning to Portugal was also reported in the case of Brazilian workers. For instance, one worker left his posting assignment in Brussels to work for another Portuguese company in Antwerp. The transition between the two occurred quickly, and the worker was not properly informed about the conditions of the new assignment:

*They never explained anything. The contract was done, and I spoke to a woman on the phone, and she asked if I wanted to go. I didn't have much choice, you know? I accepted straight away. I went because I needed the money. Did they pay? Yes, at least they did. (Posted TCN from Brazil, construction worker)*

While his new employer provided him with the PD A1, the document later expired and was not renewed for the remainder of his secondment.

The final scenario reported involved what were presumed to be falsified PDs A1. According to one of the workers interviewed in Slovenia, this issue is quite widespread, and workers must check the authenticity of documents

themselves to ensure that they are not deceived by the posting employers. However, not everyone knows how to perform such verifications:

*Sometimes, the workers or their employers have problems with fake documentation. For example, during [COVID-19] and so on, when you entered Austria, got the standard PD A1 form, when you open it in PDF, the program allows you to change the date on the PD A1 form. The problem happens if someone scans the PD A1 form and checks its validity. They do it by themselves, but they can't fool me because I keep everything under control, I can just tell you some experience. A lot of people work illegally, I worked like this at the beginning too. (Posted TCN, construction worker, SI1)*

### **Underpayment and other pay-related challenges were often reported by the posted TCN workers interviewed.**

In Poland, most of the workers interviewed stated that they agreed to provide services in Germany because they believed they could earn higher wages for a short period than their earnings in Poland. Particularly for construction sector workers, this opportunity was viewed as providing income additional to their regular monthly wages. According to the findings of the fieldwork, the approaches to remuneration and allowances varied.

In one case, the employer paid the worker an additional EUR 50 per day for the duration of the posting in Germany in 2021. Likewise, another worker reported that the daily wage rate in 2019 was PLN 20 per hour, and it remained the same while he was posted in the Netherlands. The employer would, however, pay each employee an additional EUR 100 per week for the duration of their posting and a bonus of PLN 1 000 upon their return to Poland. These additional payments were transferred directly to the workers' accounts without the relevant social security contributions being declared or counted as wages or wage supplements. In addition to the rules on the payment of social security contributions, these findings from the fieldwork appear as relevant in terms of information provision.

As reported by two of the interviewees, the wage difference expected for the number of hours they would be working in Germany was not as high as expected. Considering that, in most domestic elderly care service work, the workers are on duty around the clock without a day off, the work and wage conditions were reported as unfavourable by most of the interviewees. A care worker who was sent to Germany in 2021 and 2022 reported receiving payments of EUR 1 500 and EUR 1 700 for each two-month period spent abroad. While this appears to be the best-case example among the interviewees, others have also highlighted the low hourly rates in the sector during posting and in Poland, where their earned income was below the corresponding minimum wage, which was approximately EUR 850 per month in Poland in 2024.

In Portugal a representative of a Portuguese trade union indicated that posted workers in the construction sector frequently encounter issues related to wages and accommodation. Workers often read the contracts only after signing them, discovering discrepancies between the agreed wage and the actual wage. The trade union checks the content of the employment contracts when workers report issues to it and has identified unlawful wage deductions and non-compliance with the minimum wage requirements of the receiving Member State as common problems. Although none of the posted TCNs interviewed reported such issues with their current posting assignment, some had experienced wage-related problems in previous postings. One worker, in particular, mentioned experiencing irregular and late payment of wages during several past postings:

*At first it was fine, everything was fine. I was paid a round-trip ticket and then things got complicated. The guy didn't pay my wages properly, he was late with the payments. I carried on working and then he stopped paying for my return ticket to Portugal. He paid whenever he wanted. It was difficult. The pay was good, but he was always late. (Posted TCN from Brazil, construction worker)*

A Brazilian worker had to terminate his contract because of non-payment of wages by his employer. He, along with other workers in similar circumstances, collectively decided to take legal action. One worker collected the necessary documents and proceeded to court to recover the unpaid wages; however, he was not informed about the outcome of the procedure. Furthermore, at least two of the workers reported being paid the Portuguese minimum wage during previous postings. They were aware that their earnings at times were substantially lower than those of local workers.

*Normally Dutch people earn EUR 45 an hour or more. We earned EUR 16 an hour at the time and that was it. We travelled far. If the Dutch travel far, they have a hotel and get paid for the hours they travel. We didn't. The conditions weren't the same. (Posted TCN from Brazil, construction worker)*

In Slovenia, most of the stakeholders and workers interviewed reported that many posted TCN workers were not receiving appropriate salaries. The Slovenian labour inspectorate noted that, in some cases, although posted TCN workers are paid more than they would be in Slovenia, they still do not receive the pay rates of the receiving country. In other cases, posted workers have a clause in their contracts stating that they will be paid in accordance with the receiving country's pay rates; however, the amount is not specified.

A prevalent practice emerging from fieldwork in Slovenia indicates that workers have formal contracts in place, typically earning the minimum Slovenian wage of EUR 1 253.90 gross. However, it was observed that informal agreements are often made with employers to be paid a certain rate per hour worked in the construction sector (allegedly EUR 8–12/hour) or per kilometre or day worked in the international road transport sector (allegedly 50 cents/km or EUR 90–110/day). In the transport sector case, the employer and the worker record the hours/kilometres to calculate how much the worker should be paid. On the payslip, the amount is reported as minimum wage plus an additional sum recorded as an allowance or reimbursement of expenses, which is not subject to taxes and social security contributions. In this way, the total wage seems closer to the receiving country's wage. Cases of undeclared cash payments made to make up the difference between the minimum declared wage and the agreed verbal amount were also reported. This practice, although official data are lacking, was reported as being common in Slovenia, where workers receive the minimum wage officially and the rest as allowances or reimbursement of expenses. It is also a point of contention between the workers and their employers.

The main challenges reported by trade union and NGO representatives who assist workers with their grievances against employers included underpayment compared with the pay rates in the receiving country, including collective bargaining rates, and unfulfilled informal agreements regarding pay. The representative of the Chamber of Craft and Small Business in Slovenia stated that most small posting employers follow the principles of the applicable EU legislation by providing remuneration in accordance with the rules of the receiving country. They argued that some of the pay issues, as reported by other stakeholders, arise because companies that are new to the provision of cross-border services do not have enough information in the initial stages of their activity. This may lead to difficulties in understanding certain elements of posting, especially setting hourly rates or the conditions for entry of TCNs and their stay in the receiving country.

In addition to these common practices, there are also examples of other challenges faced by posted TCN workers, such as receiving pay below the minimum wage, being classified at levels below their actual skill or educational level, resulting in being on lower pay scales, receiving advances for expenses that are later claimed to be wages, or not receiving their final wage if they decide to resign. In the case of the transport sector, workers may be charged for damage to the vehicle without being shown invoices, as reported by a truck driver from Bosnia and Herzegovina:

*Despite being careful, I had an accident, but I just broke a glass window on the truck – it wasn't entirely my fault, there was even a guy there directing me on how to go in reverse. I feel like they put you in these situations on purpose so that they can charge you large amounts of money for the repair afterwards. I was stupid and I signed some paper stating that I will cover the repairs in the amount of EUR 1 000. I was then asking for the invoice, to see if my money actually went for the repair, but I didn't get anything. Before this incident, I had another situation when my tire got damaged, because this truck trailer did not have the tire protections that some other trucks have. This same company took EUR 500 off my wage for a new tire even though the repairman told me that there was nothing wrong with the tire and that it was working fine. If I paid EUR 500 for a new tire, at least give it to me, and I will sell it to someone else. It was pure exploitation, and I really didn't like it. (Posted TCN, truck driver, SI8)*

The same worker reported a system of fines applicable to both workers involved in accidents and those who refused to work overtime:

*At this company, they had a rule that went like this: the first time you are involved in an accident, they take EUR 500 from your wage. The second time you have some sort of an incident, they take EUR 1 000, and if it happens the third time, they take EUR 1 500 and they fire you. I got fired from this company, because*

*I didn't want to work overtime. I finished one ride, and then only had one hour left (working above that is illegal). And they wanted me to go load the truck right away – but with loading, you never know how long it's going to take, you can wait there for a while. And once they load you, they send you away, they have to close the company (you can't just stay parked there) – if you then continue driving, you are actively breaking the law. (Posted TCN, truck driver, SI8)*

Work intensification and extended working hours were frequently reported among TCNs posted from Slovenia in both the construction and international road transport sectors, as well as among TCNs posted from Poland in the care sector. In contrast, other TCNs reportedly had working time experiences that were compliant with the regulations. The TCN workers in the construction sector who were posted from Poland reported standard working hours during their posting period of about seven to eight hours. Importantly, the interviewed TCN workers from Poland highlighted that, when they were in Germany or the Netherlands, their peers or site managers warned them that working on weekends was prohibited.

The posting duration among the workers interviewed varied from one or two weeks to approximately two or three months in the longest cases. For small sending companies from Poland, the owner often accompanied the workers to perform the work abroad. The accommodation conditions reported by the workers included rented flats and hotel stays shared with other workers. The fieldwork found that the three Ukrainian workers and one Belarusian worker had not experienced many problematic issues. However, they had heard of work intensification and overworking in the construction sector from their peers and colleagues. Several workers mentioned this potential issue as a reason for declining posting offers in certain other countries and from certain employers:

*I just ran away because I saw that it was going to be some kind of slavery in the UK. And it turned out to be really like that. You had to assemble furniture there too. And this colleague went there, this young lad and he was there for quite a long time. I got in touch with this boy there in a while and he said what the conditions were like there ... He said [he was] living in some horrible conditions. And there you had to install 30 sets of kitchens in the development ... And on arrival the employer owed him somewhere around PLN 20 000. He was there for quite a long time about one and a half months. And this money he did not pay him. (Posted TCN, construction worker, PL8)*

Moreover, work intensification, which is a prominent feature of the elderly domestic care sector that also affects posted TCN workers, was also evidenced by all the workers we interviewed in Poland. This is illustrated by the following quote:

*... it's hard to stay for a month, and what is to say to stay for three months, when, for example, people don't sleep at night and four times a night you have to get up and lift the client, help them get out of bed, take them to the bathroom. This is very hard work. First of all, somehow the elderly people think that if you are at their home for 24 hours, sometimes they get so, so messed up and they think you have to work 24 hours. And that's when you have to, because some people who have a good head, a healthy head, they understand that you have to go out on a pause, that you have to have a day off, or two afternoons. But to whom you can't get it in translation, well then you have to fight for it, because they think to themselves that you have everything. 24 hours you're there and you're working. (Posted TCN, care worker, PL4)*

Similarly, TCN workers posted from Slovenia in both sectors have reported extended working hours. For example, one construction worker noted:

*The working conditions were also very bad. They made us work all the time, even on Sundays, which means we were working every single day. Sometimes, we worked for 290 hours. They said if we do not work Sundays, they will take 40 or 50 % off our wage. (Posted TCN, construction worker, SI5)*

Whereas a transport worker stated:

*Our work time is from 13 to 15 hours a day by law. Everything else depends on the situation. There are a lot of factors that influence how long you drive. For example, whether you load the truck on time or not, whether you had to wait a long time somewhere and so on. The law is very rigorous for us. When you work overtime, you get paid for that overtime. But when we do it, you need to pay a fine. (Posted TCN, truck driver, SI2)*

Another transport worker reported being asked to drive faster to meet a deadline:

*Then, I started working for [name of company] and driving mostly across Italy, but the work tempo was very difficult, and there were many irregularities in that job. The boss doesn't care about getting caught – they just have to pay a fine, but we can get deported, or our driver's license can be revoked. (Posted TCN, truck driver, SI8)*

In the international transport sector, a significant challenge related to work intensification is the monitoring of driving times, loading, unloading and rest periods for drivers. As noted by a source within the Inspectorate of Infrastructure in Slovenia, when the tachograph is one of the latest models, it is easier for the authorities to monitor driving times and rest periods. However, this is not always the case. Without the cooperation of drivers and their companies, the verification procedure is very difficult, and inspectors must calculate the distance between the accommodation and the truck, among other details, to be able to determine whether it is plausible that the worker stopped driving and stayed at the accommodation as reported or not.

Long working hours were also reported in the construction sector by a Brazilian worker who was posted from Portugal to France, but, in this case, the worker did not perceive this as a negative experience, since he enjoyed his time during the posting:

*We worked a lot. Wow, I was thirsty for work there. Because I love working, so did my friend, and we were working 70, 75 hours a week. We earned extra hours, everything was fine. Of my own free will. We worked from 6 a.m. to 9 p.m. and it was summer. Summer, then, was perfect. (Posted TCN, construction worker, PT4)*

### **Many TCN workers reported issues with their accommodation while posted, especially in the care and transport sectors.**

The three country case studies revealed a wide range of accommodation experiences among the various postings for each TCN worker. While some of these experiences were in accordance with standards and workers were satisfied with the lodging conditions, others reported having experienced inappropriate living conditions.

In the domestic care sector, accommodation conditions seem to be a considerable source of vulnerability and dependence in that, even if workers are not asked for payment, the circumstances in which they find themselves are uncertain. As reported by the care agency representative and several of the workers interviewed, their treatment by the employer (the care receiver) varies significantly, which can give rise to issues ranging from overworking and poor treatment to neglecting nutritional needs.

In most instances, interviewees resided alone with the individual they provided care for. Therefore, although the contract allowed for one to two hours of daily rest or a day off, it appears that this was not feasible in practice during their employment period. Interviewees noted visible malnutrition among some of the care workers upon their return from posting:

*I said I wanted to make soup; she [client in Germany] said her husband is allergic to soup. And when I wanted to cook soup for myself and my daughter was buying eggs, 35 cents a piece, they said they wouldn't spend that kind of money on me. And I wanted to eat one for breakfast. They didn't want to spend that money on me. (Posted TCN, care worker, PL2)*

Many such cases were known to both the agency and the interviewees, in which care workers left their work in Germany before completion due to such issues with working conditions. In these cases, workers were also reportedly unable to get any wages for the number of days that they provided services.

In Portugal, as reported by stakeholders, posted TCN workers were sometimes required to pay for their accommodation, or the costs were deducted from their wages. Although none of the workers reported such instances or problems with living conditions in their current posting experience, some had experienced poor-quality accommodation during previous posting assignments. This is consistent with the findings from the other case study countries, as illustrated by two of the interviewed Brazilian workers in Portugal:

*It was more of a camping environment and the houses were not at all acceptable. I was lucky as it was only a short time. Thankfully, they quickly closed operations there and I returned to Portugal. (Posted TCN from Brazil, construction worker)*

*I had to go outside to get into my room. I had to go out on the balcony and sometimes it was snowing or raining. I had to go out to have a shower and then go back into my room in the cold. (Posted TCN from Brazil, construction worker)*

In the Slovenian case study, challenges regarding accommodation were reported in both sectors: construction and international road transport. Slovenian inspecting authorities reported that they had observed several problematic practices. One issue was that many TCN workers needed to provide evidence of accommodation in Slovenia, but since they rarely or never come to Slovenia and instead spend their time elsewhere, that is, close to the construction sites in the receiving countries or travelling in the case of drivers, employers often provide proof of a Slovenian address, sometimes for a fee. As one worker explained:

*I do have a friend who is Bosnian, working for a Slovenian company in Germany, and for example, he has the annual leave payment in the amount of EUR 1 300, but his boss takes this money (in cash) back because my friend is registered at his address. (Posted TCN from Bosnia and Herzegovina, truck driver, SI3)*

Another issue was the lack of adequate accommodation while posted. For the construction sector, poor and crowded accommodations were mentioned by one worker, although he considered his current accommodation, one room shared by three people, better than previous lodgings:

*The company pays for the accommodation, I live in an apartment with five other people. There are two rooms for three people each, one bathroom, a kitchen and a living room. The apartment is decent, I never expected to be living in five-star hotels, but some of the previous companies provided really poor accommodation to us workers. (Posted TCN, construction worker, 6)*

Issues regarding accommodation for mandatory rest periods were also reported in international road transport. In this sector, employers provide workers with designated addresses for mandatory rest, which are to be presented to the authorities. However, reports from both stakeholders and workers indicate that drivers frequently sleep in their trucks and do not always observe the mandatory rest periods, such as the weekly rests. As one truck driver stated, 'I sleep, cook, live in the truck.' In general, monitoring of drivers in international road transport, particularly concerning driving and rest periods, was reported as a challenge by enforcement agencies and the social partners.

## 5.2. Monitoring and enforcement challenges of TCN posting

The literature on the monitoring and enforcement of the rules in relation to TCN posting highlights various procedural and practical challenges faced by enforcement authorities and other public institutions. Findings from past studies point to the complexities of ensuring compliance with posting regulations across different governance levels and institutions both within and across countries (Berntsen, 2015; Berntsen and Lillie, 2016; Čaněk et al., 2018; Danaj et al., 2021; Bogoeski and Rasnača, 2023b). Based on such evidence, extant work highlights the need for improved intra-institutional and cross-border information exchange on posting activities, noting that while the EU's internal market information (IMI) system facilitates this, practical cooperation is needed (ELA, 2023a).

The fieldwork evidence collected from the three Member States, Poland, Portugal and Slovenia, illustrates five key challenges related to the monitoring and enforcement of the rights of posted TCN workers:

- intersection of competences and cooperation challenges among enforcement authorities at national level;
- cross-border cooperation in enforcement;
- challenges when inspecting specific types of companies such as TWAs, shell companies, letterbox companies and others;
- lack of human resources in enforcement and monitoring;
- the vulnerability and reluctance of posted TCN workers to cooperate with enforcement authorities.

**Monitoring and enforcement of TCN posting cross-cuts the mandates of the national public institutions and agencies, necessitating efficient and effective cooperation and coordination efforts fit for the rapid pace of posting activities.**

Intersecting regulatory frameworks and jurisdictional boundaries limit national enforcement agencies' ability to monitor the posting of TCNs effectively. The transnational nature of cross-border service provision requires robust cooperation among multiple agencies and public institutions in each Member State. Evidence from fieldwork in the three Member States, particularly from interviews with stakeholders and public authorities, highlights that both territorial cooperation within a country and cross-country cooperation between competent institutions are crucial for effective monitoring.

Focusing on cooperation within each Member State, in Poland, despite the potential pitfalls and various sources of irregularities in the posting supply chains, the Polish public authorities noted that their mandate and power allow them to control and monitor only a limited section of the posting supply chain, which includes permit legalisation, PDs A1 and companies established in Poland. One example of a monitoring activity conducted by the State Labour Inspection refers to the regulations applicable to TWAs. The labour inspectorate reported that if it detects a situation in which an agency or company is operating illegally as a TWA without the correct registration and proper certificate, it will report the agency/company to the relevant local voivodship marshal, the social security institutions and the tax office in Poland. The local marshal will then initiate the prosecution process and apply sanctions, if necessary. Despite this, the mandates and competences of each agency are limited when it comes to taking action in potential cases of non-compliance even when it is potentially detected:

*If we detect the situation, that is kind of abusing the Polish system and the company is only registered and established to legalise the status of the workers to be abroad, our competence is still limited because there is a lack of person with whom we can carry out the inspections on this. We are not able to collect information because we have no possibility to interview workers about whether they are present in Poland only to perform work. (Representative of State Labour Inspection, Poland)*

In all three cases, stakeholders discussed the separation of mandates and jurisdiction of national agencies, noting that cooperation is usually based on information exchange and working groups:

*National authorities conduct proceedings within their jurisdiction. We cooperate by sharing the information we need, and there is also cooperation between authorities through working groups. (Representative of the Health Insurance Institute of Slovenia)*

The independent experts and public authorities we interviewed also pointed out that Poland does not have an effective procedure to verify whether a TCN worker who entered the country and obtained a visa for the Polish territory remains and works in the country. Furthermore, as reported by the Ministry of Family, Labour and Social Policy representative, a significant challenge in posting is that public institutions issuing and legalising the status of TCNs regarding their residence and work permits are separate from those issuing and registering PDs A1 and they cannot link the information for such workers. For instance, all TCNs coming to Poland for work-related reasons are required to provide proof of an employment contract with an employer in Poland. In such agreements, however, companies do not include their intentions for posting workers abroad or the date of posting. In some cases, there may be suspicions regarding whether the work will duly be conducted in Poland, which could be and, according to the authorities, there should be, grounds for refusal of the permits. The Polish legislation provides a legal basis for the possibility of refusing a work permit in such cases; however, implementation can sometimes be challenging.

A similar issue was raised in the case of Portugal, since having different authorities to manage migration, residence and work permits for TCNs, on the one hand, and the social security institutions that issue PDs A1 when workers are posted, on the other, makes it difficult to monitor whether a worker has duly stayed in the country of residence before being posted or if they are overstaying their visa or misusing their specific permit type:

*The government decided to reform the system and now we have these two competences. They are separated. And we have three different police to accompany this. There is a police for the airport, a police for boats and another for other things. And for documents we have an agency, it's named the Agency for Migration and Integration. And this agency is responsible for the issue of documents and providing policies for the integration of migrants. But the power is completely separated from the control of borders that is an issue of police. So, in this moment, we are still adapting to this reform. And during that time, the government decided to consider that all the people that has a residence permit that is not valid, and they need to renew. They consider that this would be accepted to provide to these people rights, for instance, access to the hospitals, access to benefits of Social Security because these people are still paying*

*[contributions]. So, they were still connected to the [social security] system, but they don't have the documents renewed, not because of them, but because of the services [for visas and permits] that were not working. (Institute for Social Security representative, Portugal)*

Another monitoring issue was related to the method of verification. The authorities in all three countries argued that most of their work involves checking documents and whether individuals are registered in the system, for example social security system; however, it is possible that companies might produce and submit the correct documents, which does not necessarily coincide with what is happening in practice, particularly in the receiving country, where the sending countries' authorities have no jurisdiction (see Box 4 for quotes from interviewees in all three countries).

Box 4: Insights from inspecting authorities on monitoring posting companies or TWAs by only reviewing their documentation

*So every authority [in other Member States] asks us about the legal status of the posted TCNs from that were detected during their inspections in the receiving country to make sure that, OK, they are hired legally in Poland and that they have the right to stay in Poland legally ... from the Polish perspective, it's necessary feedback from receiving country about the results of inspections taken in their country on TCNs ... For example, if, I'm the temporary employment agency and I abuse the rights of workers and working conditions from the perspective of receiving country, it has an impact on the certain certificate given by the Polish authorities, and we usually lack information about the results of the control which we need. (Representative of State Labour Inspection, Poland)*

*We are in our offices with documents, checking documents, checking in the system if people have the accounts in the system, how much time these contracts are for, the consistence of the history of each worker, we can check, but only with the information that the worker and employer provides us within the system. There is information that we only can obtain in an inspection, for instance. But we have here some, how to say, limitations in social security. To check if we are before a situation that it is a valid situation or not, of course that we are doing all we can .... (Institute for Social Security representative, Portugal)*

*So, we have here quite a lot of such employers for which we assume that they will perform only work abroad, but in practice it is difficult to stop them because you know, if these employers have all formal conditions and have papers, some, I don't know, some labour contracts and in so many cases, just formal procedures are OK. (Representative of the Employment Service of Slovenia)*

Irregularities associated with the PDs A1 in international road transport can also be challenging for monitoring and enforcement authorities, considering the involvement of multiple documents, regulations and agencies that such rules cross-cut, even within national borders. Evidence from the Slovenian fieldwork indicates that there have been instances in which a posted driver, upon being stopped, was not able to immediately provide the PD A1 but submitted one later, with a timestamp dated two hours earlier. According to a source within the Inspectorate of Infrastructure, it is possible that the driver was issued the PD A1 around the time that he was stopped. However, the online system it uses is based on Coordinated Universal Time, which then gives reason for doubt and makes it challenging for inspectors to establish whether the PD A1 was issued prior to the inspection or not. Additional documents and data from the tachograph could assist in establishing whether the driver entered the territory of the other country earlier than the time stated on the PD A1. Nevertheless, not all cases are so easily assessed, especially if a driver has traversed several countries. In such a case the posting is also considered between the country where the driver started and the country where the transported goods will be delivered, while the other countries passed through are deemed transit countries.

**Cross-country cooperation is necessary for monitoring and enforcing posting rules across the EU, but territorial jurisdictions and different rule enforcement practices across countries create challenges that could potentially be overcome with digitalisation and improvement of EU-level inspection efforts.**

Turning to the theme of cross-border cooperation in monitoring, an element raised during fieldwork pertains to the legal provisions of the receiving country concerning working conditions and minimum standards. Polish labour inspectors cannot easily check whether a Polish company posting workers to another Member State ensures that



those workers enjoy conditions that comply with the regulations and minimum standards of the country where they provide services because this necessitates inspection abroad. Instead, they aim to do this through inspections conducted within Poland. They gather as much information as possible on the company's employment relationship practices. If any suspicious or risky practices are identified, they report them to the control authorities in the relevant receiving countries either bilaterally or through the IMI system. Difficulties exist in this form of monitoring because many such fraudulent companies are letterbox companies that post workers abroad from Poland, making it challenging to track and monitor when Polish inspectors cannot find any information to initiate the necessary control proceedings, as discussed in the next section on inspecting letterbox companies.

Furthermore, the Polish authorities can also conduct inspections if requested by the receiving Member State through the IMI system. In such cases, if inspections in the receiving country indicate or arouse suspicion that a TCN might not be genuinely posted from Poland or that the company posting the TCN (or other workers) is not genuinely established in Poland, the labour inspectorate and the relevant social security authorities in Poland can perform checks and report back to the receiving Member State with the request. However, since these cases cross-cut various institutions and agencies in Poland, as discussed above in relation to jurisdiction within the countries, particularly in the case of TCNs, including the authority for legalisation of work and entry visas, social security institutions issuing PDs A1, and company registries, each institution in Poland can only monitor within their respective area of expertise. This can hinder the ability to promptly provide a comprehensive picture of the situation.

The Slovenian labour inspectorate also explained that it could perform inspections only within the territory of Slovenia, not having competences to monitor the enforcement of pay rates in the receiving country, for example. This obviously limits its activity in cross-border cases and investigations. It can impose measures only in the case of non-compliance with the provisions of Slovenian law, for example on national pay rates or the timeliness of wage payments. It can also impose measures if the employer does not ensure the employee's return to Slovenia after their work abroad ends. Or, specifically for road transport, when the rule requiring the return of the driver every four weeks is not observed, enforcement becomes challenging, since it necessarily entails cross-border cooperation beyond the jurisdiction of a single Member State. Jurisdiction, thus, could pose a double challenge in the context of enforcement, due both to the transnational nature of posting and to its intersection with the separation of mandates to different national agencies that need to be involved in the case of an inspection request from a receiving Member State.

Lastly, jurisdiction limitations apply not only to monitoring within and between Member States but also to the fact that inspectorates do not have any mandate to monitor the situation in the countries of origin:

*When it comes to temporary work agencies, we do see that there are some companies that have been registered in Poland as a temporary work agency, but we do not know ... if they were recruiting in Ukraine and the workers had to pay for that, we do not have the sort of like power here to inspect it. We may have suspicions but because the procedure is outside of Poland, we cannot do anything unless the TCN has to tell us the complaints. (Representative of State Labour Inspection, Poland)*

Despite the various challenges associated with monitoring posting supply chains from the perspective of cross-border cooperation, the stakeholders and representatives of authorities interviewed in all the case studies welcome digitalisation efforts, such as the IMI system, that facilitate the transnational exchange of information as well as the improvement efforts for a unified system of access to information on posting rules across the EU, such as the single national posting websites. The quote from the representative of the employers' confederation in Portugal illustrates a point that emerged in all three cases, namely the need for information on both national regulations and the EU rules broadly to effectively monitor, apply and enforce compliance:

*I am always in favour of more information. [ELA] could have a very important role, but in principle, yes, I think we all gain of having more information if we know that you have to apply the same rules regardless of being from you or not. I think that there must be an effort from the governments, from Member States and also from ELA, you know general questions, general review, and very specific questions like what is the collective bargaining agreement that I should apply? Two years ago, I think one of the major issues that we had in Portugal was the time to issue the PD A1. There were a lot of companies sending emails to us saying I'm losing business because they are taking two months to issue the PD A1 ... now we are discussing the E Declaration, a common declaration, and we of course support that. Because as we spoke earlier, it's important that everybody understands the same rules and apply the same rules, so I think there's that. (Representative of employers' confederation, Portugal)*

The Polish authorities also highlighted that timely and comprehensive cooperation efforts from other Member States, when an issue is raised from either side, are crucial to ensure the legality of postings in the EU. Since 2016, the Polish Act for Regulation has also paved the way for the country to establish 12 bilateral agreements with other Member States. These agreements strengthen cooperation efforts for monitoring the posting supply chain beyond what the IMI system mandates <sup>(99)</sup>.

Lastly, an additional aspect of relevance identified during the fieldwork refers to the differences in the acceptability of certain country-specific documentation provided to TCNs. Chapter 2's regulatory framework described how, for the posting of TCN workers, migration, employment and posting regulations, as well as company and temporary agency work legislation, intersect. The outcome is a complex system that needs to be enforced at both ends of the posting supply chain. For instance, according to the TWA representatives interviewed in Portugal, this may create confusion in terms of compliance. Although it is the responsibility of the posting company to check whether the conditions of posting are met, including that the posted worker has the proper residence permit or work permit, in the case of Brazilian and other CPLP nationals, employers sometimes fail to do that.

For instance, many employers believe that workers with a CPLP residence permit can be posted like any other worker. Since this permit is not accepted by other Member States, companies face problems when these workers are posted. Lacking or failing to present during inspections the necessary papers or documentation, whether intentional or not, can result in serious consequences for the posted workers involved. The representative of the Institute for Social Security described a case in which Brazilian workers were detained and questioned under suspicion of fake posting. Similar incidents, also involving posted Brazilian workers, but in different Member States, were reported by the TWA representative during the interview:

*It happened because he wasn't able to reply. He didn't have the papers with him at that moment. He was in jail for two days. Then I called the lawyer who represents immigrants, and the police, the police officer apologised. (TWA representative, Portugal)*

These challenges are not limited to posting companies. The verification of the fulfilment of the requirements applicable to the posting of TCN workers by the receiving Member State may require an understanding by its authorities of the legal framework of the sending Member State. For example, in the three country case studies, issues were reported regarding the posting of TCNs legally residing in the sending Member States under specific permits (the 'expression of interest' in Portugal, the 'declaration on entrusting work to a foreigner' in Poland or the expedited residence and work permit for citizens of Bosnia and Herzegovina and Serbia in Slovenia). These challenges are due to difficulties reported by authorities in the receiving Member State in verifying that the posting complies with all the requirements, notably, that the posted TCN is lawfully employed in the sending Member State (ELA, 2023a: 121).

### **Challenges in inspecting letterbox companies, companies that operate as TWAs and outsourcing companies were identified in all three countries.**

Some of the problematic issues related to monitoring and enforcement reported by the stakeholders interviewed in all three countries, particularly inspecting authorities and trade unions, were related to the challenges associated with letterbox companies or companies that, while not officially registered as TWAs, in practice operate as labour suppliers with minimal or no other economic activity.

In Poland, stakeholders address this issue from two distinct perspectives. The first involves inspectors' efforts and procedures to verify whether a work or residence permit issued for a specific worker to work for a particular employer is being used legally and in accordance with its stated purpose. According to the stakeholders interviewed, the facilitated permit for post-Soviet countries in particular allows certain intermediaries, such as letterbox companies, companies operating as TWAs or companies operating as outsourcing companies, to post these TCN workers abroad illegally. If there is suspicion of such activity, the legality of the company's operations is questioned, and appropriate action is taken.

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<sup>(99)</sup> The full list of bilateral agreements and further information is available online ([https://www.pip.gov.pl/o-nas/wspolpraca/wspolpraca-miedzynarodowa#title\\_2](https://www.pip.gov.pl/o-nas/wspolpraca/wspolpraca-miedzynarodowa#title_2)).

*... concerning the [TWAs] that we find that are not registered and they don't have the certificate who are found to be employing TCNs to post abroad, we inform the voivodship authority, stating that the [work permit] documents were falsely obtained because the workers didn't work in Poland but they are working in another Member State and we inform also the social security institution concerning the PD A1 issued and we inform the tax authority also. (Representative of State Labour Inspection, Poland)*

In the second part, the labour inspectorate also stated that neither it nor the agency issuing visas in Poland has a way of tracing the workers' trajectory within the EU because their Polish visas and permits cannot be linked to PDs A1. The Polish public authorities suggested that it is very challenging to monitor and identify fraudulent posting practices because, unless the letterbox company or the fraudulently operating TWA is discovered in Poland, it is not possible for them to track the activities of these intermediaries from the workers' documentation issued in Poland. They, in fact, rely more on the inspections conducted in the receiving Member States, which they are informed of via the IMI system when certain workers posted from Poland are found at the work sites of companies for which suspicions have been raised or violations have been identified. In such cases, the national institutions in Poland have the mandate to inspect whether the employers are letterbox companies engaging in fraudulent practices related to the posting of TCNs.

In Portugal, according to a Portuguese trade union representative, most letterbox companies operate with only a phone number and are actively recruiting and posting TCNs for ad hoc locations such as an office in a shopping mall:

*The workers know the company for which they work for, but they usually have only a WhatsApp number and when something goes wrong, and the workers try to contact the company, no one answers the phone. (Trade union representative, Portugal)*

The presence of letterbox companies was confirmed by the Portuguese inspecting authorities:

*The companies that give problems, so to speak, are the ones that do not really exist. We don't have a person to contact. We go to the address, and it's like, sometimes it's actually a mailbox. (Labour inspectorate representative, Portugal)*

In some cases, these entities operate without fulfilling the legal requirements, as highlighted by several Portuguese stakeholders. For example, some begin posting workers before they are formally registered as TWAs and still in the process of obtaining their licence. Others are registered as companies but do not have the licence to provide temporary work services. The Portuguese labour authority often receives requests through the IMI system from its counterparts in other Member States regarding information on posting companies or TWAs. As one of the stakeholders noted:

*There are many of them. They are not licensed. They are legal, they are a legal company, but they don't ask for the permit for the temporary work activities. This company should not provide employees to a third company in another company. But there are a lot of them doing that. The ones that are doing these schemes will find different users, different companies to use this labour force and to get them across the border and work there the whole year. (Representative of the IEFPP, Portugal)*

Similar letterbox companies or companies operating as TWAs are also reported in Poland and Slovenia. These companies often do not have their own business premises, documentation is managed by accounting services, and their employees are continuously working abroad. For instance, some of the care workers interviewed in Poland indicated that the care agencies that send them abroad to work were only contactable by phone and did not have any real offices. It is difficult for labour inspectors to intervene, and the only thing they can do is refer such cases to the authorities responsible for issuing PDs A1. As stated by the Slovenian labour inspectorate representative:

*When we talk about posting in terms of the sending country, the biggest challenge is for companies that do not operate in Slovenia because their workers are actually working abroad all the time. Such companies often do not have their own business premises, and their documentation is managed by accounting*

*services. If/when we come across such cases in inspection procedures, we establish the conditions for issuing PD A1 certificates. We propose to the Health Insurance Institution of Slovenia (ZZZS) to remove them if it is found that the conditions for issuance are not met. (Representative of the labour inspectorate, Slovenia)*

As the above quote illustrates, the labour inspectorate refers such companies detected during inspections to the Health Insurance Institute of Slovenia to check whether the conditions for issuing PDs A1 are met, and, if they are not met, the PD A1 is revoked. Portugal uses a similar approach, since the competence for verifying the PDs A1 falls under a different authority.

### **Limitations in human resources may affect the capacities of enforcement agencies to monitor TCN posting.**

The public authorities are aware of the various irregularities in the posting of TCNs, and many of the challenges described in this report were also drawn from their first-hand and institutional experience as monitoring and enforcement authorities. Yet, at the same time, these authorities face some challenges in enforcing the rules. Monitoring the posting of workers and enforcing the rules and regulations in general and also in relation to the posting of TCNs, requires the mobilisation of human resources at key locations and sites where irregularities are detected, which stakeholders interviewed in all three countries reported as challenging.

Some representatives of public administrations in Portugal also raised the issue of limited capacity to process the volume of work required to monitor various aspects related to the posting of TCNs, from verifying their migration status to verifying their social security status and their posting status. As one stakeholder stated:

*And of course, the labour inspection for a long period complains about not having inspectors so they didn't have enough staff. And this is a general problem in Portuguese public administration and relates to the fact that the country is ageing, and so public servants are demanding or starting to be open to even to foreigners to start doing these kinds of activities as well. So that is also a challenge, yes. (Representative of the Observatory for Migration, Portugal)*

In Slovenia too, some authorities reported a shortage of personnel, in particular inspectors, The labour inspectorate has 97 (56 for labour relations, 35 for occupational safety and health and six for social affairs).

To manage the volume, particularly during verifications prior to the issuance of PDs A1, the representative of the employers' confederation in Portugal recommended the digitalisation of some of these services, which could help expedite the procedure. As one stakeholder from Portugal stated:

*One thing that is very important as well, and I think it helped a lot, is this opportunity to have this exchange, staffing exchange meetings with colleagues with ELA because it allows us to have a space where several actors from several entities have a more integrated vision about the problem. Because we have particular competences in this, but to see the whole picture we need to be together with the other actors, people from inspection, people with knowledge of working rules, social security, even the police that enforces the laws of borders etc. (Institute for Social Security representative, Portugal)*

The digitalisation of the issuance of PDs A1 was introduced in Slovenia during the COVID-19 pandemic and has since been fully operational. Furthermore, cooperation and knowledge exchange with colleagues from various institutions and across different Member States, as well as with the ELA, are regarded as beneficial for building the capacities of inspection authorities and jointly addressing the complex issue of TCN posting.

### **TCN workers are reluctant to come forward and collaborate with the authorities to report abusive practices by recruiting intermediaries and posting companies / TWAs.**

Lastly, both inspecting authorities and social partners struggle to persuade TCN workers to collaborate with the authorities. While posted TCN workers are more prone to falling victim to fraudulent practices, they are less likely to report them to authorities in the sending countries and far less likely to report them in the receiving countries (Cillo, 2021; Danaj et al., 2021; Kall et al., 2021). Even in the case of trade unions, TCN workers usually approach them when something quite problematic has happened and they have not been able to resolve it themselves,

such as not being paid by their employer or in the event of accident or injury (Danaj et al., 2023a; Lillie et al., 2020). This challenge was reported by inspection authorities and trade unions in the three countries.

In Poland, while trade unions have indicated their awareness of the vulnerability of TCNs in the posting supply chain, they are limited in their ability to take a bigger role in monitoring unless the worker reaches out to them. To facilitate this, one of the unions interviewed in Poland described an initiative to include Ukrainian speakers among their staff to better assist with enquiries. Another aspect highlighted by the public authorities and social partners and evidenced in all worker interviews during the Polish fieldwork, is that TCN workers are overwhelmingly hired under civil law contracts, which presents a challenge in monitoring their cases (see Box 2 in Chapter 2).

In the case of Portugal, both labour inspectorate and trade union representatives agreed that fear of being reported to migration authorities and language barriers, for instance in the case of TCN workers from Asia, are among the main reasons why (posted) TCN workers do not lodge complaints. They may also lack an incentive to report violations, as the wages they receive in the receiving country are still higher than those they would earn in Portugal or in their country of origin. This was also observed by several stakeholders interviewed in Poland. The posted TCN workers interviewed indicated that they could approach their current posting employer with questions or problems they might have. However, one of them admitted that some workers who did not have good experiences with posting might be hesitant about speaking out and losing the opportunity to work:

*I think it's because of life experience. Especially because the other colleagues hadn't had much experience, hadn't had good experiences of posting, and I think they're afraid of saying something. And since I've never had that, I like things as they should be, right? What's agreed isn't expensive. So, if you tell me something, I'll tell you straight away whether I like it or not. I don't have to submit to things I don't need, you know? So, if I'm away from my home, from my family, if I don't have the right working conditions, there's no point in me being there. (Posted TCN from Brazil, construction worker)*

### 5.3. Risk factors for non-compliance or unfavourable working conditions

In this chapter, thus far, we have presented findings related to challenges reported by posted TCNs as well as the key issues regarding monitoring and enforcement. In this section we discuss various risk factors, identified from on the analysis of the case studies and the literature review, for non-compliance in posting of TCN workers. Such risk factors are clustered into two types, namely those linked to either the institution or the individual level, which increase the potential for non-compliance and unfavourable conditions for the TCN workers in the posting supply chain.

#### 5.3.1. Institutional level risk factors

**There is a mismatch between free movement related to the transnational economic activity of posting companies and LMIs, on the one hand, and the national mandate of enforcement agencies, intensified by the specific scope within which TCNs can be legally posted, on the other, that can be bridged only by efficient cooperation.**

The stakeholders we interviewed, especially representatives of enforcement agencies, all indicated that they are often informed about non-compliance and worker abuse by their counterparts in the receiving countries, usually through IMI system requests for verification or bilateral exchanges. To take action, they require evidence of infringements of national and EU legislation, which can be obtained from inspections conducted in the receiving country or from further verification of documents submitted to the authorities in the sending countries. Each relevant national authority can review formal postings of TCN workers and revoke PDs A1 or work permits issued under false pretences. The complexities associated with the movement of TCN workers across the EU, particularly those with temporary work permits, along with the different levels of labour market access granted by various permits in their countries of residence, such as the legalisation of Brazilians in Portugal or the entrustment of work issued to Ukrainians before the armed conflict and the civil contracts under which many of them are employed, further exacerbate the risk of non-compliance in sending and receiving countries with different national regulations that complement EU law.

In the cross-border enforcement of labour law, the ELA plays a crucial role, for instance by facilitating cross-border inspections. Bilateral cross-border inspections and other ELA activities related to information exchange or working groups are acknowledged as helpful, yet more synergies and transnational cooperation are needed to minimise the risk of non-compliance. The collaborative approach inherent in cross-border inspections reflects that labour issues often transcend national borders and require coordinated efforts.

**The fragmentation of monitoring and enforcement competences among various national public authorities that encompass different policy areas, such as migration, employment, social protection and others, at the level of a range of organisations and agencies can result in gaps where some TCN workers might be overlooked.**

The posting of TCNs includes multiple legal frameworks regarding migration, employment and social security, and therefore several institutions are involved in monitoring and enforcing these regulations. While diverse measures are taken by the authorities to coordinate their efforts through information exchange, working groups and joint task forces, the fragmentation of the monitoring and enforcement mandates among different authorities creates possible gaps that can be difficult to bridge.

For instance, since the rules on TWAs and posting regulations have been reinforced in many Member States, the three case studies revealed examples of entities registered legally as companies operating within the national labour market but which in practice function as labour suppliers, as previously discussed. Often these companies could also qualify as letterbox companies, meaning that they lack proper offices or personnel. Such companies were reported as difficult to monitor since, for example, licensing and labour issues fall under the competence of different authorities, while monitoring the immigration status of TCN workers is the competence of other authorities (local administrations, police, special agencies, or employment services depending on the country).

Within the case studies, there were reports about the substandard conditions that some workers are exposed to. Authorities, while generally aware of such practices, reported difficulties in detecting, preventing or stopping them. They often also noted that, if they suspected that a company was operating as a labour supplier, they could not intervene because it was not in their competence, as the irregular activities usually occur in another Member State. In such cases, they could only refer the matter to the relevant authorities.

**Labour supply chains and subcontracting without shared liability can lead to a shift in economic risks towards the end of the chain, where most recruiters, posting companies and LMIs are located.**

A significant risk factor for non-compliance and the exposure of posted TCN workers to unfavourable working conditions derives from the structure of the supply chains in posting. First, it has been observed that the recruitment of TCN workers to Europe or into the posting supply chain for the nationalities analysed (those from Bosnia and Herzegovina, Brazil and Ukraine) was mainly conducted by informal brokers or on an ad hoc basis while these individuals were already in the EU labour market, making them difficult to trace or monitor. Many workers were recruited through personal contacts, referrals or online. Workers from the Western Balkans and eastern Asia also paid fees to their recruiters, which indicates their dependence on and vulnerability to such recruiters or employers. Even in the case of Slovenia, where the public employment services of both the host country and the non-EU country of origin must be and are involved in screening procedures for candidates from the two countries based on bilateral agreements, that is, with Bosnia and Herzegovina and Serbia, the procedure was often a formality, with the agreement between the employer and the worker already made informally. Under these circumstances, it is challenging for authorities to investigate informal recruitment practices, since formal practices are followed to the letter of the law.

It was also observed that, between the service providers from the sending countries and the user companies in the receiving countries, there was commonly a middle entity often based in the receiving country, which acted as an intermediary. Fieldwork suggests that sometimes user companies engage intermediaries in their own country because they trust them and can cooperate without a language barrier, as shown by the experience of TWAs from Portugal posting workers to other Member States. But in other cases, these entities were also fictitiously set up for the purposes of extending the chain and therefore shifting liabilities from the user companies down the chain.

For example, in Poland, the practices of entities registering as outsourcing companies to circumvent the more restrictive TWA regulations can result in increased vulnerability for workers. These entities' involvement in the

posting supply chain can create risks of non-compliance and subsequent vulnerabilities for TCN workers. There were also two examples, one in Portugal and one in Slovenia, where the same operators set up complex networks of companies and intermediaries that were responsible for different processes, such as the recruitment, posting, payment and supervision of workers, where again the risk of unfavourable working conditions increased significantly for the workers involved.

**Important obligations, especially those related to their migration and permit status and the right to work and/or be posted, are under the responsibility of workers and not employers.**

Although posting is a provision of services by posting companies or LMIs across borders, TCN workers who are being posted are responsible for key documents related to their migration and permit status and the right to be posted, which in the case of Germany may also include obtaining the Vander Elst visa. The legal responsibility at the individual level combined with the need for the employer's support to fulfil visa and employment criteria means that TCN workers could be quite vulnerable to employer pressure to circumvent regulations. The fieldwork revealed that many companies or intermediaries post workers without the proper documents, especially in cross-border areas, and 'hope' that the workers do not get caught, but, even if they do, the workers bear the responsibility for working illegally in the receiving country.

### 5.3.2. Individual-level risk factors

**Poor availability and accessibility of information on rules and obligations regarding the posting of TCN workers can lead to the risk of non-compliance for both companies and workers, especially where there are language barriers, complex regulatory frameworks, and limited financial and human resources.**

Past research has already indicated that posted workers from non-EU countries are exposed to various vulnerabilities due to their TCN status and are less protected from potential exploitations (Arnholtz and Lillie, 2023; Cillo, 2021; Danaj et al., 2020, 2023a; ELA, 2023a; Lillie, Ndomo and Kärkkäinen, 2023; Vah Jevšnik, 2018). Emerging from the fieldwork conducted in the three case study countries, language barriers and incomplete information about the posting rules and regulations push workers to accept unfavourable conditions. For instance, while Ukrainian workers seem to have some level of Polish and learn the language as their stay in the country becomes longer, the particularities and details of the legal frameworks in Poland and subsequent regulations required for legal TCN posting and the contracts given to them still seem to be a point of potential risk, as they are often available only in Polish<sup>(100)</sup>. In Poland, some companies discussed by the worker interviewees seem to have offered them some information about the conditions in the country of work and provided help with translations of their employment contracts. However, despite this, there is a general lack of knowledge on the part of TCN workers, reported by the trade union stakeholders and by the workers themselves, which is sometimes by choice due to workers' primary interest in obtaining a salary.

Likewise, fieldwork evidence from Slovenia also pointed to a lack of awareness of and information on workers' rights and obligations as a risk factor, creating vulnerabilities. This can cause problems when they agree to unfavourable terms and conditions of employment or to informal contractual arrangements that are not reflected in their official contracts, leading to non-compliance. Similar to the findings emerging from the Polish case, the main aspects are irregularities in their salaries and the documentation necessary while they are being posted. Concerning information availability on and accessibility of key legal documents, workers from Bosnia and Herzegovina seem to be more aware of the PD A1 and its importance, especially since it is possible for the workers to check the validity of the PD A1 online<sup>(101)</sup>. However, they are often not aware of the Vander Elst visa requirement for Germany. The implications for workers are serious, since if even one of these documents is missing, it is usually the worker who is charged with the violation through fines or, in the case of a lack of a Vander Elst visa for Germany, they are removed from the country and can be banned from entering in future – a combination of risk factors at the institutional level, as discussed in Section 5.3.1, and the difficulty of TCN workers obtaining sufficient information about posting.

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<sup>(100)</sup> There is information available in Ukrainian on the Polish single national website on posting of workers.

<sup>(101)</sup> The application is available in [Slovenian](#) and in [English](#). The app in Slovenian can also be accessed via a QR code on the PD A1.

**Immigration status, residence permits and the employment-based conditionality of such rights in the case of TCNs produce a double dependence on the employers that post them, increasing their likelihood of accepting unfavourable working conditions and non-compliant practices.**

TCNs are exposed to unequal terms and conditions while posted, which they may agree to, due to their double dependence on the posting employer for both their migration and employment statuses. Importantly, for their legal residence and work permit documentation within the EU, TCNs are personally liable and can be sanctioned in cases of lack thereof, which further increases the risks that they will accept undesirable and substandard conditions to ensure that they do not lose the rights to stay and work in the EU, which is linked to and often supported by their employer.

Therefore, an important risk factor, leading to the acceptance and prevalence of substandard working conditions for TCNs, is how their presence in the EU is dependent on their right to reside, which is linked to their employer. To illustrate this point, we highlight an example from the Slovenian fieldwork. TCNs are dependent on their Slovenia-based employers for the renewal of their single permit for the EU. If they are found in the EU without such proper documentation, they are sanctioned by being deported and having temporary bans on their entry into the EU labour market, which for many would result in a critical loss of earning potential. Because of the informal network within which employment occurs, many TCN workers trust their employers when they make verbal agreements on their terms of employment and are not fully aware of what their contracts say. Since their priority is often to find or keep their employment to guarantee their stay in Slovenia and their income, they agree to terms that only later are found to be challenging in practice. The workers interviewed who had difficult first experiences said that they stayed with the employer until they had better access to the Slovenian labour market and were then able to shift from their first employer to another offering more acceptable terms and resulting in less risk of adverse working conditions.



## 6. Conclusion

This explorative study examined the recruitment channels and contractual arrangements of posted TCNs within selected Member States, namely Poland, Portugal and Slovenia. The study mapped the contracting chains involved in the posting of TCNs, identifying both public and private operators and LMIs that play pivotal roles in this complex ecosystem. Furthermore, it listed the problematic issues related to the posting of TCNs and the challenges in monitoring posting and enforcement of labour law, identifying factors that may increase the risk of non-compliance and result in unfavourable working conditions for posted TCN workers.

The findings were derived from a mixed methodology approach that incorporated primary and secondary data analysis of stocks and flows of migration and posting, a scoping review of existing academic and grey literature, an analysis of relevant national and EU rules and regulations, and three empirical case studies on TCN workers posted from Poland, Portugal and Slovenia. In the case studies, original data were collected via interviews with 52 workers and other stakeholders, providing insights on TCN posting from all three countries in the construction sector, the predominant sector for TCN posting within the EU, and a second sector in each country, namely domestic (elderly) care services in Poland, logistics in Portugal and international road transport in Slovenia.

Although, at present, TCN workers constitute a modest share of the overall EU workforce, their numbers are on the rise, particularly in labour-intensive sectors experiencing shortages. Crucially, there has been a notable increase over the last decade in the posting of TCNs, with Poland emerging as a leading sending country. Ukrainian is the most prominent nationality of origin of TCNs in the posting supply chain (even prior to the Russian war of aggression starting in 2022), particularly those posted from Poland. Additionally, while posting of workers from Portugal and Slovenia is smaller in scale, it is increasing.

As evidenced in this study, recruitment of TCNs into the posting supply chain primarily occurs after their entry into the EU and can take place during their employment with a company in the sending Member State after they have spent some time working in the Member State they first entered. The three case studies found that facilitated entry regimes existed for workers from Bosnia and Herzegovina, Brazil and Ukraine. This allowed them to accept posted opportunities and assignments in order to improve their financial situation.

LMIs, ranging from informal brokers to legally registered formal agencies, play a role in facilitating posted work within the EU labour market. The landscape of TCN employers is diverse, but small subcontractors with TCN backgrounds dominate across all three countries. The fieldwork findings suggest that TWAs involved in posting activity within the scope of the case studies typically did not recruit TCNs directly from their countries of origin due to local labour market conditions. It means either that it is unnecessary to recruit from the source when TCNs can already enter the EU labour market because of dedicated entry rules or that it is difficult because of stringent posting requirements enforced by national authorities. In the case of the workers interviewed in the case studies who entered the sending country via facilitated statutory or bilateral regimes, the intermediaries did not play a decisive role in their work trajectory in the EU, although almost all workers had encountered LMIs in some shape or form.

The basic posting supply chain configuration identified is a three-tier system comprising one main contractor or user company and two levels of subcontracting to companies or LMIs that are based in both the sending and the receiving country, but variations involving further layers were also observed. The middle tier(s) can be genuine intermediaries, but more often they were reportedly used strategically to extend the chain and transfer risks and liabilities to the lower end of the chain, where companies hiring TCN workers are usually located. Apart from the buffer role of the middle tier, dubious operators such as letterbox companies or 'outsourcing' companies, as well as outright fictitious entities, are used to register or transfer workers on paper, which has reportedly led to fraudulent practices and exposed workers to labour exploitation.

The present study also identified challenges experienced by TCN workers in the posting supply chain in both sending and receiving Member States. For example, unclear practices often arise, aimed at circumventing legal protections meant to ensure fair competition and safeguard workers' rights. Problems with the issuance of PDs A1, underpayment and other irregularities in wages were prevalent among the posted TCN workers interviewed. Consequently, TCNs can often experience some vulnerability while posted. Effective monitoring of TCN postings and enforcement of labour law necessitates coordinated efforts among national institutions, yet certain challenges arise due to territorial jurisdictions and varying enforcement practices. ELA provides support and resources to

assist national enforcement authorities in addressing enforcement challenges identified during fieldwork. These challenges include issues related to enforcement in long supply chains involving labour intermediaries and letterbox companies in a cross-border context.

Overall, TCN workers contribute significantly to the EU labour market, especially in sectors experiencing severe labour shortages. Nevertheless, strong emphasis should be put on efficient enforcement to protect TCN workers' rights. Many of the irregularities and issues reported are not specific to posting of TCNs, but the latter are associated with additional risks of non-compliance: they face barriers in access to information and they are less likely to report problems to authorities. The findings from the three Member States examined highlight the importance of enhanced monitoring and coordinated enforcement efforts among national authorities to address these challenges. Additionally, there is a need for increased legal certainty for employers and improved protection for TCN workers to ensure compliance with rules and obligations and to safeguard workers' rights.

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# Annex A. Methodology

## A1. Scoping review

A scoping review of the academic and grey literature on the posting of TCNs within the EU and, more specifically, their recruitment into the posting supply chain, the terms of their employment and the operators involved was conducted for this study. The review concentrated on seven different themes related to the topic, and we also allowed additional themes to emerge inductively during the period of the analysis. The seven themes identified were (i) the recruitment of TCNs in the posting supply chain, (ii) the role of LMIs in the recruitment and posting of TCNs, (iii) the incoming flows and patterns of cross-border mobility of TCNs, (iv) the inequalities between TCNs and other posted and local workers, (v) challenges in monitoring the posting of TCNs and in enforcing labour law, (vi) infringements in the posting of TCNs and (vii) the impact of TCNs' involvement in the posting supply chain on the EU labour market.

A research protocol was developed for the scoping review, setting out the methods to be used, including the specific research objectives, criteria for the inclusion and exclusion of publications, and the search and screening strategies for the identification and selection of publications included in the review, all of which are described in detail below.

### Search strategy

To identify relevant literature, a three-stage strategy was adopted comprising (i) a systematic search of two academic repositories – Web of Science and Scopus; (ii) a targeted search of the grey literature using relevant international organisations' repositories (i.e. European Commission, Eurofound, Organisation of Economic Co-operation and Development, International Labour Organization, European Trade Union Institute); and (iii) a hand search that included checking the publications of research projects relevant to the topic and the reference lists of the most recent and relevant papers identified through searches.

Key search terms were identified based on the researchers' own knowledge of the field and from an initial keyword search on the topic. The search terms were then refined through subsequent searches. Table A1 shows the search terms used.

Table A1: Search terms used in the scoping review

Cluster of terms	Search terms
Posting and labour mobility	"posted worker" OR "posting of workers" OR "cross-border worker" OR "cross-border mobility" OR "cross border labour" OR "seasonal work" OR "labour migration" OR "labour mobility" OR "temporary migration"
TCN	"third country national" OR "non-EU national" OR "third country" OR "non-EU" OR "TCN" OR "migrant worker" OR "labour migrant" OR "migrant"
TWA	"temporary work agency" OR "temporary agency work" OR "employment agency" OR "labour market intermediary" OR "recruitment agency" OR "gangmaster" OR "employment placement agency"

As an inclusion criterion, the literature on the posting of TCNs within the EU was considered, with a special focus on rules, contracting of TCNs, working conditions, the involvement of LMIs such as TWAs, and factors that increase the risk of non-compliance in the posting of workers. We included peer-reviewed scientific publications and grey literature including government publications, working papers, research reports and review papers. The time frame was limited to literature published since 2011 and to literature published in English. We excluded publications for which the full text was not available or the author could not be identified, for example. The list of inclusion and exclusion criteria used is presented in Table A2.

Table A2: Criteria for inclusion and exclusion of papers

Criterion	Papers included	Papers excluded
Time frame	<ul style="list-style-type: none"> <li>Published since 2011</li> <li>Published before 2011 if highly cited in newer publications</li> </ul>	
Language	<ul style="list-style-type: none"> <li>English</li> </ul>	<ul style="list-style-type: none"> <li>Other than English</li> </ul>
Countries	<ul style="list-style-type: none"> <li>Focus on EU and European region</li> </ul>	
Type of resources	<ul style="list-style-type: none"> <li>Peer-reviewed scientific publications</li> <li>Government publications</li> <li>International organisations' publications</li> <li>Narrative, systematic and scoping reviews</li> <li>Working papers, research reports</li> <li>Policy briefs</li> </ul>	<ul style="list-style-type: none"> <li>Legislation, legal documents</li> </ul>
Availability	<ul style="list-style-type: none"> <li>Full text available</li> <li>Literature with author</li> </ul>	<ul style="list-style-type: none"> <li>Full text unavailable</li> <li>Literature with no author</li> </ul>

### Screening process and data extraction

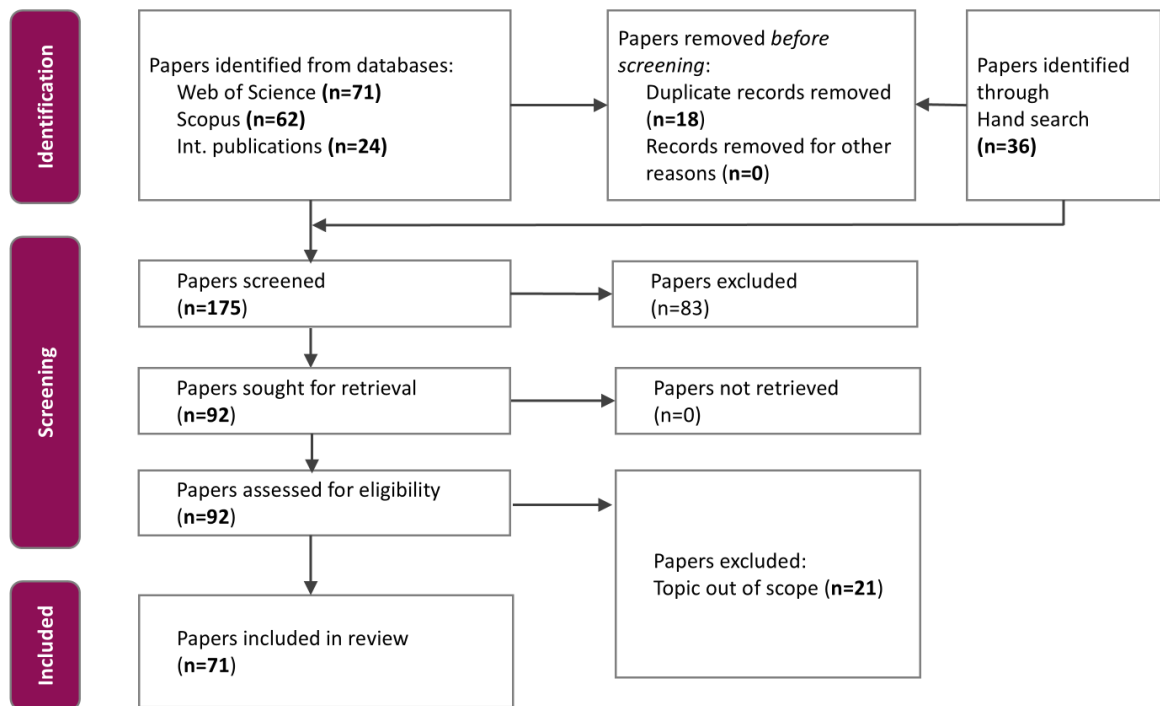
The searches of the academic and grey literature resulted in 175 resources following the removal of duplicate records (see Figure A1). Using the criteria described in Table A1, abstracts were screened by two researchers. Disagreements regarding inclusion or exclusion were resolved by consensus. The abstract screening resulted in the exclusion of 83 resources.

In the next step, the full text of the 92 papers that met the inclusion criteria were retrieved and screened and the decision on each resource documented in an Excel spreadsheet. Any discrepancies arising during the full-text review screening were resolved through discussion and consensus between the researchers. The full-text screening resulted in the inclusion of 71 papers in the analysis.

To collate data for the included records an extraction template was developed in Excel, which contained information about the papers' characteristics (e.g. authors, year, methodology), the population studies, the sector aspects addressed and key themes relevant to the aim of this review. A priori defined themes deemed relevant for the analysis and in line with the research questions to be addressed by the literature review included information about the patterns and flows of TCNs in EU cross-border labour mobility, inequalities in the employment terms and working conditions between posted TCNs and other posted and locally hired workers, recruitment of TCNs in the posting supply chain, involvement of LMIs, such as TWAs, in recruiting and posting of TCNs, infringements of the rules on the posting of TCNs, monitoring and enforcement challenges related to the posting of TCNs, and the impact of the posting of TCNs on the EU labour market and implications for social and labour standards in the EU. The template was populated with the data from the included papers by the researchers and served as the basis for the analysis.



Figure A1: Prisma diagram



## Synthesis

Once the extraction of relevant data had been completed, the research team had identified clusters of studies around the pre-determined themes. Additional themes for the analysis were also identified if there were enough relevant studies supporting the inclusion of such a dimension or if the topic was uniquely pertinent to the topic of this study. The findings from the scoping review are presented thematically and integrated in the report along with the main findings from the three case studies.

## A2. Case studies and fieldwork

The fieldwork examined Poland, Portugal and Slovenia as country case studies.

For each country case study, new empirical data were collected through semi-structured interviews with stakeholders and posted TCN workers (see more information on the fieldwork below). Additionally, we used secondary data sources, which included official statistics from Eurostat and national statistical offices, legal documents, academic and grey literature, national reports and other publications. We focused on two economic sectors per case study country. These included the construction sector across all three case studies and a second sector per country, namely domestic (elderly care services in Poland, logistics in Portugal and international road transport in Slovenia).

### Fieldwork

The fieldwork for the interviews took place from April to July in 2024. Interviews were conducted with purposely selected national stakeholders, which included representatives of public authorities involved in policymaking (ministries) or enforcement of posting rules (e.g. labour inspectorates, public employment services, social security institutes), social partners including employer, agency and worker organisations, NGOs providing support or other services to TCNs and/or posted workers, and other independent experts. Interviews were also carried out with representatives of LMI such as TWAs. In each country, we interviewed posted workers from the largest TCN

community in the country, that is Ukrainians in Poland (plus one Belarusian), Brazilians in Portugal and those from Bosnia and Herzegovina in Slovenia.

### Interviews with workers

At the time of the interview, 16 of the posted workers were actively on a posting assignment, while eight were in their country of residence or sending country, having been previously posted. Regarding the three case studies, among those workers with Poland as their entry country, one was posted during the interview and seven were residing in Poland. In the Polish case study, all Ukrainian workers had entered Poland before the activation of the temporary protection directive <sup>(102)</sup>. For those with Portugal as the entry country, five were on a posting assignment and one was in Portugal. All 10 workers with Slovenia as the entry country were on a posting assignment at the time of the interview. Various strategies were implemented to reach posted TCN workers, recognising their vulnerability. Mediators such as trade unions, employers' organizations, NGOs supporting migrant workers, cultural/ethnic associations, employers, and TWAs were enlisted. Additionally, short messages were posted in Facebook groups and Reddit, inviting TCNs to participate in the research. Once a worker agreed to be interviewed, the snowballing technique was used, where interviewees were asked for referrals to colleagues with posting experience.

An overview of the interviews by category of respondents and country is presented in Table A3. The authors approached a large number of stakeholders and workers in each of the three countries, an invitation that was accepted by the number of respondents shown in Table A3. Further details on the stakeholders and posted workers interviewed can be provided by the authors of the report upon request.

Table A3: Interviews by category of respondent and country

Country	Public authorities	Social partners	NGOs / other experts	LMIs	Workers		Total
					Construction	Care/logistics/transport	
Poland	2	3	2	3	4	4	18
Portugal	4	3	0	2	4	2	15
Slovenia	5	3	1	0	6	4	19

All stakeholder interviews were carried out using teleconferencing tools, while interviews with posted workers were either in person or carried out via telephone/teleconferencing tools. Interviews with workers who were posted at the time of the interview were conducted by phone. All participants in the interviews were explicitly asked for their permission to participate in the interviews (using a consent form adhering to general data protection regulation guidelines) and whether the information provided could be used directly or in an anonymous format, ensuring that their responses would not be recognisable in the text.

The interview questionnaires followed a semi-structured format using mainly open-ended questions and were designed for a 60-minute-long interview. They were accompanied by an interview protocol, which contained information about the purpose and details of the study, information about gaining informed consent before the interview, the full script of the interview questions and prompts for the open-ended questions. Three separate questionnaires and accompanying interview protocols were developed: one for stakeholders (including public authorities, social partners and NGOs), one for LMIs and one for posted workers. Stakeholders were asked about posted TCN workers' access to and recruitment in the national and EU labour markets, irregularities regarding TCN recruitment and posting, sectoral dynamics, the role of TWAs and other LMIs, the configuration of posting supply chains, monitoring and enforcement practices and challenges, and cross-border and intra-institutional cooperation and exchange. The LMIs were asked about the recruitment and posting of TCNs, their participation in supply chains, the sectoral dynamics of posting activity, and their own practices and challenges in the posting

<sup>(102)</sup> Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof (OJ L 212, 7.8.2001, p. 12–23). Temporary protection is an exceptional measure to provide immediate and temporary protection in the event of a mass influx or imminent mass influx of displaced people from non-EU countries who are unable to return to their country of origin. The 2001 temporary protection directive provides a tool for the EU to address such situations.

of TCNs. The posted TCN workers were asked about their migration history, work history in the country of current residence and their experiences with TWAs and were asked to give a detailed account of their posting experience. The same questionnaires were used in the three countries. The interview questionnaires and protocols are available from the authors upon request.

## Annex B. Mobility patterns and flows

### Additional tables for Poland

Table B1: Share of foreign workers in Poland, by top countries of citizenship, as at January 2024

Country of citizenship	Share (%) of all foreign workers
Ukraine	68.7 %
Belarus	11.4 %
Georgia	2.5 %
India	1.9 %
Moldova	1.3 %
Philippines	1.0 %
Others	13.2 %

Source: Statistics Poland.

Table B2: Declarations of entrustment of work entered for each nationality, 2021–2023

	2021	2022	2023
<i>Total</i>	1 979 886	1 040 338	508 577
Ukraine (UA)	1 635 104	UA 610 824	BY 200 661
Georgia (GE)	129 830	BY 212 414	UA 175 433
Belarus (BY)	98 623	GE 145 620	GE 85 773
Moldova (MD)	74 293	MD 46 365	MD 35 522
Russia (RU)	35 038	RU 15 845	AR 6 165
Armenia (AR)	6 998	AR 7 253	RU 0

Source: Ministry of Family, Labour and Social Policy, Department of the Labour Market.

### Additional tables for Portugal

Table B3: Non-EU country migrants in Portugal, by top 10 countries of citizenship, 2023

Rank	Country of citizenship	Number	As a percentage of		
			Non EU country citizens	Foreign citizens	Total population
1	Brazil	226 945	40.1 %	30.8 %	2.2 %
2	India	33 578	5.9 %	4.6 %	0.3 %
3	Cabo Verde	32 672	5.8 %	4.4 %	0.3 %
4	Angola	29 758	5.3 %	4.0 %	0.3 %
5	Nepal	22 876	4.0 %	3.1 %	0.2 %
6	Ukraine	22 611	4.0 %	3.1 %	0.2 %
7	Guinea-Bissau	21 519	3.8 %	2.9 %	0.2 %
8	China	19 738	3.5 %	2.7 %	0.2 %
9	Bangladesh	15 750	2.8 %	2.1 %	0.2 %
10	São Tomé and Príncipe	11 759	2.1 %	1.6 %	0.1 %

Source: Eurostat.

## Additional tables and figures for Slovenia

Figure B1: Population in Slovenia by citizenship (15–64 years old), in thousands, 2014–2023: (a) total and (b) in employment

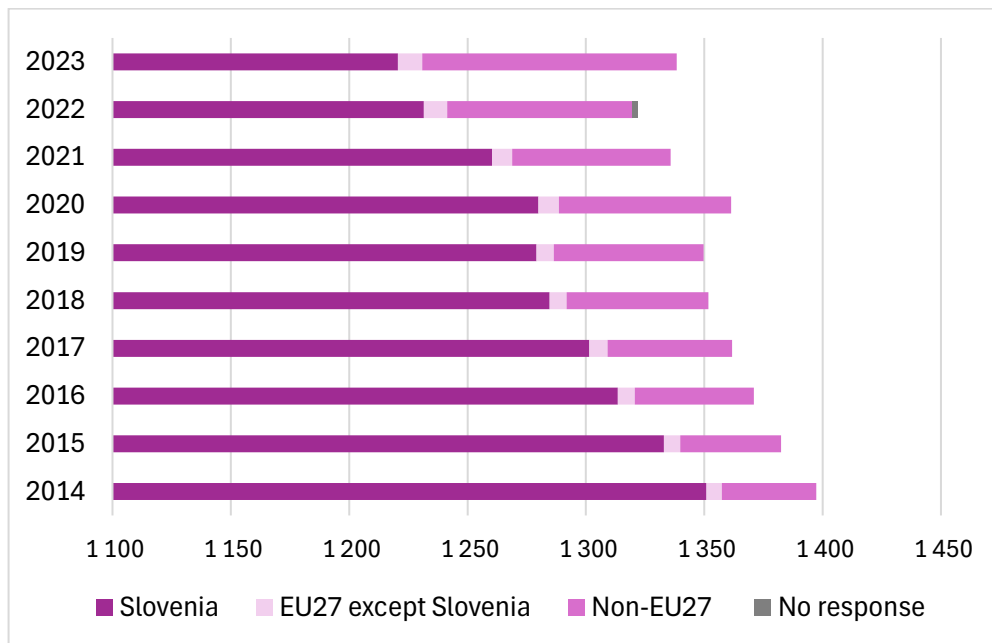
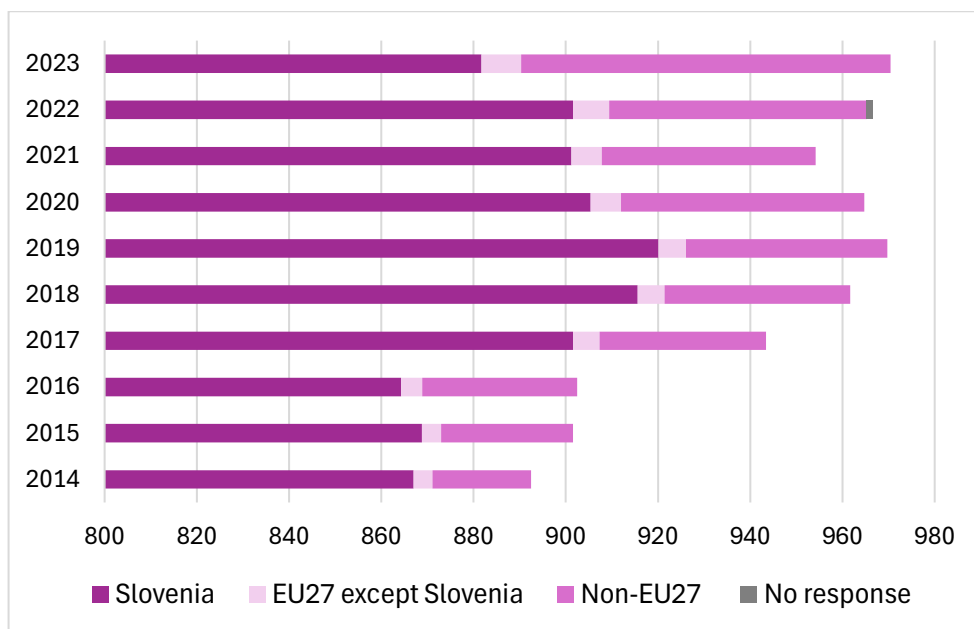
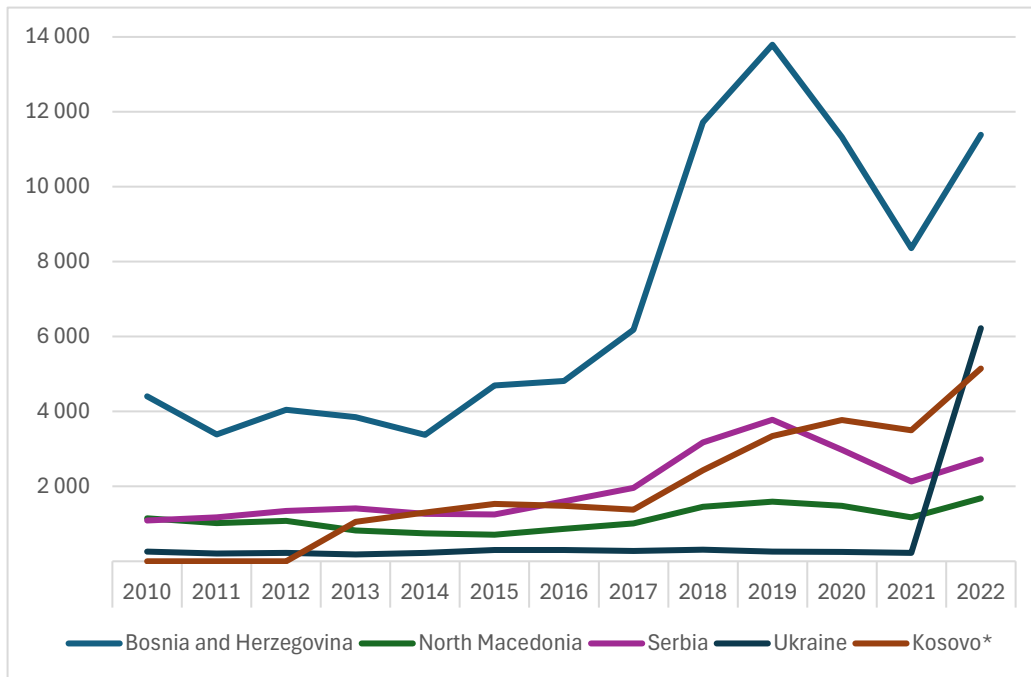


Figure B2: Population in employment in Slovenia by citizenship (thousand persons)



Source: Eurostat.

Figure B3: Immigration to Slovenia by citizenship (top five countries of origin)



Source: Eurostat.

Table B4: Number (*n*) and share (%) of Slovenian nationals and TCNs in total group of posted workers from Slovenia, breakdown by nationality, 2018–2023

	2018		2019		2020		2021		2022		2023	
	<i>n</i>	%	<i>n</i>	%	<i>n</i>	%	<i>n</i>	%	<i>n</i>	%	<i>n</i>	%
<b>Total</b>	127 051	100	14,6142	100	156 865	100	168 111	100	171 858	100	176 363	100
<b>Slovenia</b>	58 678	46.18	54 056	36.98	44 735	28.51	44 180	26.28	39 810	23.16	37 739	21.39
<b>Total TCN</b>	55 618	43.77	77 137	52.78	98 249	62.63	110 533	65.75	119 782	69.69	125 488	71.15
<b>Other</b>	12 755	10.03	14 949	10.22	13 881	8.84	13 398	7.96	12 266	7.13	12 136	6.88
		% total posted TCNs		% total posted TCNs		% total posted TCNs		% total posted TCNs		% total posted TCNs		% total posted TCNs
<b>Bosnia and Herzegovina</b>	38 843	69.83	52 507	68.09	68 928	70.15	77 012	69.67	80 399	67.12	84 477	67.31
<b>Serbia</b>	11 842	20.64	16 854	21.84	18 371	18.69	19 053	17.23	19 772	16.50	19 755	15.74
<b>Kosovo</b>	2 837	5.1	4 763	6.17	7 258	7.38	10 326	9.34	14 123	11.79	15 067	12
<b>North Macedonia</b>	1 527	2.74	2 230	2.89	2 926	2.97	3 209	2.90	3 625	3.02	3 740	2.98
<b>Montenegro</b>	153	0.27	217	0.28	385	0.39	536	0.48	520	0.43	485	0.38
<b>Ukraine</b>	204	0.36	322	0.41	288	0.29	299	0.27	323	0.26	298	0.23
<b>Bangladesh</b>	29	0.05	20	0.02	93	0.09	98	0.08	160	0.13	361	0.28
<b>Albania</b>	24	0.04	21	0.02	95	0.09	129	0.11	218	0.18	292	0.23
<b>Other TCN</b>	159	0.28	203	0.26	166	0.16	230	0.20	642	0.53	1013	0.80

Source: Authors' calculations based on data from the Health Insurance Institute of Slovenia.