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Study on the economic and social effects associated with the phenomenon of posting of workers in the EU

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PREFACE

The research team would like to thank the various people involved in the study. They contributed to the study by delivering data, factual and background information on posting and also by offering insights into the complex phenomenon of posting.

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SUMMARY

General conclusions

- This study, 'Economic and social effects associated with the phenomenon of posting of workers in the EU' was a complex and challenging research project. One of the reasons for this is the complexity of the research subject, notably posting as understood in the Posting of Workers Directive (PWD). Three different perspectives needed to be taken into account:
 - The PWD stipulating the types of posting and the terms and conditions of employment of posted workers in the context of the free provision of services;
 - E101 certificates and relevant social security regulations, in order to estimate the size and profile of posted workers, in addition to other national sources;
 - Posting as a specific form of short term international mobility, under the analytical framework of geographical labour mobility.
- The only available data source at EU-level containing information directly related to the number of postings is the administrative data based on E101 social security forms. However, there is still uncertainty as to what extent the number of E101 certificates recorded by countries is a precise measure of the actual number of postings taking place. In addition to EU data sources, national data sources are also interesting sources of information concerning posting in a receiving perspective. However, these sources also bring a variety of methodological problems as their quality varies quite significantly, depending on the country. As E101 forms seem to be the only EU data source which enables an effective EU comparison of the number of postings, it is important to try to improve this registration system.
- Based on E101 forms and taking into account the above methodological remarks, we can outline some tendencies of posting. In 2007, a total of about 1.3 million E101 certificates were recorded across the EU-27 and EFTA countries. Almost 1.06 million relate to postings to specific countries. In relation to labour mobility within the EU, the number of postings represents 18.5% of non-nationals EU-27 citizens in the labour force.¹ In some countries (e.g. Poland) and sectors (e.g. construction) posting seems to be an important phenomenon in both sending and/or receiving perspective. However, posting concerns only a small share of the active population (0.4% of the active population of EU-15 sending countries and 0.7% of the active population of EU-12 sending countries). Therefore, it seems that posting is an important phenomenon in terms of labour mobility flows, especially in some countries and sectors, but it generally remains a relatively small observable fact in the global labour market functioning more generally.
- After growth of 24% in the period 2005-2007, the number of postings seemed to stagnate between 2008 and 2009. This is also confirmed by data from the updated data collection exercise of the European Commission. An explanation for this recent development is the economic crisis of 2008/2009. Therefore, it is probable that posting is strongly correlated to economic activity. We could not find broad evidence concerning the impact of transitional measures for the free movement of workers on the number of postings, except in the case of Romania, according to the updated data collection of the European Commission. This tends to indicate that posting is generally not used by New Member States as a substitute for the free movement of workers.
- Given the nature and the different types of posting, a wide set of economic, social and regulatory factors directly or indirectly influence the occurrence of posting: export orientation, openness of sectors, economic climate, labour shortages, level of unemployment, labour costs, transitional measures for access to EU labour markets, language and culture, etc. The answer to the question of economic and social effects can therefore not be a single and simple answer.
- From the context analysis it was clear that there are other forms of mobility that could be alternatives for posting (labour migration, international mobility of self-employed workers). Posting is, however, more than a substitute for other forms of mobility because of its specific role e.g. in internationalization of companies.
- Posting seems to be driven more strongly by economic demand when compared to e.g. labour mobility. The main economic motive for posting is market entry or expansion (all types of posting), lower costs (subcontracting and via agencies) and internalization of business processes (all types of posting). The main labour market motive is related to labour shortages (volume and skills).
- The main economic and social effects correspond well to the drivers for posting. From a sending perspective, posting is considered to be important for the development of companies. Economic effects are found in the areas of market entry and internationalisation. From a receiving perspective, posting is used as a tool to increase flexibility and competitiveness. The contribution of posting to reducing labour shortages, especially in times of economic growth, has been

¹ Posted workers are not included in statistics concerning the number of non-nationals EU-27 citizens in the labour force, but this statistic is an interesting element of global comparison.



acknowledged to be an important labour market effect in the sectors where posting is concentrated. A possible limited effect on wages and working conditions was reported by the country studies, both in sending (upward) and receiving countries (downward), but this observation is not evidence based. In receiving countries there is limited evidence of displacement of local workers by foreign workers.

- In terms of working conditions and the personal situation of posted workers, we found diverging effects depending on the profile of the worker and the type of work performed. The problems related to precarious and illegal working conditions, health and safety risks, underutilization of rights and disruption of family life are still present and require further attention from all relevant stakeholders.

Data sources and monitoring of posting

Based on the analysis presented in section three, 'Size and characteristics of posting', different methodological conclusions and observations regarding the profile and size of posted workers can be made. The main **methodological conclusions** are the following:

The review of existing **EU data sources** shows that the only cross-border data source containing information directly related to postings are the administrative data based on E101 social security forms. However, there is still uncertainty as to what extent the number of E101 certificates recorded by countries is a precise measure of the actual number of postings taking place. This is due to the fact that measuring the size of postings by the number of E101 forms contains some methodological points to note:

- The number of postings is not equal to the number of posted persons, as one person can request several E101 certificates per year. Therefore, E101 forms can be used to monitor the number of postings, but not the number of posted works.
- Some companies do not apply for E101 forms when workers are posted. This relates particularly to (very) short-term postings. Naturally, there is no information on undocumented postings.

The E101 data collection of the European Commission fills an important information gap concerning the posting of workers. Given the fact that E101 forms are the only data source allowing for an EU comparison of the number of postings, we recommend to continue this exercise in the future. However, different actions should be undertaken to improve the quality of this data source:

- To improve the data collection exercise of the European commission and the exchange of information on E101 forms between countries, the registration system of E101 forms should be **electronic and mutually compatible** in all EU Member States. An introduction of a uniform electronic registration system of E101 forms in each country is recommendable.
- To ensure the quality of data it is important to increase the number of companies in each country that fulfil procedures around E101 forms correctly (even for very short periods). Therefore, three actions should be undertaken:
 - Improve the information strategies by liaison offices towards companies: The most important reason for companies to not complete the required documents is because they do not know that this is expected of them. So, the procedure has to be better explained to each company, taking into account possible language barriers.
 - Reduce the administrative burden for companies to fulfil the E101 procedures (e.g. by introducing a computerized and on-line registration system).



- Undertake a stricter supervision by the labour inspectorates toward companies: To make sure companies respect the E101 procedures, stricter controls should be introduced (e.g. with penalties).

Next to EU data sources, **national data sources** are also interesting sources of information regarding posting from a receiving perspective. However, these sources bring with them a variety of methodological issues, as they are of very differing quality, depending on the country. Moreover, the introduction of a uniform registration system in all EU Member States, based on other data than E101 forms, would induce disproportionate administrative burdens for countries and companies. Therefore, we can conclude that it is better to use data based on E101 forms from the reporting countries (figures on postings sent with geographical breakdown) to derive figures on the receiving countries than to ask the country directly how many postings they received based on their national registration systems (strong under-evaluation).

Furthermore, administrative data could also be completed with reference to qualitative information concerning posting, based on a survey. One possibility is to include questions about the characteristics of posted workers; the role of the posting; the motives for the posting; the type of work performed etc in company surveys carried out by European (or International) organizations. As an example, the European Company Survey (ECS) carried out by Eurofound is the kind of survey which could be used. Administrative data should thus be used to obtain data on the number of postings and the survey to obtain qualitative information on posting.

Based on the data of the European Commission, our own questionnaire and national data sources, it seems that the following main observations concerning the **size and characteristics of postings** can be made:

- In 2007, a total of about 1.3 million E101 certificates have been recorded across the EU-27 and EFTA countries. Almost 1.06 million (81%) relate to postings to specific countries. In relative terms, the number of postings accounted for an average of 0.37% of the active population of EU-15 sending countries and 0.74% of the active population of EU-12 sending countries. However, it seems that the number of postings represents 18.5% of non-nationals EU-27 citizens in the labour force.² These statistics show that posting is an important phenomenon in labour mobility flows, especially in some countries and sectors. These figures must be interpreted with caution since E101 certificates recorded by countries count the number of postings. So the posting phenomenon could be more important in practice since we compare the number of cases of posting (and not individuals) with the number of non-nationals EU-27 citizens in the labour force. A person could have been posted several different times in a year to another Member State.
- Almost 87% postings are sent to EU-15 countries. However, only 65% of postings originate from EU-15 countries. On the contrary, EU-12 countries received 7.3% of total postings while 34% of postings originate from these countries. We can thus conclude that in relative terms, a large number of postings originate from the New EU Member states (more specifically from Poland) and that these workers are mostly posted in EU-15 or EFTA countries.
- It seems that the main sending countries are Poland (238,946 or 22.5% of total number of postings); France (232,102 or 21.8% of total number of postings); and Germany (192,093 or 18.1% of total number of postings). France and Germany are also the most important countries for posting from a receiving perspective (respectively 216,911 or 20.8% of total postings and

² Posted workers are not included in statistics concerning the number of non-nationals in the labour force, but this statistic is an interesting element of comparison.



148,610 or 14.2% of total postings). This seems not to be the case for Poland, as it represents only 1.4% of the total postings in 2007.

- The country destination varies significantly according to the country of origin of the posted worker. The country destination seems to follow geographical location, historical and business traditions, though some countries have one or two leading destinations, and some tend to spread the workers across several countries. For example, it appears that almost half of postings from the New Member States were sent to Germany in 2007 (45.9%). However, this percentage is strongly elevated by the important number of postings from Poland to Germany. However, the Old Member States seem to be more oriented towards their neighbouring countries.
- In total, the number of sent postings has increased by 24% in the period 2005-2007. The changes to the number of postings vary a lot between countries. We can roughly conclude that the number of sent postings has increased more in the New EU Member States than in Old EU Member States.
- The number of postings seems to stagnate between 2008 and 2009. This is also confirmed by data from the updated data collection exercise of the European Commission. An explanation for this recent development is the economic crisis of 2008/2009. Therefore, we can suggest that posting is strongly correlated to the economic activity. We could not find any evidence concerning the impact of transitional measures for the free movement of workers on the number of postings. This tends to indicate that posting is not used by New Member States as a substitute for the free movement of workers. However, according to the updated data collection exercise of the European Commission, Romania could be an exception (strong increase of the number of postings from Romania between 2007 and 2009).
- The available data suggest that, on average, almost 50% of postings were sent to the service sector, particularly regarding financial intermediation, business activities and transport activities. Around 50% of postings were issued for activities in the industry sector, particularly to the construction sector (26%). This data have to be interpreted with caution due to the absence of EU-wide statistics on the sectoral distribution of posting. However, it appears from the available national and European statistics that there are large differences in the sectoral distribution of postings according to the country of origin. It appears that New Member States (especially Poland) are particularly apparent in the construction sector. However, posted workers from Old Member States have a more equilibrated spread across sectors.
- It is difficult to assess the duration of posting as limited information is available on this subject (only available for Belgium and France). Moreover, the data for Belgium does not provide information on the duration of posting but the duration of a work project in the construction sector. Based on the available statistics and the interviews with stakeholders it appears that the average duration of posting is relatively short. However, there seems to be a large difference in the duration of posting according to the sector. According to data for France, workers seem to be posted for a longer duration in the HORECA sector than in the construction sector. This duration seems to be logical, as posted workers to the HORECA sector are mostly posted for a season, while in the construction sector it is largely for a specific work project.
- Only limited information is available concerning the profile of posted workers. Based on national data sources, only information concerning the age of posted workers is available. Based on data for Belgium, we observed that posted workers seem to be relatively mature workers, unlike migrant workers. This can be explained by the fact that older workers, due to family constraints, tend to move more to another country for a short duration. However, younger



workers can more easily move to another country for a longer or more permanent duration.

- No information (at national or European level) is available concerning other profile characteristics of posted workers, such as the educational level of posted workers; the gender of posted workers; the frequency of postings and the number of companies where workers are posted.

Drivers and barriers of posting

The analysis of drivers and barriers for posting leads to a broad range of influencing factors of economic, social or regulatory nature. The findings in relation to drivers and barriers can be summarized in the following way:

- The economic aspects play an important role as a driver for posting whereas regulatory and social aspects are relatively more important barriers.
- The main economic drivers are related to internationalization of the economy and costs, especially efficient use of labour costs. Labour shortages are the main social driver.
- The barriers are mainly situated in the regulatory and administrative framework governing posting. The language barrier is important. (Legal) protection from the local (receiving) market was also mentioned. From an economic point of view, organizational aspects (transport, accommodation, and infrastructure) also play a role.
- There is a wide range of drivers and barriers but they are context specific, depending on sector, country, economic climate, and type of posting. Moreover, there are many drivers and barriers relevant for posting but not all of them are specific to posting, such as economic climate.
- In any kind of context, a combination of factors will play a role which explains partly the volatility of posting as measured in the numbers (besides the registration and monitoring issues).
- Postings between Old and New Member States have specific characteristics and drivers, notably the transitional measures. As these measures fade out, new relationships may arise such as between Member States and EU Membership candidates or between Member States and Third Countries (China, Brazil, and India).



Table 1: Overview of drivers and barriers for sending and receiving posted workers from the perspective of companies

	Sending perspective	Receiving perspective
Drivers	<p>Economic</p> <ul style="list-style-type: none"> ▪ Entering new markets and making money abroad ▪ International focus of companies and the creation of business networks ▪ Increasing cost of <i>long term</i> international assignments ▪ Using own workforce and maintaining a higher degree of control on the work performed ▪ Natural market includes neighbouring countries <p>Social</p> <ul style="list-style-type: none"> ▪ Offering workforce at lower labour cost than in the receiving country ▪ Gaining experience and learning through working abroad <p>Regulatory</p> <ul style="list-style-type: none"> ▪ Relatively simple administrative procedure for companies (in the sending country) 	<p>Economic</p> <ul style="list-style-type: none"> ▪ Competitive prices of foreign service providers due to lower wage and labour costs ▪ Flexible capacity and seasonal demand ▪ Externalisation of costs <p>Social</p> <ul style="list-style-type: none"> ▪ Labour supply shortages ▪ Work attitude and flexibility of posted workers <p>Regulatory</p> <ul style="list-style-type: none"> ▪ Restrictions on free movement of labour
Barriers	<p>Economic</p> <ul style="list-style-type: none"> ▪ Application of working conditions in universally binding collective agreements beyond core of protection to foreign workers ▪ Organisational barriers <p>Social</p> <ul style="list-style-type: none"> ▪ Reluctance of employees to be geographically mobile ▪ Language barriers ▪ Cultural barriers <p>Regulatory</p> <ul style="list-style-type: none"> ▪ Perception of and/or experience with administrative barriers related to the procedures for posting workers ▪ Complexity of legal framework governing posting ▪ Different modalities of posting applied in the Member States 	<p>Economic</p> <ul style="list-style-type: none"> ▪ Fear for competition for local market players <p>Social</p> <ul style="list-style-type: none"> ▪ Communication / language barrier ▪ Negative image of posting due to illegal work or work below minimum standards <p>Regulatory</p> <ul style="list-style-type: none"> ▪ Protective measures in specific sectors ▪ Availability of other mechanisms for recruiting foreign labour ▪ General contractor-liability principle (construction sector)

Source: IDEA Consult/Ecorys NL

Economic and social effects of posting

Before analysing the economic and social effects related to posting, it should be noted that posting was situated in a conceptual framework of geographical labour mobility based on Green et al, 2009. We consider posting as understood in the Posting of Workers Directive to be coherent with the short term labour mobility concept as defined in the framework. The profile of posted workers and postings was completed in a more qualitative way with information from the country studies. We structured the variety of posting profiles according to the type of posting as presented in the table below.



Table 2: Profile of posted workers by type of posting

Type of posting	Profile of posted workers
Posting between companies	Technically skilled workers, craftsmen Lower skilled workers, manual workers Specialists
Intra – company posting (b variant)	Managers and specialists (engineers, technically skilled persons, sales)
Posting through temporary agency work (c variant)	Low skilled and manual workers in agriculture/meat processing and HORECA

Source: IDEA Consult/Ecorys NL

The assessment of the economic and social effects is considered to be a first line assessment where we explore the fields where posting has an influence. The exploratory nature of this study needs to be stressed because the economic and social effects of posting have not been comprehensively studied before and because the quantitative data sources show many problems.

Main economic effects according to type of posting

The table below illustrates the different economic effects by type of posting. In short, we can say that posting under a contract between different companies is strongly concerned with economic aspects. Firstly, the advantage of lower labour costs for receiving companies and higher earnings for posted workers can make a difference. There is also a tendency to search for efficiency on a European level, whereby companies tend to centralise purchasing policies on a European level, by closing contracts at EU-level for maintenance or ICT, for example. Posting has contributed in sectors where it plays a significant role - especially in the construction sector – noticeably regarding competitiveness and competition in the sector. Finally, posting between different companies is also related to the international provision of services in general. Service providers consolidate or expand their international market by servicing international clients through short term assignments at the client's workplace. The clients are also able to have access to specialist skills across borders.

However, intra-company posting is rather a phenomenon of multinational companies although specialised SME's with international activities also make use of it. International mobility is a necessity for these enterprises and it contributes to the overall development of the companies.

Temporary work agencies play an increasingly important role in the recruitment of workers from Eastern Europe and foreign workers in general. With respect to posting by means of temporary agency work, we cannot reach a conclusion on the effects due to a lack of information and inconsistent findings.



Table 3: Main economic effects according to type of posting

Type of posting	Profile of posted workers	Main economic effects
Posting between companies	Technically skilled workers, craftsmen Manual/Lower skilled workers Specialists	Receiving: <ul style="list-style-type: none"> ▪ Outsourcing via subcontracting on EU level ▪ Competitiveness (productivity and cost reduction) ▪ Fiercer competition in the sector ▪ Access to specialist skills Sending: <ul style="list-style-type: none"> ▪ Market entry / market expansion ▪ On-site service to international clients
Intra – company posting	Managers and specialists (engineers, technically skilled persons, sales)	Internationalisation of services (market entry) Support to R&D and networking Quality of services to clients (tailor-made and personalised service)
Posting through temporary agency work	Low skilled and manual workers in agriculture/meat processing and HORECA	No consistency in findings/lack of information

Source: IDEA Consult/Ecorys NL

Overall assessment of economic effects of posting

When combining all findings in relation to the economic effects, the research team assessed the possible economic effects related to posting identified in the analytical framework, as presented in the table below. We consider the contribution of posting:

- to be strongly positive in the field of the provision of cross-border services, internationalisation and competitiveness and productivity of companies (++);
- to be moderately positive in the field of market expansion/consolidation (+);
- in the field of subcontracting and market organization posting can be seen as a consequence of longer subcontracting chains and business networks (0). Furthermore, posting in the context of diverging labour costs in labour intensive sectors contributes to the creation of more/longer subcontracting chains and intermediate agencies for recruitment thereby increasing market complexity, with a negative effect on market transparency (-);
- in specific sectors and countries where posting is highly concentrated, we believe that local competitors undergo fiercer competition (-);
- in the field of specialisation and entrepreneurship there is not enough information available to support an assessment (NA).



Table 4: Main economic effects associated with posting

Posting contributes to	Assessment*	Comment
Internationalisation and cross border provision of services	++	
Innovation / learning	0	
Specialisation	NA	
Subcontracting and market organization	0/-	Posting as a consequence of subcontracting (0) / posting contributing to more complex market organisation (-)
Market position (expansion/consolidation)	+	
Competitiveness and productivity of companies	++	
Pressure on local competitors of foreign service providers in local services markets (e.g. price competition)	-	In cases where posting is highly concentrated
Entrepreneurship	NA	

Source: IDEA Consult/Ecorys NL; * Legend: ++ strongly positive / + moderately positive / 0 no effect found/ - moderately negative / -- strongly negative / NA no information available

Social and labour market effects

In conclusion, we assess the social and labour market effects analysed in the study:

- In general, the labour market effects of posting are considered to be small. This includes effects on unemployment rates, overall employment and brain drain or brain gain. This conclusion holds for both sending and receiving labour markets. However, significant effects can be found in sectors where posting is concentrated, with construction being the clearest example.
- From a sending perspective, posting facilitates geographical mobility. From a receiving perspective, there is an effect on labour shortages/labour mismatch. The strongest impact regards qualitative labour shortages in receiving countries.
- A possible limited effect on wages and working conditions was reported by the country studies, both in sending (upward) and receiving countries (downward), but this observation is not evidence based. In receiving countries there is limited evidence of displacement of local workers by foreign workers.
- A great variation between working and living conditions of posted workers is found, ranging from good (above minimum requirements), over or in-line with minimum requirements (no more no less), to precarious and illegal (below minimum requirements). This will typically vary with the type of posted job, the profile of the posted workers and the type of posting. Intra-company posting of managers is likely to be found in the best category whereas manual workers/low skilled workers/craftsmen have a much higher risk for precarious and illegal posting assignments. Detailed information regarding the individual level such as data on hours worked, wage granted and payments could not be collected.
- The personal situation of posted workers can improve in the field of employability (skills, experience, language), income and savings. Disruption of family life is mentioned as a negative element. Workers also do not sufficiently make use of their rights for information and complaints.

An assessment of the social and labour market effects is summarised below.



Table 5: Main social effects associated with posting

Effect	Assessment*	Comment
Concentration in specific regions / communities or professions	NA Concentration in countries ++ Concentration in sectors ++	No information collected on concentration in communities/professions Lack of sector information
Functioning of local labour markets: addressing shortage of labour, shortage of skills	Reduction of quantitative labour shortage + Reduction of qualitative labour shortage ++ Local wages 0	
Effect on local wages and employment opportunities for local workers	Employment opportunities for local workers - (in specific situations)	In cases where posting is highly concentrated
Change in working and living conditions of posted workers	General level: mixed: from ++ to -- compared to minimum requirements Individual level: NA	Depending on profile of posted workers

Source: IDEA Consult/Ecorys NL; * Legend: ++ strongly positive / + moderately positive / 0 no effect found/ - moderately negative / -- strongly negative / NA no information available

The analysis of the construction sector industry confirms many of the findings made above. The high levels of posting can, amongst other elements, be explained by the labour intensity of the industry and the high share of temporary work. The other drivers and barriers do not differ significantly from other sectors - economic and cost motives, especially related to labour costs, together with labour shortages in the receiving country constitute the main drivers.



RÉSUMÉ

Conclusions générales

- Le projet de recherche ayant abouti à cette étude sur les conséquences économiques et sociales du phénomène de détachement de travailleurs au sein de l'UE s'est avéré particulièrement complexe et ardu. L'une des raisons de cette difficulté réside dans la complexité du sujet de la recherche lui-même, à savoir le détachement compris dans le sens de la directive relative au détachement des travailleurs. Il a fallu tenir compte de trois perspectives différentes :
 - La directive stipulant les types de détachement, ainsi que les conditions d'emploi des travailleurs détachés dans le contexte de la libre prestation de services ;
 - Les certificats E101 et les règlements de sécurité sociale correspondants, afin d'estimer l'ampleur et le profil des détachements de travailleurs, ainsi que d'autres sources de données nationales ;
 - Le détachement en tant que forme spécifique de mobilité internationale à court terme dans le cadre analytique de la mobilité géographique du travail.
- La seule source de données européennes contenant des informations directement liées au nombre de détachements est constituée par les données administratives issues des formulaires de sécurité sociale E101. Il subsiste toutefois des incertitudes quant à savoir dans quelle mesure le nombre de certificats E101 enregistrés par les différents pays constitue une mesure exacte du nombre réel de détachements ayant eu lieu. Outre celles de l'UE, les sources de données nationales constituent également d'importantes sources d'informations concernant le détachement du point de vue des pays d'accueil. Ces sources posent toutefois de nombreux problèmes méthodologiques en raison de la grande disparité de qualité constatée d'un pays à l'autre. Comme les formulaires E101 semblent constituer la seule source de données européennes autorisant une comparaison du nombre de détachements à l'échelle de l'UE, il est important d'essayer d'améliorer ce système d'enregistrement.
- En se basant sur les formulaires E101 et en tenant compte des remarques méthodologiques reprises ci-dessus, nous pouvons mettre en avant certaines tendances concernant le détachement des travailleurs. En 2007, environ 1.3 million de certificats E101 au total ont été enregistrés dans les pays de l'UE-27 et de l'AELE. Près de 1.06 million (81 %) de ces certificats concernaient des détachements dans des pays spécifiques. En comparaison à la mobilité du travail au sein de l'UE, le nombre de détachements représente 18.5 % des citoyens de l'UE-27 non nationaux au sein de la population active³. Dans certains pays (comme la Pologne) et certains secteurs (comme la construction), le détachement semble constituer un phénomène important, à la fois du point de vue de l'envoi et de l'accueil des travailleurs détachés. Le détachement ne concerne toutefois qu'une petite partie de la population active (0.4 % de la population active des pays de l'UE-15 et 0.7 % de la population active des pays de l'UE-12). Il semble dès lors que le détachement représente un phénomène important dans les flux migratoires de travailleurs, plus particulièrement dans certains pays et dans certains secteurs, mais qu'il s'agit encore généralement d'un phénomène relativement mineur du point de vue du fonctionnement global du marché du travail.
- Après une croissance de 24% durant la période 2005 – 2007, le nombre de détachements a quelque peu stagné entre 2008 et 2009. Cette stagnation est confirmée par les résultats du dernier exercice de collecte de données effectué par la Commission européenne. Cette évolution récente peut probablement s'expliquer par la crise économique de 2008/2009. Il est dès lors possible de supposer que le détachement est fortement lié à l'activité économique. Il n'a pas été possible de trouver des données probantes concernant l'impact des dispositions transitoires de migration sur le nombre de détachements, sauf en Roumanie d'après la dernière collecte de données effectuée par la Commission européenne. Cela tend à indiquer que le détachement n'est généralement pas utilisé comme un substitut de la migration par les nouveaux États membres.
- En raison de la nature et des différents types de détachement, de très nombreux facteurs économiques, sociaux et réglementaires ont une influence directe ou indirecte sur l'existence des détachements : tendance à l'exportation, degré d'ouverture des secteurs, situation économique, pénuries de main-d'œuvre, taux de chômage, coût du travail, dispositions transitoires relatives à l'accès au marché du travail de l'UE, langue et culture, etc. Il est par conséquent impossible de trouver une réponse simple et unique à la question des conséquences économiques et sociales.
- L'analyse du contexte a clairement révélé qu'il existait d'autres formes de mobilité susceptibles de remplacer le détachement (migration des travailleurs, mobilité internationale des travailleurs indépendants). Le détachement ne peut toutefois pas être considéré comme un simple moyen

Les travailleurs détachés ne sont pas inclus dans les statistiques relatives au nombre de citoyens de l'UE-27



de remplacement d'autres formes de mobilité en raison de son rôle spécifique, par exemple dans l'internationalisation des entreprises.

- Comparé par exemple, à la migration des travailleurs, le détachement semble fortement influencé par la demande économique. Les raisons économiques principales du détachement sont l'entrée sur les marchés ou le développement des marchés (pour tous les types de détachement), la baisse des coûts (sous-traitance et agences) et l'internationalisation des processus d'entreprise (tous les types de détachement). La raison la plus importante en ce qui concerne le marché du travail est liée aux pénuries de main-d'œuvre (en volume et en compétences).
- Les principales conséquences économiques et sociales correspondent clairement aux facteurs favorables au détachement. Du point de vue de l'envoi de travailleurs détachés, le détachement est considéré comme un élément important pour le développement des entreprises. Les effets économiques concernent principalement l'entrée sur le marché et l'internationalisation de l'économie. Du point de vue des pays d'accueil, le détachement de travailleurs est utilisé comme outil pour accroître la flexibilité et la compétitivité. La contribution du détachement des travailleurs à la réduction des pénuries de main-d'œuvre, surtout en période de croissance économique, a été reconnu comme un effet important pour le marché du travail dans les secteurs où le détachement est concentré. Un possible effet limité sur les salaires et les conditions de travail a été signalé à la fois dans les pays d'envoi (hausse) et les pays d'accueil (baisse) dans les études par pays, mais cette observation n'a pu être démontrée. Il n'existe également que peu d'évidence concernant le remplacement des travailleurs locaux par des travailleurs étrangers dans les pays d'accueil.
- En termes de conditions de travail et de situation personnelle des travailleurs détachés, nous avons constaté des effets divergeant en fonction du profil du travailleur et le type de travail effectué. Les problèmes liés à la précarité et les conditions de travail illégales, les risques de santé et de sécurité, la sous-utilisation des droits et la perturbation de la vie familiale sont toujours présents et méritent davantage d'attention de tous les acteurs concernés.

Sources de données et monitoring des détachements

À partir de l'analyse présentée à la section trois, concernant l'ampleur et les caractéristiques du détachement, il est possible de formuler différentes observations et conclusions méthodologiques à propos du profil des travailleurs détachés et de l'importance du phénomène. Les principales **conclusions méthodologiques** sont les suivantes :

L'analyse des **sources de données de l'UE** existantes montre que la seule source de données transfrontalières contenant des informations directement liées aux détachements est constituée par les données administratives issues des formulaires de sécurité sociale E101. Il subsiste toutefois des incertitudes quant à savoir dans quelle mesure le nombre de certificats E101 enregistrés par les différents pays constitue une mesure exacte du nombre réel de détachements ayant eu lieu, car la mesure du nombre de détachements sur base de formulaires E101 requiert certaines précautions méthodologiques.

- Le nombre de détachements n'est pas égal au nombre de personnes détachées, car une même personne peut demander plusieurs certificats E101 dans l'année. Les formulaires E101 peuvent dès lors être utilisés pour contrôler le nombre de détachements, mais pas le nombre de travailleurs détachés.
- Certaines sociétés ne demandent pas de formulaires E101 lorsque des travailleurs sont détachés, surtout s'il s'agit de détachements à (très) court terme. Nous ne disposons évidemment d'aucune information concernant les détachements non documentés.

La collecte de données de la Commission Européenne comble un manque de données important concernant le détachement des travailleurs. Étant donné que les formulaires E101 constituent la seule source de données autorisant une comparaison du nombre de détachements à l'échelle de l'UE, nous recommandons de poursuivre cette collecte de données à l'avenir. Différentes mesures doivent cependant être prises pour améliorer la qualité de cette source de données :



- Afin d'améliorer la collecte de données de la Commission Européenne et l'échange d'informations concernant les formulaires E101 entre pays, les systèmes d'enregistrement utilisés devraient être **électroniques et mutuellement compatibles** dans tous les pays membres. L'introduction d'un système d'enregistrement uniforme des formulaires E101 dans chaque pays est à recommander.
- Afin de garantir la qualité des données, il est important d'augmenter, dans chaque pays, le nombre d'entreprises qui remplissent effectivement les formulaires E101 (même pour les détachements de très courte période). Pour ce faire, 3 actions devraient être entreprises:
 - Améliorer les stratégies d'information des bureaux de liaison envers les entreprises: La raison principale des entreprises pour ne pas remplir les formulaires E101 en cas de détachement est le manque de connaissance de cette obligation. Cette procédure doit donc être mieux expliquée aux entreprises, en tenant également compte d'éventuels problèmes linguistiques.
 - Réduire les charges administratives des entreprises qui remplissent les formulaires E101 (par ex. en introduisant un système d'enregistrement électronique en ligne)
 - Appliquer une supervision plus stricte de l'inspection du travail envers les entreprises: Afin de s'assurer que les entreprises remplissent le formulaire E101, des contrôles plus stricts doivent être entrepris (par ex. avec des répercussions financières).

Outre celles de l'UE, les **sources de données nationales** constituent également d'importantes sources d'information concernant le détachement du point de vue des pays d'accueil. Ces sources posent toutefois de nombreux problèmes méthodologiques en raison des variations de qualité constatées d'un pays à l'autre. De plus, introduire un système d'enregistrement uniforme du détachement des travailleurs dans tous les pays membres, autre que sur base des données des formulaires E101, induirait des charges administrative disproportionnées pour les pays membres et les entreprises. Nous pouvons dès lors conclure qu'il est préférable d'exploiter les données des formulaires E101 des pays qui les publient (chiffres des détachements envoyés avec répartition géographique) pour déterminer les chiffres dans les différents pays d'accueil plutôt que de demander directement à chaque pays d'indiquer, sur la base de son système d'enregistrement national, le nombre de détachements qu'il a accueilli (risque de sous-évaluation importante).

Les données administratives pourraient en outre être complétées par des informations qualitatives sur les détachements, obtenues à partir d'une enquête. Il serait ainsi possible d'inclure, dans des enquêtes menées auprès des entreprises par des organismes européens (ou internationaux), des questions relatives aux caractéristiques des travailleurs détachés, au rôle du détachement, à ses motifs, au type de travail effectué, etc. L'enquête ECS (*European Company Survey*) menée par Eurofound, par exemple, constitue le genre d'enquête qui pourrait être utilisé. Les données administratives doivent donc être utilisées pour obtenir des informations sur le nombre de détachements, et les enquêtes, pour obtenir des informations qualitatives sur les détachements.

Il semble que, sur la base des données de la Commission européenne, de notre propre questionnaire et des sources de données nationales, nous pouvons formuler les observations suivantes concernant **l'ampleur et les caractéristiques des détachements** :

- En 2007, environ 1.3 million de certificats E101 au total ont été enregistrés dans les pays de l'UE-27 et de l'AELE. Près de 1.06 million (81 %) de ces certificats concernaient des détachements dans des pays spécifiques. En



termes relatifs, le nombre de détachements représentait en moyenne 0.37 % de la population active de l'UE-15 et 0.74 % de la population active de l'UE-12. Il semble toutefois que le nombre de détachements représente 18,5 % de citoyens de l'UE-27 non nationaux dans la population active⁴. Ces statistiques montrent que le détachement de travailleurs constitue un phénomène important dans les flux migratoires, plus particulièrement dans certains pays et secteurs. Ces chiffres doivent toutefois être interprétés avec prudence, car les certificats E101 enregistrés par les différents pays totalisent le nombre de détachements. Le phénomène du détachement pourrait donc s'avérer plus important dans la réalité puisque l'on compare le nombre de cas de détachement (plutôt que les individus) au nombre de citoyens de l'UE-27 non nationaux dans la population active. Une même personne peut avoir été détachée vers un autre État membre à différents moments de l'année.

- Environ 87 % des détachements sont envoyés dans des pays de l'UE-15, mais seuls 65 % des détachements ont pour origine des pays de l'UE-15. En revanche, les pays de l'UE-12 ont accueilli 7.3 % du nombre total des détachements, alors que 34 % des détachements provenaient de ces pays. Nous pouvons dès lors conclure que, en termes relatifs, une grande partie des détachements a pour origine les nouveaux États membres de l'UE (plus particulièrement, la Pologne) et que ces travailleurs sont généralement détachés dans des pays de l'UE-15 ou de l'AELE.
- Il semble que les principaux pays d'origine sont la Pologne (238,946, soit 22.5 % du nombre total de détachements), la France (232,102, soit 21.8 % du nombre total de détachements) et l'Allemagne (192,093, soit 18.1 % du nombre total de détachements). La France et l'Allemagne constituent également les pays les plus importants en termes d'accueil de travailleurs détachés avec respectivement 216,911 détachements (20.8 % du total) et 148,610 détachements (14.2 % du total). Ceci ne semble par contre pas le cas de la Pologne qui n'a accueilli que 1.4 % du nombre total de détachements en 2007.
- Le pays de destination varie considérablement en fonction du pays d'origine du travailleur détaché. La destination semble dépendre de la situation géographique, de l'histoire et des traditions commerciales, bien que certains pays favorisent une ou deux destinations principales, tandis que d'autres ont tendance à éparpiller leurs travailleurs sur plusieurs pays. C'est ainsi que près de la moitié des détachements provenant des nouveaux États membres étaient destinés à l'Allemagne en 2007 (45.9 %). Ce pourcentage est toutefois fortement influencé par le nombre important de détachements de la Pologne vers l'Allemagne. Les anciens États membres semblent au contraire privilégier leurs pays voisins.
- Au total, le nombre de détachements envoyés a augmenté (24 %) durant la période 2005-2007. L'évolution du nombre de détachements varie énormément selon les pays. Nous pouvons conclure grosso modo que le nombre de détachements envoyés a connu une plus forte augmentation dans les nouveaux États membres de l'Union européenne que dans les anciens.
- Le nombre de détachements semble avoir stagné entre 2008 et 2009. Cette stagnation est confirmée par les résultats du dernier exercice de collecte de données effectué par la Commission européenne. Cette évolution récente peut s'expliquer par la crise économique de 2008/2009. Nous pouvons par conséquent supposer que le détachement est fortement lié à l'activité économique. Il n'a pas été possible de trouver des preuves empiriques

⁴ Les travailleurs détachés ne sont pas inclus dans les statistiques relatives au nombre de citoyens non nationaux dans la population active, mais ces informations constituent néanmoins un élément de comparaison intéressant.



concernant l'impact des dispositions transitoires de migration sur le nombre de détachements. Cela tend à indiquer que le détachement n'est pas utilisé comme un substitut à la migration par les nouveaux États membres. La Roumanie pourrait toutefois constituer une exception au vu des derniers résultats de l'exercice de collecte de données effectué par la Commission Européenne (forte augmentation du nombre de détachements envoyé par la Roumanie entre 2007 et 2009).

- Les données disponibles semblent indiquer que près de 50 % des détachements, en moyenne, ont été envoyés dans le secteur des services, plus particulièrement dans les activités d'intermédiation financière, de commerce et de transport. Environ 50 % des détachements ont été effectués pour des activités du secteur industriel, plus particulièrement celui de la construction (26 %). Ces données doivent cependant être interprétées avec prudence en raison de l'absence de statistiques à l'échelle de l'UE concernant la répartition sectorielle des détachements. En outre, les statistiques nationales et européennes disponibles montrent qu'il existe des différences importantes dans la répartition sectorielle des détachements en fonction du pays d'origine. Les nouveaux États membres (spécialement la Pologne) sont particulièrement présents dans le secteur de la construction. Les travailleurs détachés provenant des anciens États membres sont en revanche répartis de manière plus équilibrée parmi les différents secteurs.
- Il s'avère difficile d'évaluer la durée des détachements en raison du nombre limité d'informations disponibles à ce sujet (uniquement pour la Belgique et la France). De plus, les données disponibles pour la Belgique ne fournissent pas d'informations sur la durée des détachements, mais plutôt sur la durée des projets dans le secteur de la construction. D'après les statistiques disponibles et les interviews des parties prenantes, il semble que la durée moyenne des détachements soit relativement courte. Il apparaît toutefois qu'il existe des différences importantes de durée des détachements en fonction du secteur. D'après les données collectées en France, les travailleurs seraient détachés plus longtemps dans le secteur HORECA que dans celui de la construction. Cette différence de durée paraît logique puisque les travailleurs du secteur HORECA sont généralement détachés pour une saison, tandis que ceux du secteur de la construction le sont principalement pour des projets spécifiques.
- Il n'existe, à l'heure actuelle, qu'une quantité limitée d'informations relatives au profil des travailleurs détachés. Les sources de données nationales ne précisent que l'âge des travailleurs détachés. Les données obtenues pour la Belgique nous ont permis d'observer que les travailleurs détachés sont relativement plus âgés que les travailleurs migrants. Ce résultat peut s'expliquer par le fait que les travailleurs plus âgés ont tendance, pour des raisons de contraintes familiales, à faire des séjours plus courts à l'étranger. Les travailleurs plus jeunes sont au contraire plus disposés à travailler plus longtemps dans un autre pays ou à y demeurer indéfiniment.
- Aucune information n'est disponible (au niveau national ou européen) en ce qui concerne d'autres caractéristiques de profil des travailleurs détachés, comme le niveau d'éducation, le sexe, la fréquence des détachements, le nombre de sociétés dans lesquelles les travailleurs sont détachés, etc.



Facteurs favorables et obstacles au détachement

L'analyse des facteurs favorables et des obstacles au détachement permet de déterminer un large éventail de facteurs influents de nature économique, sociale ou réglementaire. Les enseignements relatifs aux facteurs favorables et aux obstacles peuvent être résumés de la manière suivante :

- Les aspects économiques jouent un rôle majeur en tant que facteur favorable au détachement, tandis que les aspects réglementaires et sociaux constituent des obstacles relativement plus importants.
- Les principaux facteurs économiques favorables sont liés à l'internationalisation de l'économie et aux coûts, plus particulièrement à la gestion efficace des coûts de main-d'œuvre. Les pénuries de main-d'œuvre constituent le principal facteur social favorable.
- Les obstacles sont généralement liés au cadre réglementaire et administratif régissant les détachements. La langue constitue une barrière importante, de même que les dispositifs (juridiques) de protection en vigueur sur le marché (d'accueil). Les aspects organisationnels (transports, hébergement et infrastructure) jouent également un rôle du point de vue économique.
- Il existe une grande variété de facteurs favorables et d'obstacles, mais ils sont liés au contexte et dépendent du secteur, du pays, de la situation économique ou du type de détachement. De plus, si de nombreux obstacles et facteurs favorables s'avèrent pertinents pour le détachement, certains d'entre eux, comme la situation économique, ne sont pas spécifiquement liés à ce phénomène.
- Quel que soit le contexte, c'est une combinaison de facteurs qui permet d'expliquer en partie la volatilité des détachements observée dans les chiffres (en excluant les problèmes d'enregistrement et de contrôle).
- Les détachements entre anciens et nouveaux États membres présentent des caractéristiques et des facteurs favorables spécifiques comme, notamment, les dispositions transitoires. À mesure que les effets de ces dispositions diminuent, de nouvelles relations peuvent surgir, par exemple, entre États membres et candidats à l'entrée dans l'Union européenne ou États membres et pays tiers (Chine, Brésil et Inde).



Tableau 1: Résumé des facteurs favorables et des obstacles à l'envoi et à l'accueil de travailleurs détachés du point de vue des entreprises

	Du point de vue de l'envoi	Du point de vue de l'accueil
Facteurs favorables	<p>Économiques</p> <ul style="list-style-type: none"> Accès à de nouveaux marchés et réalisation de bénéfices à l'étranger Internationalisation des entreprises et création de réseaux commerciaux Augmentation du coût des missions internationales à long terme Utilisation de sa propre main-d'œuvre et maintien d'un degré de contrôle plus important sur le travail effectué Le marché naturel comprend les pays voisins <p>Sociaux</p> <ul style="list-style-type: none"> Offre d'une main-d'œuvre moins chère que dans le pays d'accueil Acquisition d'une expérience et d'une formation par le travail à l'étranger <p>Réglementaires</p> <ul style="list-style-type: none"> Procédure administrative relativement simple pour les entreprises (dans le pays d'origine) 	<p>Économiques</p> <ul style="list-style-type: none"> Prix concurrentiels des fournisseurs de services étrangers en raison de salaires et de coûts de main-d'œuvre plus faibles Capacité flexible et demande saisonnière Externalisation des coûts <p>Sociaux</p> <ul style="list-style-type: none"> Pénuries de main-d'œuvre Attitude professionnelle et flexibilité des travailleurs détachés <p>Réglementaires</p> <ul style="list-style-type: none"> Restrictions à la libre circulation des travailleurs
Obstacles	<p>Économiques</p> <ul style="list-style-type: none"> Application de conventions collectives universelles et obligatoires sur les conditions de travail, en plus de la protection de base accordée aux travailleurs étrangers Obstacles organisationnels <p>Sociaux</p> <ul style="list-style-type: none"> Réticence des employés face à la mobilité géographique Barrières linguistiques Barrières culturelles <p>Réglementaires</p> <ul style="list-style-type: none"> Perception et/ou expérience négative des barrières administratives liées aux procédures de détachement de travailleurs Complexité du cadre juridique régissant le détachement Modalités de détachement différentes appliquées dans les États membres 	<p>Économiques</p> <ul style="list-style-type: none"> Crainte de la concurrence pour les acteurs du marché local <p>Sociaux</p> <ul style="list-style-type: none"> Barrière de la langue/communication Image négative du détachement due au travail clandestin ou au non-respect des normes de travail minimales <p>Réglementaires</p> <ul style="list-style-type: none"> Mesures de protection appliquées dans certains secteurs Existence d'autres mécanismes de recrutement de main-d'œuvre étrangère Principe général de la responsabilité du donneur d'ordre (secteur de la construction)

Source : IDEA Consult/Ecorys NL



Conséquences économiques et sociales du détachement

Avant d'analyser les conséquences économiques et sociales du détachement, ce dernier a été placé dans un cadre conceptuel de mobilité géographique de la main-d'œuvre basé sur Green et coll., 2009. Nous considérons que le détachement tel qu'il est compris dans la directive relative au détachement des travailleurs correspond au concept de mobilité à court terme de la main-d'œuvre défini dans ce cadre. Le profil des détachements et des travailleurs détachés a été complété de manière plus qualitative au moyen d'informations provenant des enquêtes réalisées dans différents pays. Nous avons structuré la diversité des profils de détachement en fonction des types de détachement comme le montre le tableau ci-dessous.

Tableau 2: Profil des travailleurs détachés en fonction du type de détachement

Type de détachement	Profil des travailleurs détachés
Détachement entre entreprises	Travailleurs techniquement qualifiés, artisans Travailleurs moins qualifiés, travailleurs manuels Spécialistes
Détachement intra-entreprise (variante b)	Cadres et spécialistes (ingénieurs, individus techniquement qualifiés, vendeurs)
Détachement à travers le travail intérimaire (variante c)	Travailleurs manuels et peu qualifiés des secteurs de l'agriculture/du traitement de la viande et de l'horeca

Source : IDEA Consult/Ecorys NL

L'évaluation des conséquences économiques et sociales est considérée comme une évaluation de première ligne permettant d'explorer les domaines influencés par le détachement. Il est important de souligner la nature exploratoire de cette étude, car les conséquences économiques et sociales du détachement n'ont pas encore fait l'objet d'une étude complète et que les sources de données quantitatives posent de nombreux problèmes.

Principales conséquences économiques en fonction du type de détachement

Le tableau ci-dessous illustre les différentes conséquences économiques en fonction du type de détachement. En résumé, nous pouvons affirmer que les détachements effectués en vertu d'un contrat entre différentes entreprises sont fortement liés à des considérations économiques. Tout d'abord, l'avantage en termes de coûts de main-d'œuvre pour l'entreprise d'accueil, et de revenus plus élevés pour les travailleurs détachés peut faire pencher la balance. On observe également une tendance à la recherche d'efficacité au niveau européen, qui pousse les entreprises à centraliser leurs politiques d'achat à l'échelle européenne en concluant, par exemple, des contrats européens d'entretien, de TIC, etc. Le détachement a eu un impact positif dans les secteurs où il joue un rôle significatif, plus spécialement dans celui de la construction, surtout en termes de compétitivité du secteur et de concurrence au sein du secteur. Enfin, les détachements d'une entreprise à l'autre sont également liés à la fourniture internationale de services en général. Les fournisseurs de services consolident ou développent leur marché international en répondant aux besoins de leurs clients internationaux au moyen de missions à court terme effectuées chez le client. Les acheteurs de tels services peuvent ainsi bénéficier des compétences de spécialistes au-delà des frontières.

Le détachement intra-entreprise constitue plutôt un phénomène caractéristique des sociétés multinationales, même si des PME spécialisées ayant des activités internationales y ont également recours. La mobilité internationale est une



nécessité pour ces entreprises et contribue au développement général des sociétés.

Les agences de travail intérimaire jouent un rôle de plus en plus important dans le recrutement des travailleurs provenant d'Europe de l'Est et des travailleurs étrangers en général. Nous ne pouvons toutefois pas encore formuler de conclusions sur les conséquences du détachement dans le cadre d'un travail intérimaire, car les informations à ce sujet sont encore parcellaires et que les constatations demeurent contradictoires.

Tableau 3: Principales conséquences économiques en fonction du type de détachement

Type de détachement	Profil des travailleurs détachés	Principales conséquences économiques
Détachement entre entreprises	Travailleurs techniquement qualifiés, artisans	Accueil : <ul style="list-style-type: none"> ▪ Externalisation à travers la sous-traitance au niveau européen ▪ Compétitivité (productivité et réduction des coûts) ▪ Concurrence accrue au sein du secteur ▪ Accès aux compétences de spécialistes Envoi : <ul style="list-style-type: none"> ▪ Entrée sur le marché/développement du marché ▪ Service sur place proposé aux clients internationaux
	Travailleurs moins qualifiés/manuels Spécialistes	
Détachement intra-entreprise	Cadres et spécialistes (ingénieurs, individus techniquement qualifiés, vendeurs)	Internationalisation des services (entrée sur le marché) Support R&D et mise en réseau Qualité des services proposés aux clients (service personnalisé et sur mesure)
Détachement à travers le travail intérimaire	Travailleurs manuels et peu qualifiés des secteurs de l'agriculture/du traitement de la viande et de l'horeca	Constatations contradictoires/manque d'informations

Source : IDEA Consult/Ecorys NL

Évaluation générale des conséquences économiques du détachement

En combinant toutes les constatations relatives aux conséquences économiques, l'équipe de recherche a procédé à l'évaluation des conséquences économiques potentielles du détachement, identifiées dans le cadre analytique présenté dans le tableau ci-dessous. Nous considérons que la contribution du détachement peut se résumer comme suit :

- Il s'avère extrêmement positif dans le domaine de la fourniture de services transfrontaliers, ainsi que du point de vue de l'internationalisation, de la compétitivité et de la productivité des entreprises (++).
- Il s'avère modérément positif dans le domaine de la consolidation/du développement des marchés (+).
- Dans le domaine de l'organisation des marchés et de la sous-traitance, le détachement peut être considéré comme une conséquence de l'allongement des chaînes de sous-traitance et des réseaux commerciaux (0) ; en plus de ce qui précède, le détachement, dans un contexte de divergence de coûts de main-d'œuvre dans les secteurs à forte intensité de main-d'œuvre, contribue à l'allongement des chaînes de sous-traitance et à la multiplication des agences intermédiaires de recrutement, ce qui a pour conséquence de rendre le marché plus complexe et moins transparent (-).



- Nous pensons que, dans des secteurs et des pays spécifiques où les détachements sont fortement concentrés, les acteurs locaux sont confrontés à une concurrence plus féroce (-).
- En ce qui concerne le domaine de la spécialisation et de l'entrepreneuriat, les informations disponibles sont insuffisantes pour permettre une évaluation (ND).

Tableau 4: Principales conséquences économiques associées au détachement

Le détachement a des effets sur	Évaluation*	Commentaire
L'internationalisation et la fourniture de services à travers les frontières	++	
L'innovation/la formation	0	
La spécialisation	ND	
La sous-traitance et l'organisation des marchés	0/-	Détachement comme conséquence de la sous-traitance (0) / Détachement entraînant une organisation plus complexe des marchés (-)
L'état du marché (développement/consolidation)	+	
La compétitivité et la productivité des entreprises	++	
La pression exercée par les fournisseurs de services étrangers sur les concurrents locaux des marchés de services locaux (guerre des prix, p. ex.)	-	Dans les situations où le détachement est extrêmement concentré
L'entrepreneuriat	ND	

Source : IDEA Consult/Ecorys NL ; * Légende : ++ très positif / + modérément positif / 0 sans effets avérés / - modérément négatif / -- très négatif / ND aucune information disponible

Conséquences sociales et conséquences sur le marché du travail

En conclusion, nous procédons à l'évaluation des conséquences sociales et des conséquences sur le marché du travail, telles qu'elles ont été analysées dans l'étude.

- Les conséquences du détachement sur le marché du travail sont généralement considérées comme minimales. Elles comprennent les conséquences sur les taux de chômage, sur le niveau d'emploi général, ainsi que sur la fuite ou l'afflux des cerveaux. Cette conclusion est valable aussi bien pour les marchés du travail qui envoient des travailleurs détachés que pour ceux qui les accueillent. Des conséquences significatives peuvent toutefois apparaître dans les secteurs où le détachement est plus concentré, le plus évident de ces secteurs étant celui de la construction.
- Du point de vue de l'envoi de travailleurs détachés, le détachement a pour effet de faciliter la mobilité géographique. Du point de vue de l'accueil, il a un effet sur les pénuries de main-d'œuvre et les disparités du marché du travail. L'impact le plus significatif concerne les pénuries qualitatives de main-d'œuvre dans les pays d'accueil.
- Un possible effet limité sur les salaires et les conditions de travail a été signalé à la fois dans les pays d'envoi (hausse) et les pays d'accueil (baisse) dans les études par pays, mais cette observation n'a pu être démontrée. Il n'existe également que peu d'évidence concernant le remplacement des travailleurs locaux par des travailleurs étrangers dans les pays d'accueil.



- Il existe une grande disparité dans les conditions de vie et de travail des travailleurs détachés. Ces conditions peuvent être bonnes (supérieures aux exigences minimales), conformes aux exigences minimales (pas plus, pas moins) ou même précaires et illégales (inférieures aux exigences minimales). Cela dépend généralement du type de fonction détachée, du profil des travailleurs détachés et du type de détachement. Le détachement de cadres intra-entreprise correspond habituellement à la catégorie supérieure, tandis que les travailleurs manuels/peu qualifiés ou les artisans courent un plus grand risque de se retrouver dans des situations de détachement précaires ou illégales. Il n'a pas été possible d'obtenir des informations détaillées sur les situations individuelles (heures prestées, salaires accordés, versements, etc.).
- La situation personnelle des travailleurs détachés peut encore s'améliorer dans les domaines de l'employabilité (compétences, expérience, langues), des revenus et des économies. Les perturbations de la vie familiale sont mentionnées comme élément négatif. Les travailleurs n'exercent en outre pas suffisamment leurs droits à l'information et aux réclamations.

L'évaluation des conséquences sociales et des conséquences sur le marché du travail est résumée dans le tableau ci-dessous.

Tableau 5: Principales conséquences sociales associées au détachement

Conséquence	Évaluation*	Commentaire
Concentration dans des régions, des communautés ou des professions spécifiques	ND Concentration dans certains pays ++ Concentration dans certains secteurs ++	Aucune information n'a été recueillie en ce qui concerne la concentration dans des communautés ou des professions Manque d'informations sectorielles
Fonctionnement des marchés du travail locaux : solution aux problèmes de pénurie de main-d'œuvre ou de compétences	Réduction des pénuries de main-d'œuvre quantitatives + Réduction des pénuries de main-d'œuvre qualitatives ++	
Effets sur les salaires locaux et les possibilités d'emploi des travailleurs locaux	Salaires locaux 0 Possibilités d'emploi pour les travailleurs locaux – (dans des situations spécifiques)	Dans les situations où le détachement est extrêmement concentré
Modification des conditions de vie et de travail des travailleurs détachés	Niveau général : situation mitigée, de ++ à — par rapport aux exigences minimales Niveau individuel : ND	En fonction du profil des travailleurs détachés

Source : IDEA Consult/Ecorys NL ; * Légende : ++ très positif / + modérément positif / 0 sans effets avérés / - modérément négatif / -- très négatif / ND aucune information disponible

L'analyse du secteur de la construction confirme un grand nombre des constatations exposées ci-dessus. La présence élevée de détachements peut s'expliquer, entre autres, par l'intensité de la main-d'œuvre au sein du secteur et la part élevée de travailleurs intérimaires. Les autres obstacles et facteurs favorables ne diffèrent pas significativement par rapport aux autres secteurs : les motivations économiques et les impératifs de coûts, plus particulièrement en ce qui concerne les coûts de main-d'œuvre, ainsi que les pénuries de main-d'œuvre dans le pays d'accueil constituent les principaux facteurs favorables.



ZUSAMMENFASSUNG

Allgemeine Schlussfolgerungen

- Die Studie ‚Wirtschaftliche und soziale Effekte, die mit der Entsendung von Arbeitern in der EU einhergehen‘ war ein komplexes und anspruchsvolles Forschungsprojekt. Einer der Gründe ist die Komplexität des Forschungsobjektes, insbesondere der Entsendung, wie sie in der Richtlinie über die Entsendung von Arbeitskräften (PWD) verstanden wird. Die drei verschiedenen Perspektiven, die berücksichtigt werden mussten, sind:
 - Die PWD-Ausführungen zum Typ der Entsendung und die Beschäftigungsbedingungen für entsandte Arbeitskräfte im Kontext des freien Dienstleistungsverkehrs
 - E101-Bescheinigungen und relevante Sozialversicherungsvorgaben, in Ergänzung zu anderen nationalen Quellen, um die Anzahl und das Profil der entsandten Arbeitskräfte schätzen zu können
 - Entsendung als spezifische Form der kurzfristigen internationalen Mobilität unter dem analytischen Rahmenwerk der geografischen Arbeitsmobilität.
- Die einzig verfügbare Datenquelle auf EU-Ebene, die Informationen enthält, die sich direkt auf die Anzahl der Entsendungen beziehen, ist die administrative Datenbank der E101-Sozialversicherungsformulare. Es bleibt jedoch nach wie vor eher unsicher, in welchem Ausmaß die Anzahl der von den Staaten registrierten E101-Bescheinigungen eine präzise Messmethode für die aktuelle Zahl der stattfindenden Entsendungen ist. Neben den EU-Datenquellen bieten auch nationale Datenquellen interessantes Informationsmaterial über Entsendung aus der Empfängersicht. Diese Quellen bringen jedoch eine Vielzahl von methodischen Problemen mit sich, da sie je nach Land eine sehr unterschiedliche Qualität aufweisen. Da E101-Formulare die einzige Datenquelle sind, die einen EU-Vergleich für die Anzahl der Entsendungen möglich macht, ist es wichtig, diese Datenbasis zu verbessern.
- Begründet auf E101 Formularen und die methodologische Bemerkungen hier oben einkalkulierend, können wir einige Tendenzen von Entsendung beschreiben. In 2007 wurde über alle Länder der EU-27 und EFTA hinweg eine Gesamtzahl von circa 1.3 Millionen E101-Bescheinigungen verzeichnet. Fast 1.06 Millionen beziehen sich auf Entsendungen in spezifische Länder. In Bezug zur Arbeitsmobilität innerhalb der EU stellt die Zahl der Entsendungen 18.5 % der nicht staatsangehörigen EU-27-Bürger in der Erwerbsbevölkerung dar⁵. In einigen Ländern (z. B. Polen) und Branchen (z. B. Bau) scheint Entsendung ein wichtiges Phänomen zu sein, sowohl aus Entsendungs- als auch/oder aus Empfängersicht. Allerdings betrifft Entsendung nur einen geringen Teil der aktiven Bevölkerung (0.4 % der aktiven Bevölkerung der entsendenden EU-15-Länder und 0.7 % der aktiven Bevölkerung der entsendenden EU-12-Länder). Daher scheint es, dass Entsendung vor allem in einigen Ländern und Branchen ein wichtiges Phänomen bei Strömen von Arbeitsmobilität ist, dass sie aber im Allgemeinen eine als relativ gering zu beobachtende Tatsache im Rahmen der Abläufe auf dem globalen Arbeitsmarkt ist.
- Nach einem Anstieg um 24 % im Zeitraum 2005 – 2007 scheint die Zahl der Entsendungen zwischen 2008 und 2009 zu stagnieren. Das wird auch aufgrund der Daten aus der aktualisierten Datenerhebung der Europäischen Kommission bestätigt. Eine Erklärung für diese aktuelle Entwicklung ist die Wirtschaftskrise in 2008/2009. Demzufolge ist es wahrscheinlich dass die Entsendung stark abhängig von der Wirtschaftsaktivität ist. Wir konnten keinen eindeutigen Nachweis für die Auswirkungen der Übergangsregelungen für Freizügigkeit der Arbeit auf die Anzahl der Entsendungen finden, außer für Rumänien, basierend auf der aktualisierten Datenerhebung der Europäischen Kommission. Das scheint darauf hinzuweisen, dass im Allgemeinen Entsendung von den neuen Mitgliedsstaaten nicht als Ersatz für Freizügigkeit der Arbeit eingesetzt wird.
- Aufgrund der Eigenart und der verschiedenen Typen von Entsendung nehmen zahlreiche wirtschaftliche, soziale und regulatorische Faktoren direkten oder indirekten Einfluss auf das Auftreten von Entsendung: Exportorientierung, Offenheit der Sektoren, wirtschaftliches Klima, Arbeitskräftemangel, Arbeitslosenquoten, Arbeitskosten, Übergangsregelungen für den Zugang zu EU-Arbeitsmärkten, Sprache und Kultur etc. Die Antwort auf die Frage der wirtschaftlichen und sozialen Effekte kann daher keine einzelne und einfache Antwort sein.
- Aus der Kontextanalyse wurde deutlich, dass es andere Formen von Mobilität gibt, die eine Alternative zur Entsendung darstellen könnten (Arbeitskräftewanderung, internationale Mobilität selbstständiger Arbeiter). Entsendung ist jedoch mehr als ein Ersatz für andere Formen von Mobilität, da sie eine spezifische Rolle beispielweise bei der Internationalisierung von

⁵ Entsendete Arbeitskräfte sind in Bezug auf die Zahl der Nicht-Staatsangehörigen in der Erwerbsbevölkerung nicht in Statistiken enthalten; diese Statistik ist aber ein interessantes Vergleichselement.



Unternehmen spielt.

- Entsendung scheint im Vergleich zu z. B. Arbeitskräftewanderung stark von wirtschaftlicher Nachfrage motiviert zu werden. Das wichtigste wirtschaftliche Motiv für Entsendung ist Markterschließung oder -erweiterung (alle Typen von Entsendung), geringere Kosten (Untervergabe und über Agenturen) und Internationalisierung der Geschäftsabläufe (alle Typen von Entsendung). Das wichtigste Motiv des Arbeitsmarktes bezieht sich auf Arbeitskräftemangel (Volumen und Qualifikation).
- Die wichtigsten wirtschaftlichen und sozialen Effekte korrespondieren gut mit den Triebkräften für Entsendung. Aus entsendender Sicht gilt Entsendung als wichtig für die Entwicklung von Unternehmen. Wirtschaftliche Effekte wurden bei Markterschließung und Internationalisierung festgestellt. Aus Empfängersicht wird Entsendung als Werkzeug für die Erhöhung von Flexibilität und Wettbewerbsfähigkeit eingesetzt. Der Beitrag von Entsendung zur Reduzierung von Arbeitskräftemangel, vor allem in Zeiten wirtschaftlichen Wachstums, wurde als ein wichtiger Arbeitsmarkteffekt in den Branchen bestätigt, in denen Entsendung konzentriert auftritt. Über einen möglichen geringen Effekt auf Gehälter und Arbeitsbedingungen wurde sowohl in entsendenden (nach oben) als auch aufnehmenden Ländern (nach unten) berichtet, aber diese Beobachtung ist nicht aufgrund von Beweisen. In Aufnahmeländern gibt es in begrenztem Umfang Nachweise für Verdrängung von lokalen Arbeitskräften durch ausländische Arbeitskräfte.
- In Bezug auf Arbeitsbedingungen und die persönliche Situation entsandter Arbeitskräfte fanden wir abweichende Effekte je nach Profil der Arbeitskraft und der Art der ausgeführten Arbeit. Die Probleme hinsichtlich bedenklicher und illegaler Arbeitsbedingungen, Gesundheits- und Sicherheitsrisiken, teilweiser Missachtung von Rechten und Störung des Familienlebens sind nach wie vor präsent und erfordern weitere Aufmerksamkeit von allen relevanten Interessengruppen.

Datenquellen und Kontrolle der Entsendung

Basierend auf der in Abschnitt drei ‚Ausmaß und Charakteristika der Entsendung‘ präsentierten Analyse können methodische Schlussfolgerungen und Beobachtungen über Profil und Anzahl der entsendeten Arbeitskräfte angestellt werden. Die wichtigsten **methodischen Schlussfolgerungen** lauten wie folgt:

Die Durchsicht der bestehenden **EU-Datenquellen** zeigt, dass die einzige grenzüberschreitende Datenquelle mit Informationen, die direkt mit Entsendung im Zusammenhang stehen, die administrativen Daten sind, die aus dem Sozialversicherungsformular E101 stammen. Es besteht allerdings weiterhin Unsicherheit darüber, in welchem Ausmaß die von den Ländern archivierten E101-Bescheinigungen ein präzises Maß für die aktuelle Zahl an stattfindenden Entsendungen sind, da die Größenermittlung der Entsendung nach Anzahl der E101-Formulare einige zu berücksichtigende methodische Punkte in sich birgt:

- Die Anzahl der Entsendungen entspricht nicht der Anzahl der entsendeten Personen, da eine Person pro Jahr mehrere E101-Bescheinigungen beantragen kann. Daher können E101-Formulare als Kontrolle für die Anzahl der Entsendungen dienen, aber nicht für die Anzahl der entsendeten Arbeitskräfte.
- Einige Unternehmen verwenden keine E101-Formulare, wenn Arbeitskräfte entsandt werden. Das gilt vor allem für (sehr) kurze Entsendungen. Natürlich gibt es keine Informationen über nicht dokumentierte Entsendungen.

Die E101 Datensammlung des Europäischen Kommissions erfüllt ein wichtige Informationslücke was betrifft die Entsendung von Arbeiter. Angesichts der Tatsache, dass E101-Formulare die einzige Datenquelle sind, die einen EU-Vergleich in Bezug auf die Anzahl der Entsendungen ermöglichen, empfehlen wir diese Übung in der Zukunft durch zu setzen. Jedoch verschiedene Maßnahmen könnten ergriffen werden, um die Qualität dieser Datenquelle zu verbessern:

- Um die Datensammlung Europäischen Kommissions und der Austausch von Information auf E101 Formularen zwischen Länder zu verbessern, sollte das Registrierungssystem von E101 Formularen in allen EU Mitgliedstaaten elektronisch und in der Lage sein, mit jedem der anderen Systeme



elektronisch Daten austauschen zu können. Einführung eines elektronischen Registrierungssystems von E101 Formularen ist empfehlbar.

- Um die Qualität der Daten zu gewährleisten, ist es wichtig, in jedem Land die Anzahl der Unternehmen zu erhöhen, die effektiv E101-Formulare ausfüllen (auch für sehr kurze Zeiträume). Deswegen sollen drei Maßnahmen getroffen werden:
 - Informationsstrategien von Verbindungsinstanzen gegenüber den Unternehmen verbessern: Der wichtigste Grund für Unternehmen die benötigte Dokumente nicht auszufüllen ist dass sie nicht wissen was erwartet wird. Das Verfahren soll jedem Unternehmen besser erklärt werden, mit Einkalkulierung von möglichen Sprachhindernissen.
 - Die administrative Lasten um E101 Formularen zu erledigen für Unternehmen vermindern (z.B. Durch Einführung eines computerisierten und on-line Registrierungssystem).
 - Eine strengere Überwachung für Unternehmen durchführen: Um Unternehmen zu stimulieren E101 Formularen zu erledigen, sollte strengere Kontrolle eingeführt werden (z.B. mit Strafe).

Neben den EU-Datenquellen bieten auch **nationale Datenquellen** interessantes Informationsmaterial über Entsendung aus der Empfängersicht. Mit diesen Quellen ist jedoch eine Vielzahl von methodischen Problemen verbunden, da sie je nach Land eine sehr unterschiedliche Qualität aufweisen. Außerdem würde die Einführung von einem uniformen Registrierungssystem in allen EU Mitgliedsstaaten begründet auf andere Daten als E101 Formularen disproportionale administrative Lasten induzieren. Daher können wir schlussfolgern, dass es besser ist, die Daten basierend auf E101-Formularen der berichtenden Länder zu nutzen (Zahlen über Entsendungen mit geografischer Aufgliederung), um Zahlen über die Empfängerländer ableiten zu können, als die Länder direkt zu befragen, wie viele Entsendungen sie in ihrem nationalen Registrierungssystem (starke Unterbewertung) verzeichnet haben.

Darüber hinaus könnten administrative Daten auch durch qualitative Informationen über Entsendung auf Basis von Umfragen ergänzt werden. Eine Möglichkeit wäre es, Fragen über die Charakteristika der entsendeten Arbeitskräfte, die Rolle der Entsendung, die Motive für die Entsendung, die Art der ausgeführten Arbeiten, ... in begleitende Umfragen zu integrieren, die von europäischen (oder internationalen) Organisationen durchgeführt werden. Beispielsweise könnte die von Eurofound durchgeführte Erhebung 'European Company Survey (ECS)' hierzu genutzt werden. Administrative Daten sollten daher genutzt werden, um Daten über die Anzahl der Entsendungen zu erhalten und Umfragen sollten genutzt werden, um qualitative Informationen zur Entsendung zu erlangen.

Basierend auf Daten der Europäischen Kommission, unseren eigenen Befragungen und nationalen Datenquellen es scheint dass die folgenden wichtigsten Beobachtungen hinsichtlich **Ausmaß und Charakteristika von Entsendungen** gemacht werden können:

- Im Jahr 2007 wurde über alle Länder der EU-27 und EFTA hinweg eine Gesamtzahl von circa 1.3 Millionen E101-Bescheinigungen verzeichnet. Fast 1.06 Millionen (81 %) beziehen sich auf Entsendungen in spezifische Länder. In relativen Zahlen steht die Anzahl der Entsendungen für durchschnittlich 0.37 % der aktiven Bevölkerung der entsendenden EU-15-Länder und 0.74 % der aktiven Bevölkerung der entsendenden EU-12-Länder. Allerdings scheint es, dass die Zahl der Entsendungen 18.5 % der nicht staatsangehörigen EU-



27-Bürger in der Erwerbsbevölkerung darstellt⁶. Diese Statistiken zeigen, dass Entsendung ein wichtiges Phänomen bei Arbeitsmobilität ist, vor allem in einigen Ländern und Sektoren. Diese Zahlen müssen mit Vorsicht interpretiert werden, da die von den Ländern archivierten E101-Bescheinigungen die Anzahl der Entsendungen zählen. Demzufolge könnte das Entsendungsphänomen in der Praxis relevanter sein, da wir die Anzahl der Entsendungsfälle (und nicht Personen) mit der Zahl der nicht staatsangehörigen EU-27-Bürger in der Erwerbsbevölkerung vergleichen. Eine einzelne Person könnte mehrmals im Jahr in andere Mitgliedsstaaten entsendet worden sein.

- Fast 87 % der Entsendungen werden in EU-15-Länder entsandt. Allerdings stammen nur 65 % der Entsendungen aus den EU-15-Ländern. Im Gegenzug nehmen EU-12-Länder 7.3 % der Gesamtentsendungen auf, während 34 % der Entsendungen aus diesen Ländern stammen. Wir können somit schlussfolgern, dass, in relativen Zahlen, ein großer Teil der Entsendungen aus den neuen EU-Mitgliedsstaaten (insbesondere aus Polen) stammt und dass diese Arbeitskräfte am häufigsten in EU-15- oder EFTA-Länder entsandt werden.
- Es scheint dass die wichtigsten entsendenden Länder sind Polen (238,946 oder 22.5 % der Gesamtzahl der Entsendungen), Frankreich (232,102 oder 21.8 % der Gesamtzahl der Entsendungen) und Deutschland (192,093 oder 18.1 % der Gesamtzahl der Entsendungen). Frankreich und Deutschland sind auch die wichtigsten Länder aus Empfängersicht (entsprechend 216,911 oder 20.8 % der Gesamtentsendungen und 148,610 oder 14.2 % der Gesamtentsendungen). Das scheint auf Polen nicht zu treffen, da das Land nur 1.4 % der Gesamtentsendungen in 2007 verzeichnet.
- Das Zielland variiert erheblich je nach Herkunftsland der entsendeten Arbeitskraft. Das Zielland scheint geografischen Lagen sowie historischen und geschäftlichen Traditionen zu folgen, wodurch einige Länder eines oder zwei Hauptziele haben und andere dahin tendieren, die Arbeitskräfte über mehrere Länder zu verteilen. Zum Beispiel wird deutlich, dass nahezu die Hälfte der Entsendungen aus den neuen Mitgliedsstaaten im Jahr 2007 nach Deutschland durchgeführt wurden (45.9 %). Allerdings wird dieser Prozentsatz stark von der bedeutenden Anzahl an Entsendungen von Polen nach Deutschland verstärkt. Die alten Mitgliedsstaaten scheinen sich im Gegensatz dazu eher auf ihre Nachbarländer auszurichten.
- Insgesamt hat sich die Zahl der durchgeführten Entsendungen im Zeitraum 2005 bis 2007 um 24 % erhöht. Die Entwicklung der Entsendungsanzahl variiert stark zwischen den Ländern. Wir können das grobe Fazit ziehen, dass die Anzahl der durchgeführten Entsendungen sich in den neuen EU-Mitgliedsstaaten mehr erhöht hat als in den alten EU-Mitgliedsstaaten.
- Die Zahl der Entsendungen scheint zwischen 2008 und 2009 zu stagnieren. Das wird auch durch die Daten aus der aktualisierten Datenerhebung durch die Europäische Kommission bestätigt. Eine Erklärung für diese aktuelle Entwicklung ist die Wirtschaftskrise der Jahre 2008/2009. Demzufolge können wir die Entsendung als stark abhängig von der Wirtschaftsaktivität einstufen. Wir konnten keinen Nachweis für den Einfluss von Übergangsregelungen bei der Freizügigkeit der Arbeit auf die Anzahl der Entsendungen feststellen. Dies scheint darauf hinzuweisen, dass Entsendung von den neuen Mitgliedsstaaten nicht als Ersatz für Freizügigkeit der Arbeit eingesetzt wird. Allerdings könnte Rumänien, laut aktualisierter Datenerhebung durch die Europäische

⁶ Entsendete Arbeitskräfte sind in Bezug auf die Zahl der Nicht-Staatsangehörigen in der Erwerbsbevölkerung nicht in Statistiken enthalten; diese Statistik ist aber ein interessantes Vergleichselement.



Kommission (noch nicht veröffentlicht), eine Ausnahme darstellen (starke Zunahme der Zahl von Entsendungen von Rumänien zwischen 2007 und 2009).

- Die verfügbaren Daten zeigen, dass durchschnittlich fast 50 % der Entsendungen im Dienstleistungssektor durchgeführt werden, vor allem für, Bankdienstleistungen, Geschäftsaktivitäten und Transportaktivitäten. Rund 50 % der Entsendungen wurden für Aktivitäten im Industriesektor veranlasst, vor allem in der Baubranche (26 %). Diese Daten müssen aufgrund des Mangels an EU-weiten Statistiken über die sektorbezogene Verteilung der Entsendungen mit Vorsicht interpretiert werden. Es wird jedoch aus den verfügbaren nationalen und europäischen Statistiken ersichtlich, dass es je nach Herkunftsland große Unterschiede bei der sektorbezogenen Verteilung von Entsendungen gibt. Es scheint, dass die neuen Mitgliedsstaaten (vor allem Polen) besonders in der Baubranche vertreten sind. Entsandte Arbeitskräfte aus den alten Mitgliedsstaaten verteilen sich im Gegensatz dazu ausgeglichener über alle Sektoren.
- Es ist schwierig, die Dauer der Entsendung festzustellen, da nur eingeschränkt Informationen zu diesem Thema verfügbar sind (nur für Belgien und Frankreich). Darüber hinaus bieten die Daten für Belgien keine Information über die Dauer der Entsendung, sondern über die Dauer eines Arbeitsprojekts in der Baubranche. Basierend auf verfügbaren Statistiken und Interviews mit Interessengruppen wird deutlich, dass die durchschnittliche Dauer von Entsendungen relativ kurz ist. Es scheint allerdings je nach Sektor große Unterschiede bei der Entsendungsdauer zu geben. Den Daten für Frankreich zufolge scheinen Arbeitskräfte in der GASTRONOMIE für eine längere Dauer entsandt zu werden als in der Baubranche. Diese Dauer erscheint logisch, da in die Gastronomie entsandte Arbeitskräfte meist für eine Saison entsandt werden, während es sich in der Baubranche zumeist um ein spezifisches Projekt handelt.
- Über das Profil der entsandten Arbeitskräfte sind nur begrenzte Informationen verfügbar. Basierend auf nationalen Datenquellen sind nur Informationen über das Alter der entsandten Arbeitskräfte verfügbar. Basierend auf Daten für Belgien haben wir festgestellt, dass entsandte Arbeitskräfte relativ erfahrene Arbeitskräfte sind, im Gegensatz zu Wanderarbeitern. Dieses Ergebnis kann durch die Tatsache erklärt werden, dass ältere Arbeitskräfte, aufgrund familiärer Gegebenheiten, eher für kürzere Zeiträume in ein anderes Land gehen. Dahingegen sind jüngere Arbeitskräfte eher bereit, für einen längeren Zeitraum oder für einen permanenten Aufenthalt ins Ausland zu gehen.
- Es liegen keine Informationen (auf nationaler oder europäischer Ebene) über sonstige Profilcharakteristika von entsandten Arbeitskräften vor, wie z. B. Bildungsgrad der entsandten Arbeitskräfte, Geschlecht der entsandten Arbeitskräfte, Häufigkeit der Entsendung, Anzahl der Unternehmen, die Arbeitskräfte entsenden usw.



Triebkräfte und Barrieren für Entsendung

Die Analyse der Triebkräfte und Barrieren für Entsendung führt zu einer breiten Palette an Einfluss nehmenden Faktoren von wirtschaftlicher, sozialer oder regulatorischer Art. Die Erkenntnisse im Hinblick auf Triebkräfte und Barrieren können wie folgt zusammengefasst werden:

- Die wirtschaftlichen Aspekte spielen als Triebkraft für Entsendung eine wichtige Rolle, während regulatorische und soziale Aspekte eher zu den wichtigsten Barrieren zählen.
- Die wichtigsten wirtschaftlichen Triebkräfte stehen mit der Internationalisierung von Wirtschaft und Kosten in Verbindung, und hier vor allem der effiziente Umgang mit Arbeitskosten. Arbeitskräftemangel ist die wichtigste soziale Triebkraft.
- Die Barrieren liegen hauptsächlich im regulatorischen und administrativen Rahmen, der die Entsendung regelt. Die Sprachbarriere ist wichtig. Auch (gesetzlicher) Schutz seitens des lokalen (aufnehmenden) Marktes wurde erwähnt. Aus wirtschaftlicher Sicht spielen organisatorische Aspekte (Transport, Unterkunft und Infrastruktur) eine Rolle.
- Es gibt eine breite Palette von Triebkräften und Barrieren, sie sind aber kontextspezifisch je nach Sektor, Land, wirtschaftlichem Klima und Art der Entsendung. Ferner haben viele Triebkräfte und Barrieren Relevanz für die Entsendung, aber nicht alle von ihnen sind entsendungsspezifisch, z. B. das wirtschaftliche Klima.
- In jedweder Art von Kontext spielt die Kombination von Faktoren eine Rolle, was teilweise die im Zahlenwerk gemessene Volatilität der Entsendung erklärt (neben Registrierungs- und Überwachungsproblemen).
- Entsendungen zwischen alten und neuen Mitgliedsstaaten haben spezifische Eigenschaften und Triebkräfte, insbesondere die Übergangsregelungen. Da die Regelungen auslaufen, können neue Beziehungen entstehen, wie beispielsweise zwischen Mitgliedsstaaten und EU-Beitrittskandidaten oder zwischen Mitgliedsstaaten und Drittländern (China, Brasilien und Indien).



Tabelle 1: Übersicht über Triebkräfte und Barrieren für Entsendung und Aufnahme von entsandten Arbeitskräften aus Sicht von Unternehmen

	Entsendungsperspektive	Aufnahmeperspektive
Triebkräfte	<p>Wirtschaftlich</p> <ul style="list-style-type: none"> ▪ Neue Märkte erobern und Umsatz im Ausland machen ▪ Internationaler Fokus von Unternehmen und Aufbau von Geschäftsnetzwerken ▪ Steigende Kosten von <i>langfristigen</i> internationalen Aufträgen ▪ Eigene Arbeitskräfte einsetzen und bessere Kontrolle über ausgeführte Arbeiten behalten ▪ Natürlicher Markt schließt Nachbarländer ein <p>Sozial</p> <ul style="list-style-type: none"> ▪ Angebot an Arbeitskraft zu geringeren Arbeitskosten als im aufnehmenden Land ▪ Erfahrungszuwachs und Lernen durch Arbeit im Ausland <p>Regulatorisch</p> <ul style="list-style-type: none"> ▪ Relativ einfaches administratives Verfahren für Unternehmen (im Entsendungsland) 	<p>Wirtschaftlich</p> <ul style="list-style-type: none"> ▪ Wettbewerbsfähige Preise für ausländische Dienstleister aufgrund geringerer Lohn- und Arbeitskosten ▪ Flexible Kapazität und saisonale Nachfrage ▪ Auslagerung von Kosten <p>Sozial</p> <ul style="list-style-type: none"> ▪ Arbeitskraftknappheit ▪ Arbeitseinstellung und Flexibilität der entsandten Arbeitskräfte <p>Regulatorisch</p> <ul style="list-style-type: none"> ▪ Beschränkungen der Freizügigkeit der Arbeit
Barrieren	<p>Wirtschaftlich</p> <ul style="list-style-type: none"> ▪ Anwendung von Arbeitskonditionen in allgemein verbindlichen Tarifabkommen über Kernschutz für ausländische Arbeiter hinaus ▪ Organisatorische Barrieren <p>Sozial</p> <ul style="list-style-type: none"> ▪ Zurückhaltung von Arbeitnehmern, gegenüber geografischer Mobilität ▪ Sprachbarrieren ▪ Kulturelle Barrieren <p>Regulatorisch</p> <ul style="list-style-type: none"> ▪ Wahrnehmung von und/oder Erfahrung mit administrativen Barrieren in Bezug auf Verfahren für entsandte Arbeitskräfte ▪ Komplexität des gesetzlichen Rahmens, der Entsendung regelt ▪ Verschiedene Modalitäten für Entsendung in den verschiedenen Mitgliedsstaaten 	<p>Wirtschaftlich</p> <ul style="list-style-type: none"> ▪ Angst vor Konkurrenz für lokale Marktteilnehmer <p>Sozial</p> <ul style="list-style-type: none"> ▪ Kommunikations-/Sprachbarriere ▪ Negatives Image der Entsendung aufgrund illegaler Arbeit oder Arbeit unterhalb von Mindeststandards <p>Regulatorisch</p> <ul style="list-style-type: none"> ▪ Schutzmaßnahmen in spezifischen Branchen ▪ Verfügbarkeit anderer Mechanismen für Rekrutierung ausländischer Arbeitskräfte ▪ Prinzip der Haftung des Hauptauftragnehmers (Baubranche)

Quelle: IDEA Consult/Ecorys NL



Wirtschaftliche und soziale Effekte von Entsendung

Vor der Analyse der mit Entsendung verbundenen wirtschaftlichen und sozialen Effekte wurde die Entsendung in einem konzeptionellen Rahmenwerk von geografischer Arbeitsmobilität basierend auf Green et al, 2009 angesiedelt. Wir betrachten Entsendung, wie in der Richtlinie über die Entsendung von Arbeitskräften wiedergegeben, als kohärent mit dem Konzept für kurzfristige Arbeitsmobilität, wie es im Rahmenwerk definiert ist. Das Profil entsandter Arbeitskräfte und von Entsendungen wurde mit Informationen aus den Länderstudien in qualitativer Hinsicht komplettiert. Wir haben die Vielzahl der Entsendungsprofile gemäß Art der Entsendung, wie in nachfolgender Tabelle gezeigt, strukturiert.

Tabelle 2: Profil entsandter Arbeitskräfte nach Art der Entsendung

Art der Entsendung	Profil der entsandten Arbeitskräfte
Entsendung zwischen Unternehmen	Technisch ausgebildete Arbeitskräfte, Handwerker Geringer qualifizierte Arbeitskräfte, Arbeiter Spezialisten
Innerbetriebliche Entsendung (Variante b)	Manager und Spezialisten (Ingenieure, technisch ausgebildete Personen, Vertrieb)
Entsendung über Leiharbeit (Variante C)	Gering qualifizierte Arbeiter in Landwirtschaft/Fleischverarbeitung und Gastronomie

Quelle: IDEA Consult/Ecorys NL

Die Feststellung der wirtschaftlichen und sozialen Effekte ist als Anfangsfeststellung anzusehen, in der wir die Felder untersuchen, in denen Entsendung einen Einfluss hat. Der sondierende Charakter dieser Studie muss hervorgehoben werden, da wirtschaftliche und soziale Effekte von Entsendung bislang noch nicht umfangreich untersucht wurden und die quantitativen Datenquellen zahlreiche Probleme aufweisen.

Wichtigste wirtschaftliche Effekte nach Art der Entsendung

Die nachfolgende Tabelle illustriert die verschiedenen wirtschaftlichen Effekte nach Art der Entsendung. Zusammengefasst können wir feststellen, dass Entsendung auf Basis eines Vertrags zwischen verschiedenen Unternehmen stark von wirtschaftlichen Aspekten betroffen ist. Zunächst kann der Vorteil der geringeren Arbeitskosten für aufnehmende Unternehmen und die höheren Einnahmen für entsendende Arbeitskräfte ausschlaggebend sein. Es gibt außerdem eine Tendenz, nach Effizienz auf einer europäischen Ebene zu suchen, wobei Unternehmen dahin tendieren, Beschaffungsstrategien auf europäischer Ebene zu zentralisieren, z. B. durch Abschluss von Verträgen auf EU-Ebene für Wartung, IKT etc. ... Entsendung wirkte sich positiv in Sektoren aus, in denen sie in Bezug auf die Wettbewerbsfähigkeit und den Wettbewerb in der Branche eine maßgebliche Rolle spielt – vor allem in der Baubranche. Letztendlich unterliegt Entsendung zwischen verschiedenen Unternehmen auch der internationalen Bereitstellung von Dienstleistungen im Allgemeinen. Dienstleister konsolidieren oder erweitern ihren internationalen Markt durch die Unterstützung internationaler Kunden mit Hilfe von kurzfristigen Einsätzen am Arbeitsplatz des Kunden. Die Käufer dieser Dienstleistungen sind in der Lage, Zugang zu spezialisierten Qualifikationen auch über Grenzen hinweg zu erlangen.

Innerbetriebliche Entsendung ist eher ein Phänomen multinationaler Unternehmen, obwohl spezialisierte KMUs mit internationalen Aktivitäten sie ebenfalls einsetzen. Internationale Mobilität ist ein Muss für diese Unternehmen und trägt zur allgemeinen Entwicklung der Unternehmen bei.



Zeitarbeitsagenturen spielen eine immer wichtigere Rolle bei der Rekrutierung von Arbeitskräften aus Osteuropa und ausländischen Arbeitskräften im Allgemeinen. Im Hinblick auf Entsendung über Zeitarbeitsagenturen können wir keine Schlussfolgerung über die Effekte ziehen, da Informationen fehlen und die Ergebnisse uneinheitlich sind.

Tabelle 3 Wichtigste wirtschaftliche Effekte nach Art der Entsendung

Art der Entsendung	Profil der entsandten Arbeitskräfte	Wichtigste wirtschaftliche Effekte
Entsendung zwischen Unternehmen	Technisch ausgebildete Arbeitskräfte, Handwerker	Aufnehmend: <ul style="list-style-type: none"> ▪ Outsourcing über Untervergabe auf EU-Ebene ▪ Wettbewerbsfähigkeit (Produktivität und Kostenreduzierung) ▪ Härterer Wettbewerb im Sektor ▪ Zugang zu Spezialistenqualifikation Entsendend: <ul style="list-style-type: none"> ▪ Markterschließung/Markterweiterung ▪ Dienstleistung vor Ort für internationale Kunden
	Arbeiter/geringer qualifizierte Arbeiter	
	Spezialisten	
Innerbetriebliche Entsendung	Manager und Spezialisten (Ingenieure, technisch ausgebildete Personen, Vertrieb)	Internationalisierung der Dienstleistungen (Markterschließung) Unterstützung für F&E und Networking Qualität der Dienstleistungen für Kunden (maßgeschneiderter und personalisierter Service)
Entsendung über Zeitarbeitsagenturen	Gering qualifizierte Arbeiter in Landwirtschaft/Fleischverarbeitung und Gastronomie	Keine Konsistenz in Ergebnissen/Mangel an Informationen

Quelle: IDEA Consult/Ecorys NL

Gesamtbeurteilung der wirtschaftlichen Effekte von Entsendung

Bei der Kombination aller Ergebnisse hinsichtlich wirtschaftlicher Effekte stellte das Untersuchungsteam die möglichen entsendungsbezogenen – wie im analytischen Rahmenwerk ermittelt - wirtschaftlichen Effekte wie in nachfolgender Tabelle gezeigt fest. Wir beurteilen den Beitrag von Entsendung:

- als sehr positiv im Bereich der Bereitstellung von grenzüberschreitenden Dienstleistungen und Internationalisierung und Wettbewerbsfähigkeit und Produktivität von Unternehmen (++)
- als mäßig positiv im Bereich Markterschließung/-konsolidierung (+)
- Im Bereich Untervergabe und Marktorganisation kann Entsendung als eine Konsequenz längerer Untervergabeketten und von Geschäftsnetzwerken gesehen werden (0). Darüber hinaus trägt Entsendung vor dem Hintergrund divergierender Arbeitskosten in arbeitsintensiven Branchen zum Aufbau weiterer/längerer Untervergabeketten und Vermittlungsagenturen für Rekrutierung bei; dies führt zu steigender Marktkomplexität und hat negative Auswirkungen auf die Markttransparenz (-).
- In spezifischen Branchen und Ländern, in denen Entsendung hoch konzentriert auftritt, glauben wir, dass lokale Wettbewerber sich einem härteren Wettbewerb gegenübersehen.
- Im Bereich Spezialisierung und Geschäftsführung liegen keine ausreichenden Informationen vor, um eine Feststellung zu untermauern (k. A.).



Tabelle 4: Wichtigste wirtschaftliche Effekte, die mit Entsendung einhergehen

Entsendung trägt bei zu	Feststellung	Anmerkung
Internationalisierung und grenzüberschreitende Bereitstellung von Dienstleistungen	++	
Innovation/Lernen	0	
Spezialisierung	k. A.	
Untervergabe und Marktorganisation	0/-	Entsendung als Konsequenz aus Untervergabe (0) / Entsendung als Beitrag zu komplexerer Marktorganisation (-)
Marktposition (Expansion/Konsolidierung)	+	
Wettbewerbsfähigkeit und Produktivität von Unternehmen	++	
Druck auf lokale Unternehmen durch ausländische Dienstleister in lokalen Dienstleistungsmärkten (z. B. Preiskonkurrenz)	-	In Fällen, in denen Entsendung hoch konzentriert auftritt
Geschäftsführung	k. A.	

Quelle: IDEA Consult/Ecorys NL

* Legende: ++ sehr positiv / + mäßig positiv / 0 kein Effekt festgestellt / - mäßig negativ / -- sehr negativ / k. A. keine Informationen verfügbar

Soziale und arbeitsmarktspezifische Effekte

Abschließend führen wir die sozialen und arbeitsmarktspezifischen Effekte, die in der Studie analysiert wurden, auf:

- Im Allgemeinen können arbeitsmarktspezifische Effekte von Entsendung als gering eingestuft werden. Dies schließt Effekte auf Arbeitslosenquoten, Gesamtbeschäftigung und Abfluss oder Zufluss von Know-how ein. Diese Schlussfolgerung gilt sowohl für entsendende als auch aufnehmende Arbeitsmärkte. Allerdings können in Branchen, in denen Entsendung konzentriert vorliegt, signifikante Effekte festgestellt werden. Die Baubranche ist hier das offensichtlichste Beispiel.
- Aus Entsendungssicht erleichtert Entsendung geografische Mobilität. Aus Aufnahmesicht gibt es einen Effekt auf Arbeitskräftemangel/Arbeitskraftdiskrepanzen. Die stärkste Auswirkung konnte für qualitativen Arbeitsmangel in Aufnahmeländern festgestellt werden.
- Über einen möglichen geringen Effekt auf Gehälter und Arbeitsbedingungen wurde sowohl in entsendenden (nach oben) als auch aufnehmenden Ländern (nach unten) berichtet, aber diese Beobachtung ist nicht aufgrund von Beweisen. In Aufnahmeländern gibt es in begrenztem Umfang Nachweise für Verdrängung von lokalen Arbeitskräften durch ausländische Arbeitskräfte.
- Große Abweichungen zwischen Arbeits- und Lebensbedingungen von entsandten Arbeitskräften wurden gefunden, die von gut (über Mindestanforderungen) über im Rahmen der Mindestanforderungen bis hin zu bedenklich und illegal (unter Mindestanforderungen) reichen. Dies variiert typischerweise je nach Art der Entsendungsposition, nach Profil der entsandten Arbeitskraft und der Art der Entsendung. Innerbetriebliche Entsendung von Managern dürfte sich in der besten Kategorie wiederfinden, während Arbeiter/gering qualifizierte Arbeiter/Handwerker einem sehr viel höheren Risiko auf bedenklich und illegale Entsendung ausgesetzt sind. Detaillierte Informationen zu individuellen Niveaus wie Daten zu



Arbeitsstunden, gezahltem Gehalt und Zahlungen konnten nicht gesammelt werden.

- Die persönliche Situation der entsandten Arbeitskräfte kann im Bereich Beschäftigungsfähigkeit (Qualifikation, Erfahrung, Sprache) und Einkommen und Einsparungen verbessert werden. Störung des Familienlebens wird als negatives Element genannt. Arbeitskräfte machen außerdem nicht ausreichend Gebrauch von ihrem Informations- und Beschwerderecht.

Die Feststellungen zu sozialen und arbeitsmarktspezifischen Effekten sind nachfolgend zusammengefasst.

Tabelle 5: Wichtigste soziale Effekte, die mit Entsendung einhergehen

Effekt	Feststellung	Anmerkung
Konzentration in bestimmten Regionen/Gemeinschaften oder Berufen	k. A. Konzentration in Ländern ++ Konzentration in Branchen ++	Keine Informationen über Konzentration in Gemeinschaften/Berufen gesammelt Mangel an Brancheninformationen
Funktionieren lokaler Arbeitsmärkte: Arbeitskräftemangel, Qualifikationsmangel aufgreifen	Reduzierung quantitativer Arbeitskräftemangel + Reduzierung qualitativer Arbeitskräftemangel +	
Effekt auf lokale Gehälter und Beschäftigungsmöglichkeiten für lokale Arbeitskräfte	Lokale Gehälter 0 Beschäftigungsmöglichkeiten für lokale Arbeitskräfte - (in spezifischen Situationen)	In Fällen, in denen Entsendung hoch konzentriert auftritt
Veränderung bei Arbeits- und Lebensbedingungen der entsandten Arbeitskräfte	Allgemein: Gemischt: von ++ bis -- im Vergleich zu Mindestanforderungen Individuell: k. A.	Abhängig vom Profil der entsandten Arbeitskräfte

Quelle: IDEA Consult/Ecorys NL

* Legende: ++ sehr positiv / + mäßig positiv / 0 kein Effekt festgestellt / - mäßig negativ / -- sehr negativ / k. A. keine Informationen verfügbar

Die Branchenanalyse für die Bauindustrie bestätigt viele der oben wiedergegebenen Resultate. Die hohe Entsendungsrate kann unter anderem durch die Arbeitsintensität der Industrie und den hohen Anteil an Zeitarbeit erklärt werden. Die sonstigen Triebkräfte und Barrieren unterscheiden sich nicht wesentlich von anderen Branchen: Wirtschaftliche und kostenspezifische Motive, vor allem in Bezug auf Arbeitskosten, zusammen mit Arbeitskräftemangel in den Aufnahmeländern stellen die Haupttriebkräfte dar.



INTRODUCTION

1.1 Context of the study

The posting of workers is an essential component of the cross-border provision of services in the Union. Without the possibility to post workers to perform specific technical functions under given economic and logistic conditions, most undertakings would be unable to offer services across borders. However, the posting of workers raises complex legal, social and economic issues to the extent that their work is performed, on a temporary basis, in a Member State other than the one where the employment relationship was originally established.

The Posting of Workers Directive (PWD) 1996/71/EC aims to reconcile the exercise of companies' fundamental freedom to provide cross-border services under Article 49 EC with appropriate protection for the rights of workers temporarily posted abroad. The Directive is designed in order to remove obstacles and uncertainties likely to hamper the freedom to provide services, by improving legal security and makes it possible to identify the working conditions applicable to 'posted workers'. The original objectives of the Directive, as mentioned in the recitals, are the following:

- Supporting the dynamic environment for the transnational provision of services offered by the completion of the internal market.
- Fair competition between service providers in EU-countries.
- Respect for the rights of workers.

However, the implementation of this Directive has been fraught with several difficulties, particularly regarding its implementation and interpretation in different Member States. Moreover, the lack of statistical and other information of sufficient quality has, to date, made it difficult to identify the economic and social effects associated with the phenomenon of posting of workers. Such information is crucial if we want to assess the extent to which the original purposes of the Directive have been reached in practice.

Therefore, a pilot project was launched to fund initiatives which help one to explore the real working and living conditions of posted workers and how the Member States, social partners and labour inspectorates work in practice. One of the actions under the pilot project is the call for tender launched by DG Employment, Social Affairs and Equal Opportunities. One call concerned the social and economic effects of posting of workers and another requests a legal study on posting of workers.

This report is the result of the study on the social and economic effects associated with the phenomenon of posting of workers in the EU. The EC project reference is VT/2009/062.



1.2 Objective of the study

The aim of the study is to explore and identify the economic and social effects associated with the phenomenon of posting of workers. Firstly, the study gives an overview of the size and characteristics of posting based on statistical data sources. Furthermore, it tries to explore whether the economic objectives pursued with the posting of workers are fulfilled given the legal and administrative provisions in force both in the origin and the host countries, as well as the broader impact of posting on labour markets, competitiveness and organisation of markets.

The study focuses on those sectors where the use of posting is most widespread and on those Member States with a relatively larger presence of posted workers - either as receiving or sending countries.

The objectives of the study can be summarised in the following way:

- Analysis of the size and characteristics of the posting.
- Exploration of the economic and organisational effects of posting main sending and receiving countries and by main sectors of activity.
- Exploration of the social and labour market effects of posting by main sending and receiving countries.

1.3 Outline of the report

The final report takes the form of thematic reporting, in line with the issues analyzed in the study. Per theme, the relevant information collected through different research activities is brought together, analyzed and reported.

The **final report** contains following parts:

- Analytical and methodological framework (Part 1);
- Legal and socio-economic context of posting (Part 2);
- Size and characteristics of posting of workers on EU-level and national level (Part 3), including the results from the statistical data collection;
- Economic and social effects of posting of workers (Part 4), including drivers and barriers.

The **Annexes** contain following parts:

- Bibliography (Annex 1), including a general bibliography and a bibliography of the field research;
- Overview of statistical data sources (Annex 2);
- Additional statistical information (Annex 3), including additional tables on the statistical data collection and an update of the data on free movement of workers;
- Response of the statistical data collection exercise (Annex 4);
- Country analysis of monitoring systems (Annex 5);
- Field research: topic list and contact list (Annex 6);
- Web-based survey: questionnaire (Annex 7).



Part 1: ANALYTICAL AND METHODOLOGICAL FRAMEWORK



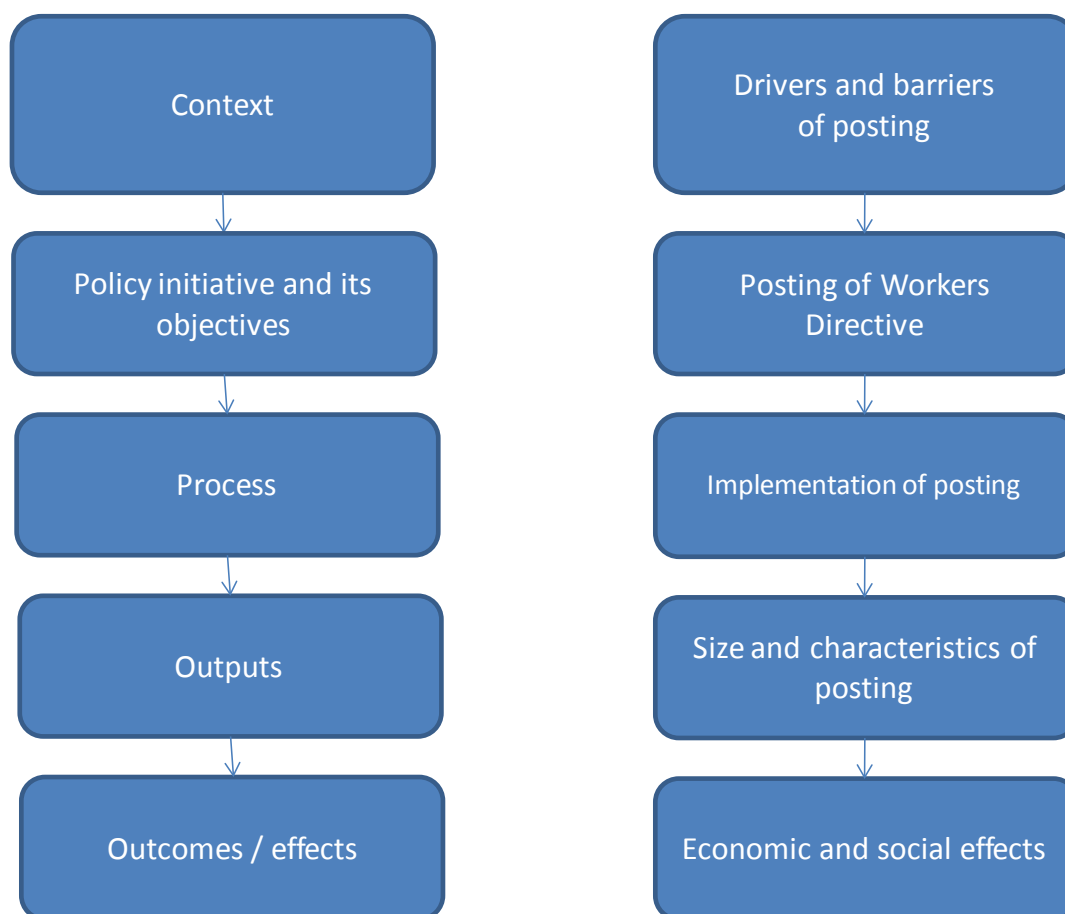
1 ANALYTICAL FRAMEWORK

The analytical framework is composed of three elements. First of all, the general framework for the study is presented. It is based on schemes used in the evaluation of policy initiatives. This is the global structure and entails a top-down perspective. Secondly, a bottom-up perspective is provided by developing a micro-framework for the behaviour and decisions of companies making use of posting. Thirdly, the frameworks are translated into evaluation topic lists which form the guiding tool for the different research activities during the study.

1.1 Posting –Evaluation framework

The framework for the study on the economic and social effects associated with the phenomenon of posting is based on the framework for evaluation of socio-economic policy measures.⁷ The framework is presented below:

Figure 1: Evaluation framework



Source: IDEA Consult/ECORYS NL

In this framework, the following components can be identified:

⁷ Adapted from 'Evaluating EU activities. A practical guide for Commission Services', 2004, EC DG Budget, p 72.



- Context: economic, legal, social, policy factors determining needs, drivers and barriers related to cross-border provision of work and the protection of employees involved in this work;
- Formulation of the policy initiative on posting of workers: Posting of Workers Directive and its objectives;
- Process: implementation of the Posting of Workers Directive by EU bodies, Member States, sectors and companies;
- Achievement of outputs: number and profile of companies and workers involved in posting;
- Achievement of effects: economic and social effects related to the implementation of the Posting of Workers Directive.

The study presented here combines different characteristics (or dimensions) in terms of type of evaluation, the type of effects considered, the level of evaluation, and the use of indicators.

The first dimension in the evaluation framework concerns the **type of evaluation**. Dealing with the evaluation and assessment of existing policy measures, we distinguish between two main types of evaluation: process evaluation and outcome (or effect) evaluation.⁸

In a process evaluation, the way in which an existing policy initiative is implemented is examined. In this study the implementation of the Posting of Workers Directive is examined, but not in terms of legal conversion to national regulatory frameworks. The implementation is analysed in terms of the process of posting from a socio-economic perspective. Implementation concerns the structures and actors involved in posting and the process of posting at different levels (macro, meso, micro).

An effect evaluation examines the short term and longer term results associated with the policy initiative. Short term results are usually referred to as 'outputs', while longer term results can be 'outcomes' or 'impacts'. In the context of the Posting of Workers Directive, we mainly focus on exploring (i.e. clarifying and identifying) the economic and social effects of posting. In terms of assessment of the effects, it is important to compare the identified effects with the original objectives of the Directive.⁹

The study on economic and social effects of posting is therefore mainly considered as an **evaluation of the phenomenon of posting** combined with an **exploration of its output and effects**.

Within the framework of policy evaluation, the meaning of the term "**effect**" differs, depending on the used typology. We make use of the following typology:

- Economic versus social effects: economic effects relate to the product market (market structure and organization and competitiveness of sectors and companies); social effects relate to labour market and social security conditions (local labour markets in receiving or sending countries, rights of posted workers in relation to working and living conditions).

⁸ University of Texas, Austin, Division of Instructional Innovation and Assessment (2007) Types of program evaluation <http://www.utexas.edu/academic/diia/assessment/iar/programs/plan/types>

⁹ Impact assessment guidelines, SEC (2009) 92, European Commission, 2009.

http://ec.europa.eu/regional_policy/sources/docgener/evaluation/evalsed/guide/index_en.htm



- Intended versus unintended effects: intended effects correspond to the objectives of the Posting of Workers Directive; unintended effects correspond to other effects.¹⁰

The **level of evaluation** is the second dimension in the evaluation framework: macro level, meso level and micro level. In this study, the macro level is the general level of EU 27 and the Member State level (perspective of sending and receiving countries). The meso level relates to the sectors in which posting occurs. The micro level refers to the companies and posted workers involved in the process of posting.

The last dimension is the role of **indicators used for evaluation**. On each level and in each type of evaluation, indicators can be defined. These indicators have a dual purpose. In the first instance, indicators are needed to evaluate a policy measure or programme. Secondly, indicators are essential to monitor policy measures or programmes. In accordance with the structure of the evaluation framework, the following indicators can be defined:

- Context indicators;
- (Input indicators);
- Output indicators;
- Outcome and impact indicators.

In this study, we mainly focus on output indicators and to a lesser extent on context indicators; the other indicators do not form a part of the study. The following paragraphs explain why only context and output indicators are examined.

The **context indicators** refer to the socio-economic and political context of the policy measure or programme. In this study the context indicators are related to the socio-economic situation in EU Member States (e.g. unemployment rates, employment rates, income level, average wages, economic situation, profile of companies, sector specialization) and to the policy and legal framework at EU-level and country level (e.g. legislation influencing trade, institutional organization of labour market/social security, social dialogue). These context indicators are used to interpret the drivers and barriers to posting, the need for and the objectives of posting and the importance of the effects of posting.

Input indicators refer to the means for implementation of a policy measure or programme. Usually, these means concern programmed financial or material input for expenditure programmes targeted at specific groups of beneficiaries. Since the Posting of Workers Directive is a regulatory initiative, input indicators are not considered to be relevant.

Output indicators refer to the reached target groups and the achieved actions related to the policy initiative that is being examined. In this study the output indicators refer to the size and characteristics of posting, and more specifically, the profile of workers and companies involved.

The outcome and impact indicators are effect indicators. Although the study identifies different effects related to the Posting of Workers Directive, it is not possible to provide quantitative measures for the outcomes or impacts associated with the Posting of Workers Directive for several reasons. First of all, the main scope of the study is to identify the effects (exploration). Measurement or quantification will only be possible in a second step. Secondly, there are problems with the quality and the coverage of the available data and information. The

¹⁰ Other typologies are considered to be less relevant e.g. gross versus net effects, direct versus indirect effects.



evaluation of effects is normally based on monitoring data and on surveys in the field which help to observe and analyse the outcomes and impacts of the policy initiative. For the time being, systematic monitoring data on the phenomenon of posting are not available and specific surveys among companies, sectors or workers have not been organised.

1.2 Evaluation topic list

The items that are analysed in this study have been illustrated in the tables below. For each of the elements of the evaluation framework (context, policy, process, output and effects) and for each level in the evaluation, we have specified the evaluation topics. We have also integrated the direction of the posting (perspective of sending posted workers, receiving posted workers or both). For each of the evaluation topics we have indicated what type of information it is, namely of qualitative nature (obtained through an open-ended question) or of quantitative nature (obtained from a closed question), the nature of the source providing information and how we collect the information from the sources.

This scheme contains an exhaustive overview of the evaluation topics covered in this assignment. It is based on the evaluation framework developed earlier; the terms of reference for this study; the Impact Assessment Guidelines of the EC and an analysis of the academic literature on posting. The evaluation topics have been used to design and structure the research activities, especially the field research including interviews with the main actors involved in the process of posting.

The table includes information items related to the context, the Directive, the process of implementation, the outputs and the effects (outcomes) related to the implementation of the Posting of Workers Directive.



Table 6: Topic list on context, policy, process, outputs and outcomes of posting

Element of evaluation framework	Level	Direction of posting	Topic	Type of info	Method for data collection	Source
Context	Macro	General	Legislation and regulatory framework concerning free provision of services	Qualitative	Desk research	EC/MS
			Legislation and regulatory framework concerning social security and social protection	Qualitative	Desk research	EC/MS
			Macro-economic situation	Quantitative	Desk research	Eurostat
	Meso	General	Sector specific legislation e.g. establishment of temporary work agencies	Qualitative	Desk research	MS
			Characteristics of services provided and trends in the sector influencing supply and demand for services	Qualitative	Desk research/ interviews/ Online survey	Sector
	Micro	Sending	Strategic and tactical decision of companies with respect to the cross-border provision of services	Qualitative	Desk research/ interviews/ Online survey	Sector/ company
Receiving		Motives to work with cross-border service providers	Qualitative	Desk research/ interviews/ Online survey	Sector/ company	
	Institutional market model	Receiving	Information on regulations concerning working conditions and non-discrimination policies	Qualitative/ quantitative	Desk research	MS/sector/ company
Policy initiatives and objectives	Macro	Sending	Posting workers Directive	Qualitative	Desk research	EC
	Institutional market model	Sending/ receiving	Conversion of PWD by MS into national legislation and regulatory frameworks	Qualitative	Desk research/ interviews	MS
Process	Macro	Sending	Implementation, coordination and monitoring of PWD by EU and by MS	Qualitative	Desk research/ interviews	EC/MS
	Meso	Sending	Implementation and monitoring of PWD by sectors	Qualitative	Desk research/ interviews	Sector
	Micro	Sending/ receiving	Tactical and operational decisions of service providers: how is posting implemented by service providers	Qualitative	Interviews/ Online survey	Sector/ company
Output	Macro	Sending	Number of posted workers by MS, distinguishing between type of posting	Quantitative	Statistical data collection/ interviews	EC/Eurostat /MS
		Receiving	Number of posted workers by MS, distinguishing between type of posting	Quantitative	Statistical data collection/ interviews	EC/Eurostat /MS
		General	Quality of statistical data/monitoring systems	Qualitative	Statistical data collection/ interviews	MS
	Meso	Receiving	Number of posted workers by sector	Quantitative	Interviews	MS/sector
Economic outcomes	Micro/meso	Sending	Internationalisation and cross-border provision of services	Qualitative	Online survey/ interviews	sector/ company
			Entrepreneurship	Qualitative	Online survey/ interviews	sector/ company
	Micro/meso	Receiving	Market position (expansion/consolidation)	Qualitative	Online survey/ interviews	sector/ company
			Subcontracting / market organisation	Qualitative	Online survey/ interviews	sector/ company
			Pressure on local competitors from foreign service providers in local services markets	Qualitative	Online survey/ interviews	sector/ company
	Micro/meso	Sending/ receiving	Competitiveness and productivity of companies	Qualitative	Online survey/ interviews	sector/ company
			Innovation/learning	Qualitative	Online survey/ interviews	sector/ company
			Management costs and administrative burden	Qualitative	Online survey/ interviews	sector/ company
			Specialisation	Qualitative	Online survey/ interviews	sector/ company
Social outcomes	Micro/meso	Sending	Concentration in specific regions / communities or professions	Qualitative	Interviews	MS/ sector
			Functioning of local labour markets (shortage of labour, brain gain or drain)	Qualitative	Desk research/ interviews	Company/ local community
	Micro/meso	Receiving	Functioning of local labour markets: addressing shortage of labour, shortage of skills	Qualitative	Desk research/ interviews	Company/ local community
			Effect on local wages and employment opportunities for local workers	Qualitative	Desk research/ interviews	Company/ local community
Micro	Sending/ receiving	Change in working and living conditions of posted workers (positive, negative, mixed)	Qualitative	Desk research/ interviews	Company/ local community	
General outcomes	Macro/meso / micro	Sending/ receiving	Relevance and perception of posted workers for stakeholders	Qualitative	Desk research/ Online survey/ interviews	MS/ sector/ company/ local community

Source: IDEA Consult/Ecorys NL



2 METHODOLOGY

The overall approach of the study is multi-stakeholder, multi-level and multi-method.

- It is **multi-stakeholder** since care is taken to include all relevant perspectives. This is not only necessary in terms of stakeholder involvement but also for information gathering purposes, given the relatively unexplored nature of the subject matter.
- A **multi-level perspective** is adopted since some information items concern the micro level of workers, some the meso level of sectors, and others the macro level of countries or regions.
- A **multi-method approach** is necessary to strengthen the validity and reliability of information by cross-checking different information sources and supplementing quantitative information with qualitative information for all issues where quantitative data is lacking.

In this section the **research activities** are stated: desk research, statistical data collection, field research and a web-based survey. Each activity is presented below.

2.1 Desk research

The desk research review covers the existing documents and literature on posting in the EU. The purpose of the desk research is the following:

- To provide an overview of the available information about posting in the literature;
- To provide an overview of information gaps by comparing the available information with the analytical framework;
- To provide background information for other research activities mainly for interviews and statistical data collection.

On the one hand there are findings from the literature that we attempt to confirm and illustrate in the statistical data collection, interviews and the web-based surveys. On the other hand, in the statistical data collection, web-based survey and field work, we concentrate on those elements which are not covered by the literature but are mentioned in the analytical framework.

Five types of documents are consulted through desk research:

- Legal documents
- Policy documents
- Statistical data sources
- Academic literature
- Documents published by stakeholders (e.g. trade unions, sector federations, NGO's)

The material is found at different levels: international (EU, international organisations, relevant international journals and published books...), Member State level and sector level (e.g. sector information/studies).

The legal documents and policy documents are used as background for the development of the chapter on the concept and interpretation of posting. The



consultation of other policy documents and documents published by stakeholders is organized in relation to the field research (interviews), the web-based survey and the analysis and reporting of the study findings.

In the desk research, we mainly focus on academic literature review and statistical data sources, especially in the field of economic and social sciences. We also concentrate on outputs (size and characteristics) and economic and social effects of posting, as opposed to information on the context, the legal framework of posting, its objectives and its implementation.

The academic literature review focuses on the empirical reports and studies and includes different kind of literature:

- Research reports from research institutes
- Articles from scientific journals
- Articles from international journals
- Papers presented at conferences
- Other studies

The general literature on posting has some **limitations** concerning the coverage on several aspects of the analytical framework. The most important limitations concern:

- **Type of posting:** most of the literature does not distinguish explicitly between the different ways of posting as mentioned in the PWD. If there is distinction made, most of the literature often concerns posting of a worker to another Member State under a contract which the employer has concluded with the party in the State for whom the services are intended. There is also some attention paid to the role of temporary employment agencies with regard to posting. The in-company posting receives less attention.
- **Sector coverage:** most literature addresses the construction sector. This is due, amongst other factors, to the fact that the PWD was originally designed for the construction sector. Other sectors which are mentioned are agriculture, transport, manufacturing sector (particularly the food industry) and the food processing industry (the meat industry). Much of the literature about the construction sector is written from a specific point of view (social partners). Because there are no reliable figures about posting at sector level it is not clear to what extent the literature is representative of the true situation.
- **Direction of posting** (receiving and sending): most of the reviewed literature concerns receiving countries. Germany and the Nordic countries are relatively well covered by the literature on posted workers. The attention that some countries receive in the literature is not always in proportion to the quantity of posting that takes place in or from the country. Germany is, for example, well represented in the literature on the receiving side as a major receiving country, but it is less represented on the sending side, despite the fact that it is also one of the most important sending countries. Conversely, Nordic countries receive more attention in the literature than would be expected, given the number of posted worker they receive. Within the receiving countries the literature often concerns Eastern European workers and/or low skilled workers. As regards the sending countries, most studies are found on Poland.

Because of the limitations of the literature, we explore the results from the literature in relation to the results of the other research activities (field research, statistical data collection and web-based survey).



The individual references have been listed in a systematic matrix for the purpose of screening, synthesis and reporting. Aside from the literature on posting and the free movement of services, some general literature on intra EU mobility of labour is studied. An overview of the reviewed literature can be found in **Annex 1**, Bibliography.

2.2 Statistical data collection

The aim of the statistical data collection is to:

- Collect data on the size of posting and the characteristics of posted workers in the European Union (EU-27 and other EEA-countries);
- Gain an insight into the main sending and receiving countries, as well as the main sectors where posted workers exist;
- Identify and assess available data sources on posted workers.

In order to gain an insight into the size and characteristics of posting in the EU, it is important to collect statistical information of sufficient quality. Therefore, statistical data collection on the phenomenon of posting in the EU forms an important part of this research project.

The statistical data collection is organised on **EU-level** and on **national level**.

2.2.1 *EU-level*

In order to analyse the size and characteristics of posting of workers on EU-level, a **review of European data sources** is carried out.

Alongside this review, data on the posting phenomenon based on the **E101 social security forms** - collected by the European Commission in all EU-member States and EFTA-countries - are presented and analysed in detail. Furthermore, in order to identify other available data sources, a **questionnaire** on posting of workers is sent to all EU Member States and EFTA-countries.

2.2.2 *National level*

On national level, a **review of national data sources**, including monitoring systems, is carried out for the eight countries selected in the field research.

We go on to analyse in detail all available data for **four countries** (Belgium, France, the Netherlands and Poland). These countries have been selected because of the importance of posting and the availability of accurate data on posting in these countries.

An extensive overview of the statistical data sources can be found in **Annex 2** Overview of statistical data sources.

Annex 3 Statistical data collection: Additional information contains additional data of the statistical data collection and an update of data on free movement of workers.

The response of the data questionnaire can be found in **Annex 4** Response data collection exercise.

Finally, an in-depth analysis of the monitoring systems of the eight selected countries can be found in **Annex 5**.



2.3 Field research

The field research aims to gather qualitative information through interviews with organisations (government institutions, sector organisations such as social partners, and companies) on the following elements:

- Contextual frameworks, drivers and barriers of posting: the information is gathered on meso and micro level and is additional to the desk research and the web based survey. The interviews are important to interpret the significance of the indicated drivers and barriers.
- The implementation, coordination and monitoring of posting: the information gathered through the interviews is crucial to analyse the process of posting on macro, meso and micro-level.
- The size and characteristics of posting: the information is gathered on macro and meso level and is additional to the statistical data collection. The interviews are important to interpret the quality of the available data and the monitoring systems.
- The economic effects of posting in five sectors where posted workers are relatively more present: the information is gathered on meso and micro level and is additional to the desk research and the web-based survey.
- The social effects of posting in a sample of sending and receiving countries: the information is gathered on meso and micro level and is additional to the desk research.

The field research takes place at different geographical **levels**: at EU-level and country-level. Five **sectors** are involved: agriculture; hotels; restaurants and catering; transport; construction and temporary agencies. An in-depth sector analysis of the construction sector is carried out. For the other sectors, it is not possible to make an in-depth analysis because of the lack of consistent and reliable data.

The following **stakeholders** are involved in the study: (academic) experts; sector federations; trade unions; labour inspectorates; social security and other governmental institutions; placement services (such as temporary work agencies). Some stakeholder interviews are functional for the sector analysis (i.e. assessment of economic effects), some for the country analysis (i.e. assessment of social effects) and some for both.

The field research takes place with these multiple stakeholders through **semi-structured interviews**. Given the complexity of the subject matter, we opted for as many face-to-face interviews as possible. This technique is complemented with telephone interviews where needed. Each stakeholder was contacted to ask for collaboration (mail + telephone) and to identify the appropriate person to invite for the interview. We began by approaching the general coordinator/director who could direct us to the right person(s) e.g. experts in the field of internal market and/or social policy. The people that have agreed to be interviewed received a fact sheet in advance, containing information on the topic of the study and if requested, a topic list. Interviewees could bring in additional elements that are relevant in their view.

The topic list and the contact list for the field research can be found in **Annex 6** Field research: topic list and contact list.



2.3.1 *EU-level*

In order to gain a broad picture of the phenomenon of posting and its effects at sector level, face-to-face interviews were held with EU-social partners of the sectors suggested in the Terms of Reference for the study. In addition, we interviewed representatives of Business Europe and ETUC.

2.3.2 *Country level (sending and receiving)*

In both sending and receiving countries, general information on the process of posting was gathered. Interviews were held with governmental institutions. Sector aspects are analysed through interviews with sector federations and trade unions.

At country level the research was conducted in a sample of sending and receiving countries. For the selection of the countries we have used the following **selection criteria**:

- **Size of posting:** we focus on the countries which have a high number of sent or received posted workers. For this purpose we use the figures presented in Employment in Europe 2008 based on the E 101 forms and the literature. Taking into consideration the high number of both sent and received posted workers in the Netherlands, Germany and Belgium we examine both situations in all three countries. Denmark has lower figures on received posted workers, but is often mentioned in the literature.
- **Geographical spread:** we include countries in Western Europe, Eastern Europe, Southern Europe and a Nordic country. This is why we chose to assess the situation in Poland and Bulgaria as sending countries as well as Denmark, Spain and France as receiving countries, in addition to the three countries mentioned above,
- **Legal labour background/social dialogue model:** we include countries with a different background concerning employment conditions. One issue is the existence or lack of a legally defined minimum wage or collectively agreed national minimum wages. Therefore, we include two countries, Germany and Denmark, from several which do not have a legally defined minimum wage - Denmark, Germany, Norway, Austria, Switzerland, Sweden, Italy and Cyprus. Another aspect is the model or tradition of social dialogue, so we also include countries which fall into this group. Belgium, the Netherlands, Germany and Denmark are countries characterized by a strong social dialogue model concerning employment conditions. In France, Bulgaria and Poland, employment conditions are regulated by governmental initiative. Spain has a more moderate tradition of social dialogue.

Table 7: Selection of countries

Country	Sending	Receiving
The Netherlands	X	X
Germany	X	X
Belgium	X	X
Poland	X	
Bulgaria	X	
Denmark		X
Spain		X
France		X

Source: IDEA Consult/Ecorys NL



2.4 Web-based survey

The main objective of the web-based survey among national sector federations is to collect additional information regarding the **outcomes/effects** of posting on the five selected sectors: construction; transport; hotels; restaurants and catering; agriculture and temporary work agencies. The web survey concerns the sending and receiving perspective. The focus lies on the **economic effects** and on **contextual factors** influencing posting.

The web-based survey among national sector federations allows us to focus systematically on the national sector level. A web-based survey is an effective tool to collect larger systematic amounts of information and is also user-friendly. In contrast to those posed during face-to-face interviews, the survey questions are mostly closed (although with possibility to provide comments where needed) in order to facilitate comparison and aggregation of the results. This enables the comparison of outcomes.

The contact details of the national sector federations were obtained during interviews with the sector federations at EU level in the first stage of this study. The interviewees of the EU level federations were asked to supply us with the contact details of the relevant staff members in their national member organisations. In cases where the EU sector federations have not responded to our request, contact details were collected through the EU federations' websites. This has resulted in a panel of 197 contacts who were invited to participate in the web-based survey. 41 contacts responded to the questionnaire, which is a net response rate of 21 percent.

The results of the web-based survey are included in the exploration of the economic and social effects of posting of workers in Part 4.

The topic list for the web-based survey can be found in **Annex 7** Web based survey: questionnaire.



Part 2: CONTEXT OF POSTING



1 INTRODUCTION

In this Part the context in which posting occurs is outlined. Both the policy and legal framework and the socio-economic situation are important when interpreting the phenomenon of posting. More specifically: the drivers and barriers related to posting; the need for and the objectives of posting and the importance of the effects of posting.

Following elements will be outlined below:

- The framework of posting
 - The Posting of Workers Directive
 - The implementation of the Posting of Workers Directive
- Developments influencing the phenomenon of posting
 - Transitional measures in geographical labour mobility
 - Socio-economic context



2 THE FRAMEWORK OF POSTING

2.1 The Posting of Workers Directive

2.1.1 *Posting of workers versus free movement of workers*

The free movement of workers and freedom of services goes hand in hand with the objective of fostering a common market, but there are fundamental differences between free movement of workers on the one hand and posting of workers on the other (Blanpain, 2010).

Free movement of workers:

- Access to the labour market: free access for all workers;
- Level of protection: equal treatment as national workers.

Posting of workers under the PWD:

- Access to the labour market for three groups of workers (
 - Companies that send abroad their own employees to provide services directly to their customers, possibly on-site (Article 1.3(a));
 - Companies that post employees to their foreign branches or subsidiaries (Article 1.3(b));
- Temporary work agencies that provide workers to foreign-user companies to work on their premises (Article 1.3(c)). Level of protection: terms and conditions of employment are listed in the Directive.

The Posting of Workers Directive establishes a common framework for the provision of transnational services within the EU: it identifies a 'hard core' of national rules in the host country to be applied to posted workers, while safeguarding the potentially improved conditions that employees may be granted through law or collective bargaining in the country where they habitually work.

The objectives of the Directive as mentioned in the recitals are as follows:

- Supporting the dynamic environment for the transnational provision of services offered by the completion of the internal market;
- Fair competition between service providers in EU-countries;
- Respect for the rights of workers.

2.1.2 *Types of posting in the provision of cross border services*

It is important to specify the various situations in which the posting of workers can take place, according to the Directive (Article 1). As part of the transnational provision of services, posting of workers can occur when undertakings established in a Member State meet the following conditions (Blanpain, Eurofound, 2010):

- They post workers to the territory of another Member State under a contract concluded between the undertaking making the posting and the party for whom the services are intended (Article 1.3(a));
- They post workers to an establishment or to an undertaking owned by the group in the territory of another Member State (Article 1.3(b));



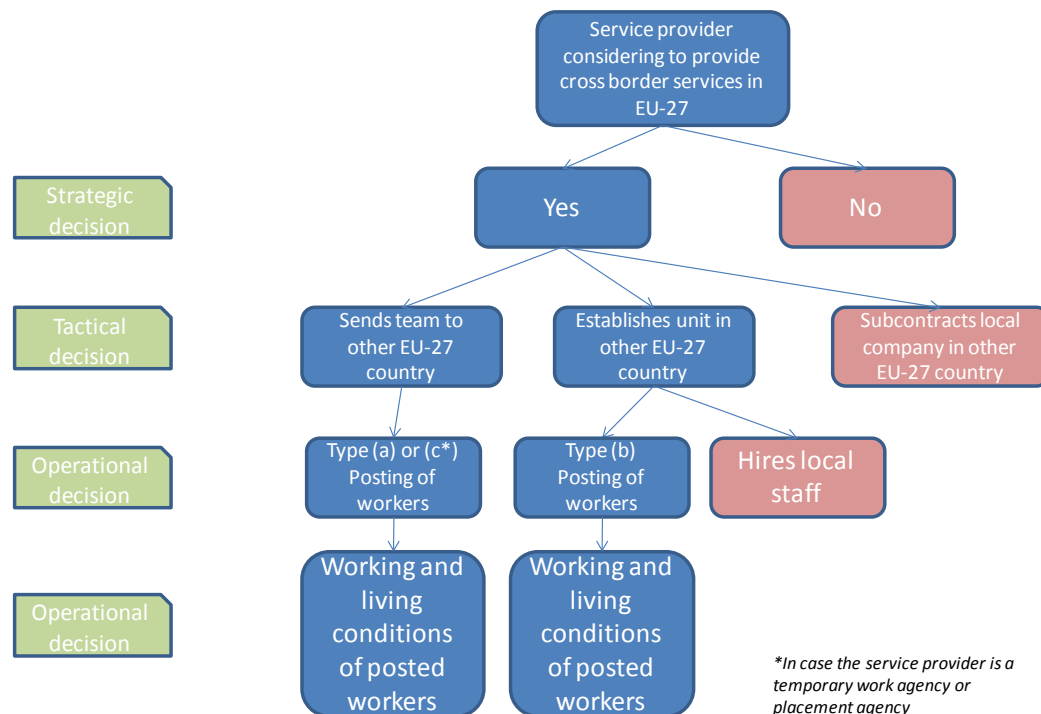
- They are a temporary employment undertaking or placement agency and hire out workers to a user undertaking that is established or operates in the territory of a Member State (Article 1.3(c)).

It is important to provide a perspective based on the behaviour and decisions made by companies involved in posting. Various situations need to be considered. It is possible to distinguish between:

- Companies that send abroad their own employees to provide services directly to their customers, possibly on-site;
- Companies that post employees to their foreign branches or subsidiaries;
- Temporary work agencies that provide workers to foreign-user companies to work on their premises.

In the figure, the process of posting is described from the perspective of cross-border provision of services.

Figure 2: Process of posting in the perspective of cross border provision of services



Source: IDEA Consult/ECORYS NL

One of the three types of posting is posting through **temporary agency work**. The concept of temporary agency work is characterised by a triangular relationship between three parties: a temporary agency worker is employed by a temporary work agency (TWA) and is then - via a commercial contract - hired out to perform work assignments at a user firm (Storrie, 2002).

Following directives have had an influence on the activity of temporary agency work (Vaes & Vandenbrande, 2009):

- Framework Directive 89/391/EEC
- Directive 91/383/EEC on Health and Safety for Temporary Workers
- Directive 96/71/EEC on the Posting of Workers



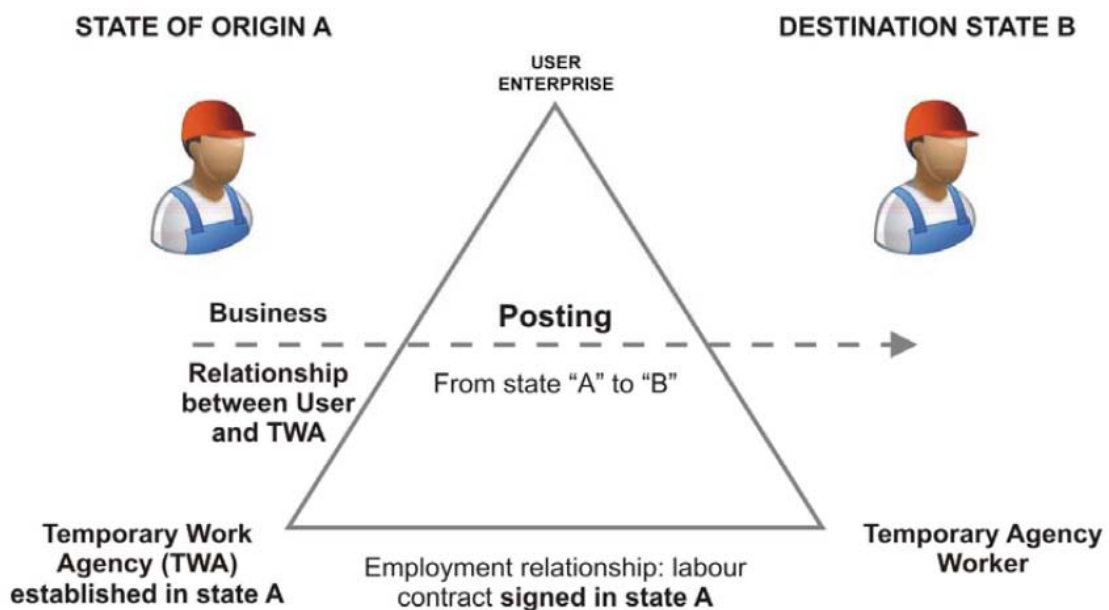
- Directive 99/70/EEC concerning the Framework Agreement on fixed-term Work concluded by ETUC, UNICE and CEEP
- Directive 2008/104/EC on Temporary Agency Work

The Posting of Workers Directive and the Directive on Temporary Agency work share common areas but the application of the Posting of Workers Directive takes precedence over the Agency Work Directive when dealing with cross-border activities of Temporary Work Agencies.

There are three types of cross-border services provided by TWA and posting is one of them. The three types are: cross-border posting (cf. posting by TWA targeted in PWD), cross-border recruitment (to a company) and cross-border recruitment to TWA ('diamond relationship'). In this last type of cross-border services, two temporary agencies are involved, one in the sending country and one in the receiving country (Rodriguez, 2010).

Posting of workers in the Temporary Agency Work sector concerns the posting by a TWA of workers to a user undertaking located in a Member State other than that of the TWA doing the posting. This is a case of typical transnational activity within the framework of the free provision of services across the EU.

Figure 3: Posted workers within a triangular relationship framework



Source: Rodriguez, 2010



2.1.3 *Social protection of posted workers*

Besides the definition of the types of posting in the provision of cross-border services, the social protection of the posted workers is stipulated in the Directive.

First of all, the Directive defines the matters applicable to posted workers. Article 3.1 lists the elements of the '**terms and conditions of employment**' set in the host country legislation that posting firms should apply to posted workers (Eurofound, 2010).

Box 1: Article 3.1 of the EU Directive 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

1. Member States shall ensure that, whatever the law applicable to the employment relationship, the undertakings referred to in Article 1 (1) guarantee workers posted to their territory the terms and conditions of employment covering the following matters which, in the Member State where the work is carried out, are laid down:

- by law, regulation or administrative provision, and/or
- by collective agreements or arbitration awards which have been declared universally applicable within the meaning of paragraph 8, insofar as they concern the activities referred to in the Annex:
 - (a) maximum work periods and minimum rest periods;
 - (b) minimum paid annual holidays;
 - (c) the minimum rates of pay, including overtime rates; this point does not apply to supplementary occupational retirement pension schemes;
 - (d) the conditions of hiring-out of workers, in particular the supply of workers by temporary employment undertakings;
 - (e) health, safety and hygiene at work;
 - (f) protective measures with regard to the terms and conditions of employment of pregnant women or women who have recently given birth, of children and of young people;
 - (g) equality of treatment between men and women and other provisions on non-discrimination.

For the purposes of this Directive, the concept of minimum rates of pay referred to in paragraph 1 (c) is defined by the national law and/or practice of the Member State to whose territory the worker is posted.

Article 3.10 authorises the extension of the above list to other matters. Host countries are allowed to demand the application of provisions from their own legal systems relating to terms and conditions of employment to posted workers, other than those referred to in Article 3.1, 'in the case of public policy provisions'.

Secondly, the Directive addresses the **nature of the regulation**, regardless of whether it results from law or collective agreement. Article 3.1 restricts the application of terms and conditions resulting from collective agreements on the matters expressly listed solely regarding posted workers employed in the building industry. Article 3.10 again broadens the application of collective agreement rules: it allows Member States to extend to posted workers the application of 'terms and conditions of employment' set out in national collective agreements concerning the activity of service providers operating in other sectors (Eurofound, 2010).

Article 3.8 specifies that these collective agreements must be declared 'universally applicable', meaning that they 'must be observed by all undertakings in the geographical area and in the profession or industry concerned'. In the absence of a formal system for declaring collective agreements to be universally applicable, Member States may regard those which are simply 'generally applicable to all similar undertakings in the geographical area and in the profession or industry concerned' and/or 'which have been concluded by the most representative employers' and workers' organisations at the national level and which are applied throughout national territory', as equivalent to collective agreements of universal application. In all cases, Member States are required to ensure equality of treatment for national and foreign undertakings in a similar position.



2.2 The implementation of the Posting of Workers Directive

We can identify two fundamental choices that the Member States could make when implementing the Directive: implement either minimum or full protection; and implement protection either through legal instruments or through autonomous collective bargaining.

2.2.1 *Minimum versus full protection*

The national regulators can identify a limited set of basic protections that must be guaranteed for posted workers as a kind of 'safety net' or they may apply the entire system of labour and work protections granted to resident workers to posted workers (by using Article 3.10 on the 'public policy' clause). Such a choice applies to both legislative provisions and collective bargaining, though in a different way. Legal instruments essentially define minimum protections, on top of which the parties can add further guarantees to the employment contract, whether individually or collectively.

Therefore, 'minimum' versus 'full' protection in this domain should be understood in terms of the **scope of regulation**. Minimum protection does not extend beyond those strictly listed in Article 3.1, while broader or full protection could be so broad as to include the entirety of labour legislation. In the case of collective agreements, the legislation implementing the Posting of Workers Directive could stipulate that bargained minimum protection simply replaces the legal ones listed in Article 3.1., or it could provide for the complete application of collective agreements to posted workers (Eurofound, 2010).

2.2.2 *Legislation versus collective agreement*

Protection of posted workers can be granted through applying either (certain) legislative instruments or collective agreements.

In practice, most of the national laws implementing the Posting of Workers Directive mention both law and collective agreements as the means for setting the protection levels for posted workers. Collective agreements relevant for posted workers are usually universally binding. Nevertheless in some countries such as Lithuania and Malta, no universally binding collective agreements exist, thereby limiting the actual protection of posted workers to the legal minimum guarantees. In other situations, collective agreements simply replace the legal minimum protections, but they do not apply in full to posted workers (Eurofound, 2010).

The most problematic aspects regarding the implementation of the Posting of Workers Directive which have emerged in recent years, concern (Blanpain, Eurofound, 2010):

- The relationship between legislation and collective bargaining in defining the employment conditions of posted workers;
- The universal applicability of collective agreements and the selection of the collective agreement to be applied, if more than one bargaining level exists (for instance, national, local, and sectoral agreements);
- The scope of the applicable rules and their identification (whether providing all protections or minimum protections, and specifying what those minimum protections are).

The table below illustrates the choices which Member States have made in the implementation of the Posting of Workers Directive.



Next to these problems, there are other issues regarding the implementation of the Posting of Workers Directive (Communication of the European Commission, COM (2003) 458, COM (2006) 159 and COM (2007) 304):

- Diversity and 'balance' of administrative control measures;
- Access to information and administrative cooperation between monitoring authorities and between liaison offices;
- Compliance with the Directive.



Table 8: The national legal framework on posting of workers, EU and Norway (2009)

Country	Transposition of the Directive	Protection levels	Types of regulation	Application to temporary agency workers (TAW)	Public procurement
Austria	Amendments to different laws	Broad	Legislation and collective agreement (CA) (universally binding by mandatory employer representation)	Complete legislation	No requirements
Belgium	Specific law	Broad	Legislation and CA (universally binding by law)	Complete legislation	No requirements
Bulgaria	Specific law	Minimum	Legislation and CA (universally binding by law)	TAW is not present in Bulgaria	No requirements
Cyprus	Specific law	Minimum	Legislation and CA (most representative)	TAW is not explicitly regulated, practically non-existent	No requirements
Czech Republic	Amendments to different laws	Minimum	Legislation and CA (universally binding by law)	Complete legislation (but contradiction in the text)	No requirements
Germany	Specific law, construction sector only plus several extensions to other sectors	Broad	Legislation and CA (made universally binding by a special legal procedure)	No special rules	Possible (Rüffert case)
Denmark	Specific law	Broad	Legislation and CA (most representative)	Regulated by collective agreement: same rules for posted workers; law expected by January 2011 in application of EU Directive	The Danish state adopted the ILO Convention 94, which requires that the same rights and conditions are ensured for all workers. This covers large state works, but it is recommended that regional authorities follow the same approach
Estonia	Specific law	Minimum	Legislation and CA (universally applicable by law)	No specific regulations for TAW; workers involved in transnational TAW are treated like posted workers	No requirements
Spain	Specific law	Minimum	Law and CA (universally applicable by law)	As for other posted workers	No requirements
Finland	Specific law	Broad	Legislation and CA (universally binding)	Complete legislation	CA universally binding must be applied
Greece	Specific law	Minimum	Legislation and CA (universally binding by law)	Complete legislation	Law and CA must be applied
Hungary	Amendment of existing law (Labour Code)	Minimum	Legislation and CA (universally binding by law - construction)	Like other posted workers	No requirements



Ireland	Amendment of existing law	Broad	Legislation and CA (universally applicable Registered Employment Agreements (REA) and agreements reached by Joint Labour Committees (JLC) by law – construction and other sectors)	Complete legislation	Possible (for instance under the 2005 Dublin City Council Agreement)
Italy	Specific law	Broad	Legislation and CA (most representative)	Complete legislation	A 'social clause' included in public procurement legislation requires the full application of relevant CA
Lithuania		Minimum	Legislation and CA (universally binding by law – not applied in practice, no such CA)	No special rules	No requirements
Luxemburg	Amendment of existing law (Labour Code)	Broad	Legislation and CA (universally binding by law)	Complete legislation	No requirements
Latvia	Amendment of existing law (Labour Code)	Minimum	Legislation	No special rules	No requirements
Malta	Specific law	Minimum	Legislation and CA (universally binding by law - not applied in practice, CA only at company level)	No special law on TAW	Terms of employment must be disclosed in advance
Netherlands	Specific law	Minimum	Legislation and CA (universally binding by law)	Complete legislation	No requirements
Norway	Amendment of existing law	Minimum	Legislation and CA (universally binding by law – construction and ship building)	Complete legislation	Conditions on terms of employment including collective agreements
Poland	Amendment of existing law (Labour Code)	Minimum	Legislation	Complete legislation	No requirements
Portugal	Amendment of existing law (Labour Code)	Minimum	Legislation and CA (universally binding by law)	Complete legislation	No requirements
Romania	Specific law	Minimum	Legislation and CA (universally binding by law)	Like other posted workers	No requirements
Sweden	Specific law	Broad	Legislation and CA (most representative)	Complete legislation, like posted workers	No requirements
Slovenia	Employment Relationship Act	Broad	Legislation and CA (universally binding by law)	No special rules	No requirements
Slovakia	Different amendments to existing laws	Minimum	Legislation and CA (universally binding by law)	No special rules on TAW	No requirements
United Kingdom	Employment Relationship Act	Broad	Legislation	Complete legislation	No requirements

Source: Eurofound, 2010



3 DEVELOPMENTS INFLUENCING THE PHENOMENON OF POSTING

3.1 Transitional measures in geographical labour mobility

The free movement of persons is one of the four fundamental freedoms guaranteed by EU law, along with the free movement of goods, services and capital. It includes the right of EU nationals to freely move to another Member State, to take up employment and reside there with their family members. Free movement of workers precludes Member States from directly or indirectly discriminating against EU workers and their families on the basis of nationality in employment related matters. It also ensures equal treatment as regards public housing, tax advantages and social advantages (Employment in Europe 2008, 111-112).

3.1.1 *Transitional measures*

In an attempt to address the complex implications of the EU's 2004 and 2007 enlargements¹¹, the Accession Treaties of 16 April 2003 and 25 April 2005 allow Member States to temporarily restrict the free movement of workers from countries that joined in 2004 (with the exception of Malta and Cyprus) and 2007 to their labour markets.¹² Several Member States from the EU-15 introduced '**transitional measures**' (restrictions) on the movement of workers from the New Member States. These restrictions can be maintained for a maximum of seven years - until May 2011 in the case of workers from the eight countries that joined the Union in 2004 to which transitional arrangements apply, and until January 2014 in the case of workers from Bulgaria and Romania.

The policies relating to the free movement of workers from the EU-8 within the EU-15 states can be classified into three categories:

- Those keeping the restrictions in place after May 2009: Austria and Germany.
- Those who lifted the restrictions gradually, between 2006 and 2009: Belgium, Denmark, France, Luxembourg, The Netherlands.
- Those keeping labour markets open / removing restrictions: Finland, Greece, Ireland, Italy, Portugal, Spain, Sweden, United Kingdom.

With respect to the 1 January 2007 enlargement which brought Romania and Bulgaria into the EU, many Old EU Member States were more reluctant to open their labour markets. All EU-15 countries, with the exception of Sweden and Finland, decided to restrict Bulgarians' and Romanians' access to their labour market.

All new EU-10 Member States decided to open their labour markets - with the exception of Malta, which constricts access, and Hungary, which imposes some conditions.

¹¹ 2004: EU-15 enlarges to eight countries from Central and Eastern Europe, Cyprus and Malta. 'Old' EU Member States may decide to restrict labour movements but have to gradually lift them, following a 2+3+2-year scheme.

2007: Romania and Bulgaria join the EU, bringing total numbers of member states to 27 (EU-27). Their citizens are also subject to a 2+3+2 scheme.

¹² EU-15' refers to all Member States forming part of the EU before 1 May 2004;

EU-10' refers to all countries that joined the EU on 1 May 2004,

EU-2' refers to Bulgaria and Romania.



Under the Accession Treaty, Austria and Germany have the possibility to restrict the freedom to provide services through posted workers. This enables these countries to cope with the risk of disruption in certain vulnerable sectors, and to limit the posting of workers in relation to the provision of services for as long as they apply restrictions on the free movement of workers and have informed the Commission. Bilateral agreements with Germany and Austria limit the number of workers that can be posted to these countries in certain sectors.

Table 9: Member States' policies towards workers from the New Member States

Member State	Workers from the EU 8/EU 15	Workers from BG and RO/ EU 25	
EU 15	BE	Free access (1 May 2009)	Restrictions with simplifications
	DK	Free access (1 May 2009)	Free access (1 May 2009)
	DE	Restrictions with simplifications*	Restrictions with simplifications*
	IE	Free access (1 May 2004)	Restrictions
	EL	Free access (1 May 2006)	Free access (1 January 2009)
	ES	Free access (1 May 2006)	Free access (1 January 2009)
	FR	Free access (1 July 2008)	Restrictions with simplifications
	IT	Free access (27 July 2006)	Restrictions with simplifications
	LU	Free access (1 November 2007)	Restrictions with simplifications
	NL	Free access (1 May 2007)	Restrictions with simplifications
	AT	Restrictions with simplifications *	Restrictions with simplifications *
	PT	Free access (1 May 2006)	Free access (1 January 2009)
	FI	Free access (1 May 2006)	Free access (1 January 2007)
	SE	Free access (1 May 2004)	Free access (1 January 2007)
	UK	Free access (1 May 2004), mandatory workers registration scheme	Restrictions with simplifications
EU 10	CZ	No reciprocal measures	Free access – national law (1 January 2007)
	CY	-	Free access 1 January 2007)
	EE	No reciprocal measures	Free access (1 January 2007)
	LV	No reciprocal measures	Free access (1 January 2007)
	LT	No reciprocal measures	Free access (1 January 2007)
	HU	No reciprocal measures (1 January 2009)	Free access (1 January 2009)
	MT	-	Restrictions
	PL	No reciprocal measures 17 January 2007)	Free access (1 January 2007)
	SI	No reciprocal measures (25 May 2006)	Free access (1 January 2007)
	SK	No reciprocal measures	Free access (1 January 2007)
EU 2	BG	-	No reciprocal measures
	RO	-	No reciprocal measures

Source: <http://ec.europa.eu/social>

Note: * Restrictions also on the posting of workers in certain sectors



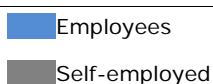
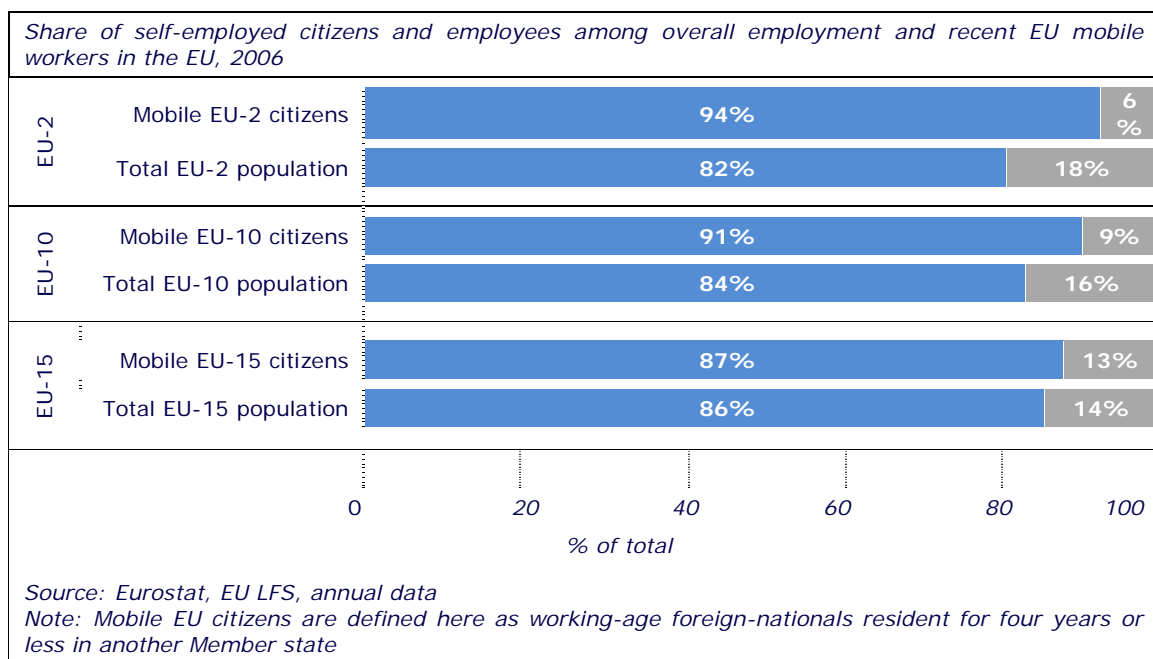
The transitional restrictions can only be applied to workers and not to the self-employed workers or any other category of citizens. They only apply to obtaining access to the labour market in a particular Member State. Once a worker has been admitted to the labour market of a particular Member State, Community law on equal treatment as regards remuneration, other employment-related matters and access to social and tax advantages is valid. This means that no discrimination on the grounds of nationality in these matters is allowed between legally employed workers, regardless of the EU Member State from which they come. As no transitional arrangements are in place for the application of Community law on the coordination of social security schemes, they also benefit from equal treatment in this regard (Employment in Europe 2008, 111-112).

3.1.2 *Transitional measures and self-employment*

Given the restrictions on the free movement of workers under transitional arrangements, there is a general concern that this may lead to an increase of (real and 'false') self-employment.

However, overall averages indicate that the share of recent self-employed movers in the EU-15 is in fact lower than the share of self-employed movers in the respective sending countries. Moreover, the share of recent self-employed EU-10 and EU-2 movers to the EU-15 is below the overall self employment rate in the EU-15 (Employment in Europe 2008, 130).

Graph 1: Share of self-employed citizens and employees among overall employment and recent EU mobile workers in the EU, 2006



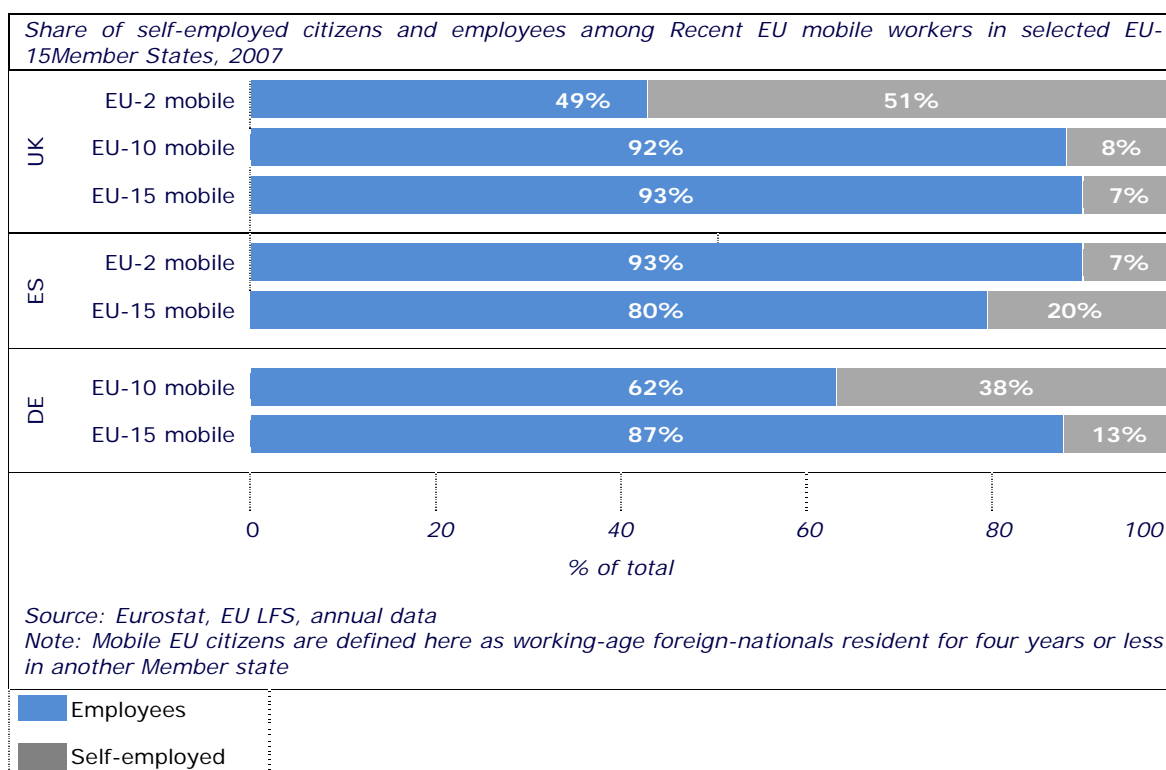
Source: Employment in Europe 2008, 127

However, there are substantial differences between Member States, as shown in the following table, which presents the proportion of self-employed recent movers for the main receiving countries for which data are sufficiently available. According to this data, the share of self-employed workers is small in the UK, being almost identical for both recent immigrants from the EU-15 and the EU-10



(7% and 8% respectively). In contrast, around half of employed recent arrivals from the EU-2 to the UK and almost 40% of recent arrivals from the EU-10 to Germany are self-employed. The main reason for this may be due to the fact that Germany still restricts the free movement of workers from the New Member States while the UK opened its borders to EU-8 labour migrants from the day of accession, but has implemented restrictions with respect to Bulgarians and Romanians. This has reduced the number of employees relative to self-employed workers coming to Germany and the UK from those Member States for which restrictions are applied. The question as to what proportion of self-employed movers from the New Member State in a destination country is due to false or 'bogus' self-employment cannot be answered on the basis of the available data (Employment in Europe 2008, 130).

Graph 2: Share of self-employed citizens and employees among Recent EU mobile workers in selected EU-15 Member States, 2007



Source: Employment in Europe 2008, 128

3.1.3 Transitional measures and posting of workers

Theoretically, the transitional restrictions can force some workers from the New Member States to choose posting because the free movement of workers is restricted for a period of several years. Therefore, it is possible that the end of the transitional measures will have a negative impact on the number of postings from New Member States. On the other hand, unlike the free movement of workers, posting requires a relationship between the individual worker and the employer who provides cross-border services. Therefore posting cannot automatically be considered to be a substitute for the free movement of workers.

The following table provides data on the number of postings in comparison with the stock of EU 27 foreign labour force. The labour force consists of people between the age of 15 and 65 years. The data is divided between EU 15 and EU 12 (EU 10 and EU 2) countries. In Annex 3 more detailed data on the number of foreign nationals in EU 27 is presented.



In comparison with the stock of the EU-27 foreign labour force, the proportion of postings is 18.5%. When looking at the data, the difference between EU-12 and EU-15 countries is remarkable. Posting in the EU-12 countries represents 70.3% of the stock of EU-27 non nationals in the labour force; in the EU-15 countries it only represents 17.5%. Based on these figures, posting can be considered to be an important phenomenon in relation to geographical labour mobility, especially in the EU-12 member states.

However, we have to take into account some other factors. First of all, the number of postings cannot be interpreted as a part of the EU-27 foreign labour force, but as a comparison with the stock of EU-27 foreign labour force. Therefore, the figures only give an indication of the importance of posting in relation to geographical labour mobility. Secondly, the number of postings represents the number of posting assignments and not the number of posted workers. Finally, most of the postings are of a short duration.

Table 10: Number of postings and non-nationals but citizens of EU-27 countries in the labour force 2007

Host country	Country of origin	Number of postings	EU-27 non-nationals in the labour force	Postings in % of EU-27 non-nationals in labour force
EU 15 member states	EU-27	901,109	5,156,180	17.5%
EU 12 member states	EU-27	76,163	108,202	70.3%
EU-27	EU-27	977,272	5,264,381	18.5%

Source: IDEA Consult/Ecorys NL; Eurostat LFS

3.2 Socio-economic context

3.2.1 Socio-economic indicators

Economic motivations are a primary factor in prompting geographical labour mobility. According to neoclassical economic models, workers migrate from poorer to richer countries. Indeed, the relative poverty of Central and Eastern European countries vis-à-vis the EU15 at the time of EU expansion in 2004 and 2007 was a key factor in the implementation of transitional arrangements placing temporary restrictions on migrant flows. As standards of living converge, economic motivations for international labour mobility might be expected to diminish. Hence changes in rates of growth, in standards of living and exchange rates within the EU might be expected to influence geographical patterns of mobility (Green, 2009).

The table below illustrates the most important socio-economic context indicators of the eight country cases involved in this study. It is clear that there is still a notable difference between the Old and New Member States when it comes to indicators such as average wages, quality of work and standards of living. These indicators can be interpreted as important drivers for geographical labour mobility and for posting of workers, particularly in the **New Member States**.

Standards of living are not, of course, the only driver for geographical labour mobility. Export driven economies are important in the context of internationalisation of the economy and the competitiveness of companies. An export driven economy probably explains the labour mobility and the high



number of postings in the **Old Member States**. Most of these countries provide services in neighbouring countries as these areas are part of the natural home markets.

Table 11: Socio-economic context indicators

Indicators	BE	BG	FR	ES	PL	DK	DE	NL	EU-27
Real GDP-growth (2009)	-3.0%	-5.0%	-2.6 %	-3.6%	1.7 %	-4.9 %	-4.9 %	-4.0%	-4.2%
Share of intra-EU trade of services in GDP based on combined export and income (2008)	0.2%	1.9%	0.4%	2.1%	0.5%	0.1%	1.0%	1.7%	0.5%
Share of intra-EU trade of services in GDP based on import only (2008)	11.6%	9.5%	2.4%	4.3%	4.4%	10.0%	4.5%	6.8%	5.2%
Share of intra-EU trade of services in GDP based on export only (2008)	11.8%	11.4%	2.8%	6.4%	4.9%	10.1%	3.5%	8.5%	5.7%
Share of foreigners in work force (Q4 2009)	8.5%	n.a.	4.9%	13.7%	0.2%	5.1%	8.5%	3.5%	6.6%
Labour Cost per hour in Euro	33.66	1.89	31.97	16.39	6.78	34.74	27.8	27.41	19.85
Annual Average wage in Euro (2007)	38,659	2,626	32,413	21,890	8,178	53,165	40,200	42,000	31,302
Minimum wage as percentage of average wage	45.3%	40.4%	48.1%	35.2%	35.7%	/	/	44.2%	/
Unemployment rate (2009)	7.9%	6.8%	9.5%	18.0%	8.2%	6.0%	7.5%	3.4%	8.9%
Quality of work (synthetic indicator)	0.67	0.38	0.57	0.39	0.29	0.79	0.5	0.73	0.51
Standard of living (synthetic indicator)	78	69	82	76	71	76	81	77	74
EPL (OECD) (2008) ¹³	2.61	n.a.	2.90	3.11	2.41	1.91	2.63	2.23	2.41
Importance of self-employment (Q4 2009)	9.2%	7.7%	6.0%	10.2%	13.9%	5.0%	5.7%	8.7%	9.9%
Importance of temporary agency work (2006)	2.0%	n.a.	2.4%	0.7%	0.3%	0.8%	1.3%	2.5%	1.8%

Source: IDEA Consult/Ecorys NL based on Eurostat and Ciett

¹³ 1= very flexible while 6= very rigid.



3.2.2 *Economic crisis*

By the second half of 2008 it was clear that many European countries were entering a recession as a result of the credit crunch and economic downturn. Moreover, the recession is global in nature. This means that the current context for geographical labour mobility is somewhat different from that experienced in recent years.

It is very likely that the economic downturn has impacted on geographical labour mobility. It is possible that a reduction in vacancies in potential destination countries will serve to depress labour mobility. In a period of economic downturn, this reduction in economic activity will reduce the demand of temporary workers and posted workers and only if necessary, their own workforce. In a period of economic recovery, companies will first employ domestic temporary workers and thereafter foreign temporary workers (posted workers).

Conversely, it is possible that in a period of economic downturn, a shortage of employment opportunities locally or nationally will prompt more individuals to consider an international move in search of employment. With greater competition for jobs in the context of a reduction in vacancies, there may be challenges to community cohesion if migrants are perceived to be engaged by employers in preference to local people and / or if posted workers are taking jobs in the context of rising local unemployment (Green, 2009).



4 CONCLUSION

The **Posting of Workers Directive** establishes a common framework for the provision of transnational services within the EU: it identifies a 'hard core' of national rules in the host country to be applied to posted workers, safeguarding at the same time the (possibly better) conditions which employees may be granted through law or collective bargaining in the country where they habitually work.

These are the objectives of the Posting of Workers Directive, as noted in Directive's recitals: supporting the dynamic environment for the transnational provision of services offered by the completion of the internal market; fair competition between service providers in EU-countries; and respect for the rights of workers. Various situations need to be considered as it is possible to distinguish between: companies that send their own employees abroad to provide services directly to their customers, possibly on-site; companies that post employees to their foreign branches or subsidiaries; temporary work agencies that provide workers to foreign user companies to work on their premises.

The phenomenon of posting is, among others, influenced by two developments at EU-level: the transitional measures in geographical labour mobility in the EU and the socio-economic context.

In an attempt to address the complex implications of the EU's 2004 and 2007 enlargements, several Member States from the EU-15 introduced '**transitional measures**' (restrictions) on the movement of workers from New Member States. The transitional restrictions can only be applied to workers and not to the self-employed workers or any other category of citizens. They only apply to obtaining access to the labour market in a particular Member State.

Given the restrictions on the free movement of workers under transitional arrangements, there have been concerns that this may lead to an increase in (real and 'false') self-employment. Overall averages indicate that this is not the case. However, there are substantial differences between Member States, influenced by the transitional measures.

The transitional restrictions could possibly force some workers from New Member States to choose posting because the free movement of workers is restricted for a period of several years. Therefore, it is possible that the end of the transitional measures will have a negative impact on the number of postings from New Member States. Given the transitional measures of Germany and Austria concerning the free movement of workers through posting of workers, the impact for these countries may differ. However, the impact cannot be assessed based on the available data. On the other hand, unlike the free movement of workers, posting requires a relationship between the individual worker and the employer who provides cross-border services. Therefore posting cannot automatically be considered to be a substitute of free movement of workers. In comparison with the EU-27 foreign labour force, the number of postings represents 18.5%. Posting can be considered to be an important phenomenon in relation to geographical labour mobility.

Economic motivations are a primary factor in prompting geographical labour mobility. It is clear that **socio-economic context** indicators like average wages, quality of work and standards of living can be interpreted as important drivers for geographical labour mobility and for posting of workers, particularly in the New Member States. However, standards of living are not the only driver for geographical labour mobility. Export driven economies are important in the context of internationalisation of the economy and the competitiveness of companies. The very nature of an export driven economy probably accounts for



labour mobility and the high number of postings in the Old Member States. Most of these countries provide services in neighbouring countries as these areas are part of the natural home markets.

By the second half of 2008 it was clear that many European countries were entering recession as a result of the credit crunch and economic downturn. Moreover, the recession is global in nature. It is very likely that the economic downturn had an impact on geographical labour mobility and on posting.



Part 3: SIZE AND CHARACTERISTICS OF POSTING OF WORKERS



1 INTRODUCTION

In order to gain an insight into the size and characteristics of posting in the EU, it is important to collect statistical information of sufficient quality. Therefore, statistical data collection on the phenomenon of posting in the EU formed an important part of this research project.

The objectives of the statistical data collection are:

- Collect data on the size of posting and the characteristics of posted workers in the EU-27 and other EEA-countries
- Gain insight into the main sending and receiving countries, as well as the main sectors where posted workers are present
- Identify and assess available data sources on posted workers

To reach these objectives, the following activities have been carried out:

- A thorough review of the existing European Union (and international) data sources which could provide information about posted workers
- An analysis of the data collected through the annual EC questionnaire on behalf of the Administrative Committee Social Security
- A questionnaire about data sources concerning the posting of sent out and received workers from EU-27 and EEA countries.

In the following chapters, the results of these activities are presented in more detail. The first chapter opens with an analysis of the size and characteristics of posting of workers on EU-level. Hereafter, we will focus on data on a national level.



2 SIZE AND CHARACTERISTICS OF POSTING OF WORKERS AT EU-LEVEL

2.1 Introduction

In order to analyze the size and characteristics of posting of workers at EU-level, a review of the data sources on European level has been carried out. Alongside this review of European data sources, data on the posting phenomenon based on the E101 social security forms collected by the European Commission are presented and discussed in detail. Thereafter, other data on posting are presented, based on a questionnaire sent during this study to all Member States.

2.2 Review of statistical data sources on EU-level

Little reliable data exists regarding the phenomenon of posting of workers

Posting of workers can be included within the larger concept of temporary workers' mobility: namely, short-term international assignments¹⁴ (Warwick Institute for Employment Research, 2009). From the review of statistical data on the scope and nature of short-term international mobility it appears that measuring the volume, nature, extent and characteristics of different forms of employment-related mobility of a temporary nature, remains difficult. This literature showed that little reliable data exists on the phenomenon of posting of workers and that it is not possible to rely on existing EU-data surveys to collect data.

Table 12 summarizes the reviewed EU (or international) statistical data sources concerning posted workers. A broad description of the reviewed European data sources – in the form of an overview of these data sources with their relevant data, strengths, weaknesses and potential use – can be found in Annex 2 of this report.

¹⁴ Defined as a person who moves to a country other than that of his or her usual residence for a period of at least 3 months but less than a year, except in cases where the movement to that country is for purposes of recreation, holiday, visits to friends and relatives, business, medical treatment or religious pilgrimage.



Table 12: Summary of reviewed EU (or international) statistical data sources concerning posted workers

Type of data sources	Data sources	Information about posted workers included	Potential use
Administrative data sources	OECD International Migration Outlook	Posted workers can be included in the statistics depending on countries' registration systems. However, posted workers cannot be extracted.	Source cannot be used unless registration systems are adapted and/or posted workers are marked.
	Eurostat Population Statistics	Posted workers can be included in the statistics depending on countries' registration systems. However, posted workers cannot be extracted.	Source cannot be used unless registration systems are adapted and/or posted workers are marked.
	Administrative social security data	The number of E101 social security forms gives an indication of the number of postings in EU and EEA countries (perspective of sending and receiving countries).	Is the only cross-country data source containing information on the number of postings in the EU.
European population or household surveys	EU Labour Force Survey (LFS)	Based on the questions of the ad hoc module about migration it is possible to identify migrants who are inter-corporate transfers (which might include posted workers) and those who migrated for a job, which they applied for from outside the country.	Some additional questions need to be included to identify posted workers unambiguously. Moreover, larger sample sizes are required to be statistically representative. An advantage is that many characteristics of the respondents are available in the survey.
	European Social Survey (ESS)	Posted workers can be included as respondents in the sample, but they cannot be extracted based on the data available in the survey design.	Many additional questions need to be included to identify posted workers. Moreover, much larger sample sizes are required to be statistically representative. An advantage is that several characteristics of the respondents are available.
	European Community Household Panel (ECHP)	Posted workers can be included as respondents in the sample, but cannot be extracted based on the data available in the survey design.	Potential use is low as the survey is no longer operational.
	EU Statistics on Income and Living Conditions (EU-SILC)	Posted workers can be included as respondents in the sample, but cannot be extracted based on the data available in the survey design.	Potential use would require many additional questions in the survey and an increase of the sample sizes to identify posted workers. Advantage is that lots of information about income and living conditions is available in the survey.
	Eurobarometer surveys	Posted workers can be included as respondents in the sample, but cannot be extracted based on the data available in the survey design.	Can be used to get qualitative information about posted workers (e.g. motivations, barriers) provided posted workers can be extracted and sample sizes increase.
Employer Surveys by private companies	KPMG, Cartus, GMAC, PwC, Mercer	Data about the number of expatriates or international assignees in the company. Data about the characteristics of expatriates (e.g. sex, age).	Data could be used to estimate the size of type (b) posting (in company posting, expatriates) and their characteristics. However, the quality of the sampling should be improved to make the estimates representative for a country.
Expatriate surveys by private companies	Sibson Consultants and IBIS Advisors, HSBC Bank	Mostly characteristics of expatriates (sex, age, income, living conditions, geographic scope).	Could be used to gain insights into the characteristics of one type of posted workers (namely expatriates).
Company surveys carried out by European (international) institutions	European Company Survey (ESC)	No information about posted workers is included in the current survey design.	Extra questions included about the use of posting by companies could give an estimate of the size of posting (by sending country) when the sampling is representative. Questions about the characteristics of the posted workers can also be added.

Source: IDEA Consult/Ecorys NL



The phenomenon of posting of workers can be measured in a direct or indirect way

This review indicated that it is possible to provide information on the phenomenon of posting in a direct or indirect way. Two type of data sources *directly* contain information related to (the number of) posted workers:

- *Administrative data on E101 social security forms* which cover the three types of posted workers in our definition. The E101 certificate is delivered by the social security institutions of sending countries for every posting not exceeding 12 months to EU Member States, EEA countries and Switzerland. This certificate states that the social security legislation of the sending country continues to apply to the posted worker. In principle, this certificate must be requested by every worker that is posted to EU Member States, EEA countries and Switzerland for less than 12 months before this person goes abroad. Since the 1st of May 2010, it is called the A1 form and is valid for 24 months. At the present, these data give no reliable picture of the size of posting in the EU. There are several reasons for this (e.g. number of postings instead of posted workers are recorded, and agencies in certain countries do not send the E101 forms to the social security institute of the receiving country).¹⁵ It is also important to make a distinction between the sending and receiving perspective:
 - Measuring the number of posted workers *sent* to another EEA country: the quality of the data depends on the national monitoring system.
 - Measuring the number of posted workers *received* in the country: quality depends on the information exchange between the country and the other EEA countries as well as on the monitoring systems of the other countries.
- *Employer surveys carried out by private companies* which focus on one type of posting, namely expatriate workers. Most of these surveys are not available free of charge. Moreover, the sampling in this kind of surveys is not representative in order to extrapolate the findings to a wider range of employees of all companies in a particular country.

Following these two data sources, three types of sources can be used to measure posted workers in an *indirect* way:

- *Administrative data on foreign population (or foreign workers)* in a country may include posted workers depending on the recording definitions and systems which differ between countries. Data tend to be better for workers from outside the EU who need work permits. Free movers are particularly hard to record. In general, registration systems (e.g. related to permits issued to foreign workers in a particular country) are likely to provide more timely estimates of moves than surveys. However, permit statistics are not without their shortcomings (e.g. not all persons may need a permit to enter a country; the data may describe permits granted rather than actually used). In sum, depending on the registration system of a country, these sources could include posted workers. However, it is not possible to extract the posted workers from the total foreign population (or foreign labour force). As such, these data sources cannot provide useful information about the posting of workers.
- *European-wide surveys targeting households or the general population of a country.* Depending on the sampling details by country, posted workers could

¹⁵ See Annex 2 for more information.



be included as respondents in these surveys. It subsequently depends on the specific questions asked in the survey as to whether the responses of posted workers can be extracted. For all surveys under review, extra questions need to be included in the design in order to unambiguously extract the data regarding posted workers. However, the sample size of these surveys is generally much too small to offer statistical representative data about the size (and characteristics) of posted workers in EU countries. Moreover, survey sources tend to be relatively poor at covering short-term moves as mobile individuals are not generally included within the scope of surveys. Also, due to language problems, posted workers (and immigrants in general) risk being under-represented in these surveys. An important advantage of these surveys is that they contain an abundance of information about the characteristics of the respondents (e.g. age, sex, education, income, living conditions, employment situation).

- *Company surveys carried out by European (or international) organisations* asking companies (e.g. HR managers) to what extent they make use of posting of workers to other EEA countries. We did not find a European-wide company survey requesting this kind of information. As an example, the European Company Survey (ECS) carried out by Eurofound is the kind of survey which could be used to poll the size of posting by EU companies. In the current survey design, no questions about posting are asked. If the quality of the sampling is high, the results could be extrapolated to estimate the size of posting by EU countries (perspective of the sending country).

E101 forms are the only cross-country data source containing information on the number of postings in the EU... But the monitoring of the number of postings based on this data source creates some methodological issues.

The review of existing EU data sources shows that the only data source containing information directly related to posted workers (for all 3 types of posted workers mentioned in our definition) is the administrative data based on E101 social security forms. Moreover, these data source are the only such source which allows for a cross-country comparison of data on posting in the EU. Although administrative data on E101 forms are the only cross-country data source which contains information about posting in the EU, measuring the size of posting by the number of E101 forms contains some methodological issues.¹⁶ Therefore, there is still uncertainty as to what extent the number of E101 certificates recorded by countries is a precise proxy of the actual number of postings occurring:

- The number of postings is not equal to the number of posted persons, as one person can request several E101 certificates per year. Therefore E101 forms can be used to monitor the number of postings, but not the number of posted works.
- Some companies do not apply for E101 forms when workers are posted. This is especially the case for (very) short-term postings. Naturally, there is no information on undocumented postings. According to social insurance organisations, the most important explanation for the fact that companies do not always complete the required documents is because they do not know that this is expected of them. The number of E101 forms requested depends thus on the communication strategy in each country. Moreover, according to

¹⁶ 'Report on the use of E101 forms – analyses of the data, Note from the Secretariat of 8 October 2009 for the Administrative commission on social security for migrant workers 409/09'.



social insurance organisations, some companies do not request E101 forms, especially for very short postings, to avoid administrative burden. However, the administrative burden caused by E101 forms depends on the administrative registration systems and procedures in each country. We observed that in countries where E101 forms can be requested on-line, 24 hours, 7 days a week, the number of companies which request E101 forms is much higher than in countries where no computerized system has yet been introduced.

2.3 Administrative data on E101 social security forms

2.3.1 *Methodological introduction*

Despite the fact that monitoring posting based on E101 forms creates some methodological issues, they fill an important information gap concerning posting of workers in the EU. Therefore, DG Employment has started their own data collection exercise to gather data on E101 certificates issued by the EU27 and EEA countries.

DG Employment has completed data collections on the number of E101 certificates issued in the reference years 2005, 2006 and 2007. An update of this data for the reference years 2008 and 2009 is also available¹⁷.

To collect the data, a questionnaire was sent to the members and observers of the Administrative Commission on social security for migrant workers. The questionnaire asked for the number of E101 certificates issued in the 27 EU Member States, Iceland, Norway, Liechtenstein and Switzerland under Council Regulation (EC) No 1408/71 on the application of social security schemes to employed persons, self-employed workers and to members of their families moving within the Community. The data originate from administrative sources from countries' ministries for labour or social affairs or social security or social insurance authorities.

During the different rounds of data collection, coverage has significantly improved, both with respect to the overall number of reporting countries as well as the number of countries reporting posting by economic activity and by destination country (see Table 13 for further information).

In the 2007 data collection, a distinction was made between:

- The number of E101 forms issued for posting to a specific Member States (according to art. 14(1)(a), 14a(1)(a), 14b(1) and 14b(2)¹⁸ of Council Regulation (EC) No 1408/71);
- The number of E101 forms applying to international transport (art. 14(2)a);
- The number of E101 forms for persons active in 2 or more Member States (art. 14(2)b); and

¹⁷ The updated data collection exercise of the European Commission has been made available by the end of this research study. Therefore, all the analyses included in this report are based on the data collection exercise for the reference years 2005, 2006 and 2007. The data for 2008 and 2009 have also been included at the end of this chapter but have not been assessed.

¹⁸ See Annex 2 for an overview of the relevant articles of Council Regulation (EC) No. 1408/71.



- The number of E101 forms according to other cases (art. 14a(4), 14b(4), 14c(a) and 14e).

Table 13: Data description of different data collections of E101 forms issued

	2006 collection	2007 collection
E101 forms issued in which year	<ul style="list-style-type: none"> ▪ 2006: CY ▪ 2005: 22 countries (except BE, ES, IE, IT, MT, NO and CH) ▪ 2004: CY ▪ 2000-2004: NL 	<ul style="list-style-type: none"> ▪ 2007: BG, PT, SK, RO, NO ▪ 2006: 27 countries (except BG, ES, FR, RO) ▪ 2005: EE, CY, NO ▪ 2004: CY
Total reporting countries	29 countries	31 countries
Disaggregation by destination country	For 26 countries	For 29 countries
Disaggregation by sector	For 16 countries (agriculture, industry (incl. construction) and services)	For 18 countries (Nace A+B, C to F (F separately), G, H, I, J+K, M + N +O)
Disaggregation by article of council Regulation (EC) No 1408/71)	For 22 countries (single destination country, multiple countries and international transport)	For 26 countries (forms issued according to different articles of council Regulation (EC) No 1408/71)

Source: DG Employment, Social Affairs and Equal Opportunities, Employment Analysis

In the following paragraphs, we present the results of this data collection. We focus on the 2007 data collection as this collection exercise has the widest coverage.¹⁹ However, it is important to keep in mind that these data must be analysed with caution in light of some methodological issues²⁰:

- While almost all countries have transmitted figures broken down by destination country, data from two countries (Romania and Switzerland) still lack such a breakdown and therefore prevent the calculation of a complete sending by destination country matrix.
- A structural analysis of the labour market impact of postings is limited by the lack of sectoral breakdown for the data of the main sending countries and a general lack of detail by economic activity. While postings tend to concentrate on a few specific activities (e.g. construction, cleaning services), the available data are not detailed enough to allow any deeper analysis.
- The data collected do not make a distinction between workers and self-employed workers, while the PWD is not applicable to the self-employed workers.
- The European Commission observed some data inconsistencies in the collected data. For example, compared to postings to particular Member States and compared to other countries, the Netherlands reported an extraordinarily high number of E101 certificates for persons active in 2 or more Member States.

¹⁹ The data presented in this paragraph is taken from 'Report on the use of E101 forms – analyses of the data, Note from the Secretariat of 8 October 2009 for the Administrative commission on social security for migrant workers 409/09'.

²⁰ Based on comments of the 'Report on the use of E101 forms – analyses of the data, Note from the Secretariat of 8 October 2009 for the Administrative commission on social security for migrant workers 409/09'.



2.3.2 *Results of the data collection exercise of the European Commission*²¹

2.3.2.1 *Statistics on the number of E101 certificates by sending country*

Table 14 shows the number of E101 forms issued in each of the 31 reporting countries. A distinction is made between E101 certificates issued for posting to a specific Member State²² and other types of E101 forms.²³

Table 14: *E101 certificates by sending country, 2007 (number of cases and % of active population)*

Country	Postings			Other E101			Postings and other E101		
	Number	%	% of active population	Number	%	% of active population	Number	%	% of active population
EU-15	698,052	66%	0.37%	221,040	90%	0.12%	919,092	70%	0.49%
EU-12	353,663	33%	0.74%	21,914	9%	0.05%	375,577	29%	0.79%
EFTA	11,667	1%	0.44%	1,363	1%	0.05%	13,030	1%	0.49%
Total	1,063,382	100%	0.45%	244,317	100%	0.10%	1,307,699	100%	0.55%

Source: IDEA Consult/Ecorys NL based on data collection of European Commission

Posting is an important phenomenon in EU labour mobility flow, but is concentrated in a small number of countries

In 2007 a total of about 1.3 million E101 certificates have been recorded across the EU-27 and Iceland, Liechtenstein, Norway and Switzerland. Of these, almost 1.06 million (81%) relate to postings. The remainder of around 244,000 cases fell into the categories international transport, persons active in 2 or more Member States or other cases.

If we only consider posting of workers (excluding other E101), almost 66% of the sending countries are in the EU-15, 33% are EU-12 countries and 1% EFTA countries. However, in relative terms, posted workers accounted for an average of 0.37% of the active population of EU-15 sending countries and 0.74% of the active population of EU-12 sending countries.

Graph 3 shows that the main sending countries were:

- France: with almost 284,000 E101 certificates issued (or 21.9% of total number of postings)
- Poland: with 238,946 (or 18.4% of total number of postings)
- Germany: with 217,869 (or 16.8% of total number of postings)

Five other countries – the Netherlands, Portugal, Belgium, Luxembourg and the United Kingdom – recorded a number of 50,000 E101 certificates or higher, while numbers in most other countries were substantially lower.

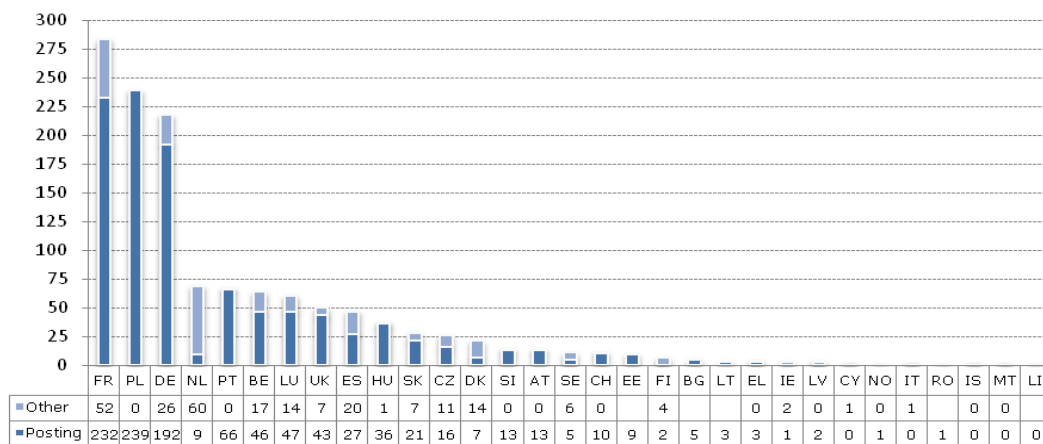
²¹ See complete tables of data in Annex 3.

²² According to art. 14(1)(a), 14a(1)(a), 14b(1) and 14b(2)²² of Council Regulation (EC) No 1408/71.

²³ E101 forms applying to international transport (art. 14(2)a), E101 forms for persons active in 2 or more Member States (art. 14(2)b) and E101 forms according to other cases (art. 14a(4), 14b(4), 14c(a) and 14e).



Graph 3: Number of E101 certificates by sending country (x 1,000), 2007



Source: IDEA Consult/Ecorys NL based on data collection of European Commission

Graph 3 also shows that if we consider only the number of E101 certificates issued for posting, the main sending countries were:

- Poland: 238,946 (or 22.7% of total number of postings)
- France: 232,102 (or 22.1% of total number of postings)
- Germany: 192,093 (or 18.3% of total number of postings)

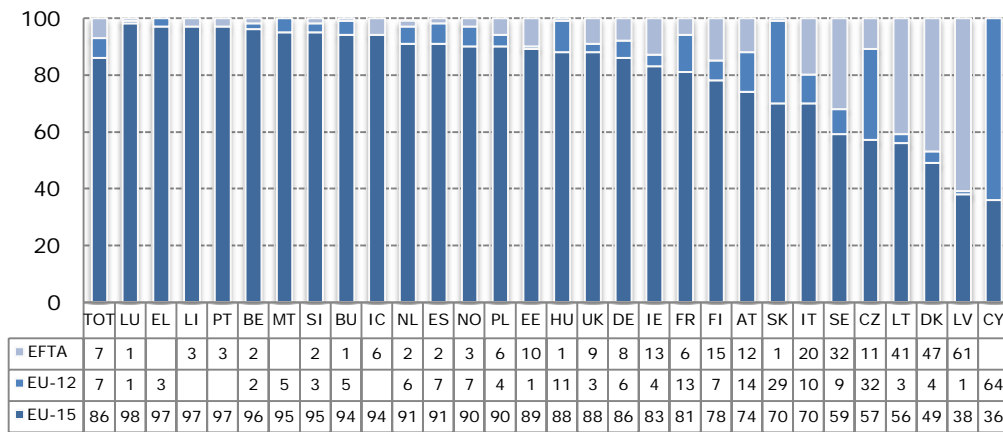
The number of E101 certificates issued for posting can be used as a proxy of the number of postings. Therefore, in this part of the report, the term 'number of postings' is used in the place of the number of E101 forms issued for posting.

86% of postings are issued to EU-15 countries

Finally, Graph 4 illustrates the distribution of posting according to the country of destination (EU-15, EU-12 or EFTA). This graph shows that 86% of the postings in 2007 were issued to EU-15 countries, 7% to EU-12 countries and 7% in EFTA countries. However, large differences are observable in this distribution according to the country of origin. For postings from Latvia (61%), Denmark (47%), Lithuania (41%) and Sweden (33%), EFTA countries are rather important destination countries. This can be explained by the geographical neighbourhood of these countries (close to Norway). For postings from Cyprus (64%), the Czech Republic (32%) and Slovakia (29%), EU-12 countries are also important destinations.



Graph 4: Distribution of sent postings by destination country (%), 2007



Source: IDEA Consult/Ecorys NL based on data collection of European Commission

2.3.2.2 Number of postings by receiving country²⁴

Each country provided data on the number of E101 certificates that were issued by their authorities for postings and other activities abroad. The countries did not provide statistics on the number of received postings. However, by summing up the corresponding numbers by sending country, it is possible to calculate the number of received postings for each country.

Romania and Switzerland did not provide statistics by destination country, so postings originating in these two countries cannot be allocated to a receiving country. As a consequence, the calculation by destination country is incomplete. However, postings from these two countries only represent 1.8% of total postings occurring in EU and EFTA in 2007.

New Member States are over-represented in posting from a sending perspective

Table 15 presents the number and percentage of postings by receiving and sending country for 2007. This table shows that almost 87% of receiving countries are EU-15 countries. However, only 65% of postings originate from EU-15 countries (see Table 14). On the contrary, EU-12 countries received 7.3% of total postings while 34% of postings originate from these countries. EFTA countries are also more represented in a receiving perspective (6.3%) than in a sending perspective (1%). We can thus conclude that a large proportion of postings originate from New EU Member states (specifically from Poland) and that these workers are mostly posted in EU-15 or EFTA countries. New Member States seem thus to be over-represented in posting, from a sending perspective.

²⁴ Figures from RO and CH are not disaggregated by destination country. Figures for UK relate to April 2007 to March 2008



Table 15: Posting by destination and sending country, 2007

Receiving country	Sending country							
	EU-15		EU-12		EFTA		Total	
	Number	%	Number	%	Number	%	Number	%
EU-15	601,012	86.2%	299,038	86.8%	1,059	90.4%	901,109	86.4%
EU-12	51,098	7.3%	24,994	7.3%	71	6.1%	76,163	7.3%
EFTA	45,486	6.5%	20,601	6.0%	41	3.5%	66,128	6.3%
TOTAL	697,596	100%	344,633	100%	1,171	100%	1,043,400	100%

Source: IDEA Consult/Ecorys NL based on data collection of European Commission

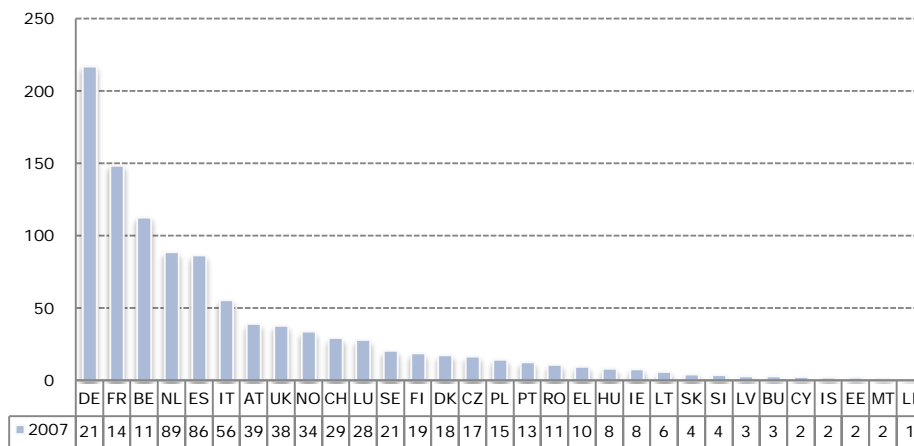
France and Germany are important countries for posting of workers from both a sending and receiving perspective

Graph 5 shows the number of received postings by country. This graph indicates that the number of received postings is the highest in:

- Germany: 216,911 (or 20.8% of the total postings)
- France: 148,610 (or 14.2% of total postings)
- Belgium: 112,766 (or 10.8% of postings)
- The Netherlands: 88,656 (or 8.5% of total postings)
- Spain: 86,426 (or 5.3% of total postings)

Therefore, France and Germany are important countries for posting of workers, from a sending perspective as well as from a receiving perspective. Poland, on the contrary, is only an important country for posting from a sending perspective, as it represents only 1.4% of the total postings in 2007.

Graph 5: Number of received postings by country (x 1,000), 2007



Source: IDEA Consult/Ecorys NL based on data collection of European Commission



2.3.2.3 Country by country distribution of postings

Destinations of postings follow geographical location, historical and business traditions

Different tables in the Annex 3 illustrate the detailed distribution of postings between the 31 sending and receiving countries. The figures show a rather clear pattern in the distribution of postings. The country destination seems to follow geographical location, historical and business traditions, though some countries have one or two leading destinations, and some tend to spread the workers across several countries:

- The number of postings from Belgium, France, Germany, Luxembourg and the Netherlands spread into neighbouring countries. The main destinations for postings from
 - Germany are: Austria, Belgium, France, Luxembourg and the Netherlands
 - Belgium are: France and the Netherlands
 - Luxembourg are: France and Belgium
 - The Netherlands are: Belgium and Germany.
- The main destinations for posting from Austria are Germany and Italy; and from Italy are France and Switzerland.
- Main destinations for posting from Denmark and Finland are Norway and Sweden respectively. Norway is also a main destination for postings from Sweden.
- Posting from the UK is mainly destined to France, the Netherlands but also to Spain, while those from Ireland are mainly destined to the UK, the Netherlands and France.
- The main destinations for posting from Portugal are Spain and to a lesser extent France, while for Spain, France was a major destination. For postings from Greece the main destination country is Germany.
- Almost half of postings from the New Member States were sent to Germany in 2007 (45.9%). This is especially the case for Hungary, Poland, Slovakia, Slovenia and Bulgaria. France is the second most important destination for postings from EU-12 countries, but with only a share of 10.2%. We can thus stress that among the main receiving countries, the share of posted workers from the new Member States is rather low, with the exception of Germany.
- A main destination for postings from Estonia is Finland, while for Latvia and Lithuania it is Norway and Germany.

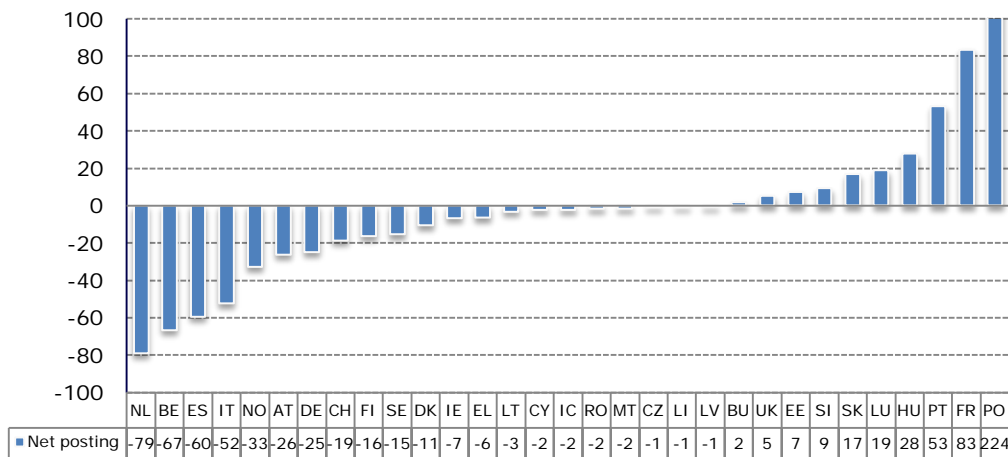


2.3.2.4 Net balance between posted workers sent and posted workers received

In net terms, the Netherlands and Belgium are principally receiving countries, while Poland and France are sending countries

Graph 6 gives an overview of the net balance of postings in a country by showing the number of postings originating in a country minus the number of postings received from other countries. By this account, it seems that the Netherlands, Belgium, Spain and Italy were the countries that received the highest number of postings in net terms. On the other hand, Poland, France and Portugal were by far the main sending countries.

Graph 6: Net balance between sent and received postings (x 1,000), 2007



Source: IDEA Consult/Ecorys NL based on data collection of European Commission



2.3.2.5 Developments in the number of E101 forms between 2005 and 2007

Posting increased by 24% between 2005 and 2007

Table 16 shows the evolution of E101 certificates between 2005 and 2007. Comparability over time is somewhat limited by the variation in countries which reported postings and a change in the structure of the data questionnaire. Nevertheless, overall and country specific results appear to be quite consistent between the three years collected. In total, the number of E101 certificates has increased by 36.8% in the period from 2005-2007. However, this large increase is mainly due to the increase in the number of E101 certificates for other reasons than posting.²⁵ These certificates increased with 150.9% between 2005 and 2007, while the number of certificates for posting increased only with 23.8% between 2005 and 2007.

Table 16: Number of E101 in a sending perspective between 2005 and 2007²⁶

	Postings	Other E101	Total postings including other E101
2005	858,714	97,370	956,084
<i>Growth</i>	<i>12.3%</i>	<i>35.7%</i>	<i>14.7%</i>
2006	964,337	132,153	1,096,490
<i>Growth</i>	<i>10.3%</i>	<i>84.9%</i>	<i>19.3%</i>
2007	1,063,382	244,317	1,307,699
<i>Growth (2005-2007)</i>	<i>23.8%</i>	<i>150.9%</i>	<i>36.8%</i>

Source: IDEA Consult/Ecorys NL based on data collection of European Commission

Sent postings between 2005 and 2007 increased faster in New Member States than in Old Member States

If we only consider the number of E101 certificates for postings, we observe that the evolution in the number of postings varies considerably between countries (see Graph 7). A significant increase of the number of postings can be observed in the following countries: Slovenia (324.9%), Slovakia (287.7%), Greece (189.3%), Portugal (80.7%), Poland (75.2%), Lithuania (62.5%), Luxembourg (61.1%), Estonia (60.4%) and Hungary (52.0%).

On the contrary, an important decrease of the number of postings has been observed in following countries: France (-25.6%), Denmark (-40.4%), Latvia (-41.6%), Sweden (-42.5%), Cyprus (-51%), Iceland (-54.1%), Finland (-55.0%) and the Netherlands (-74.6%).

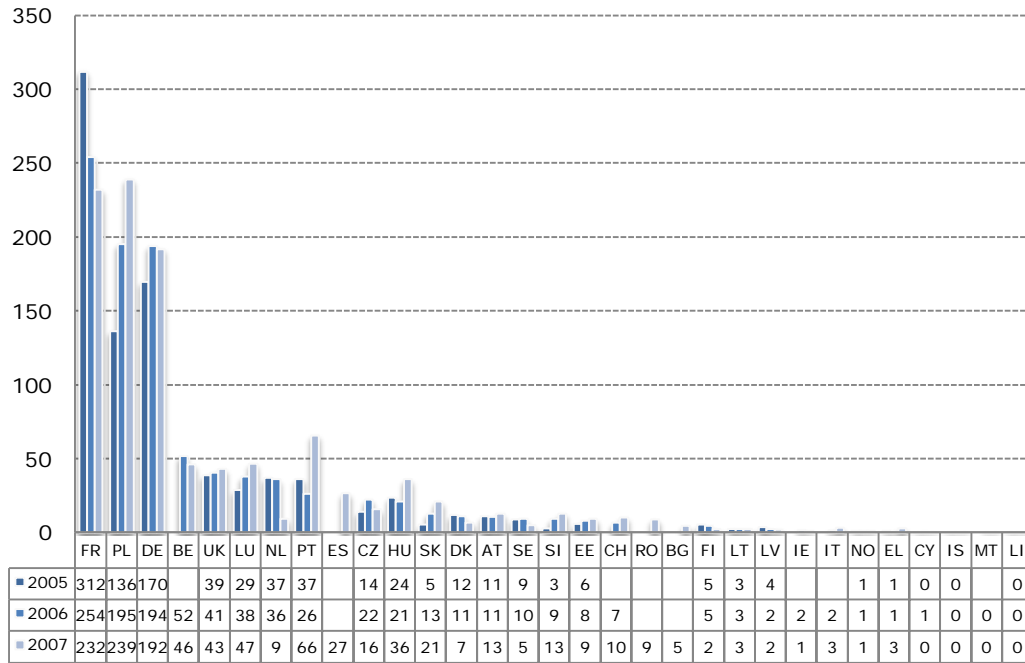
²⁵ E101 forms applying to international transport (art. 14(2)a), E101 forms for persons active in 2 or more Member States (art. 14(2)b) and E101 forms according to other cases (art. 14a(4), 14b(4), 14c(a) and 14e.

²⁶ Notes: Years not fully comparable due to variation of countries which reported postings. Data for 2005 do not include postings from BE, BG, CZ, IE, ES, IT, LV, MT, RO, and CH. Data for 2006 do not include postings from BG, ES, RO and CH. Data for 2007, do not include postings from RO and CH, as both countries do not provide data disaggregated by destination country. Figures for postings originating in the UK relate to April 2007 to March 2008.



We can roughly conclude that the number of sent postings has increased faster in New Member States than in Old Member States, and that this development is not only due to an improvement of the data.

Graph 7: Number of postings in a sending perspective between 2005 and 2007 (x 1,000)²⁷



Source: IDEA Consult/Ecorys NL based on data collection of European Commission

A comparison of the number of received postings over time is more problematic due to the variation of countries which reported postings between 2005 and 2007. Therefore, data on posting for 2005 and 2006 from a receiving perspective are not presented in this report.

²⁷ Notes: Years not fully comparable due to variation of countries which reported postings. Data for 2005 do not include postings from BE, BG, CZ, IE, ES, IT, LV, MT, RO, and CH. Data for 2006 do not include postings from BG, ES, RO and CH. Data for 2007, do not include postings from RO and CH, as both countries do not provide data disaggregated by destination country. Figures for postings originating in the UK relate to April 2007 to March 2008.

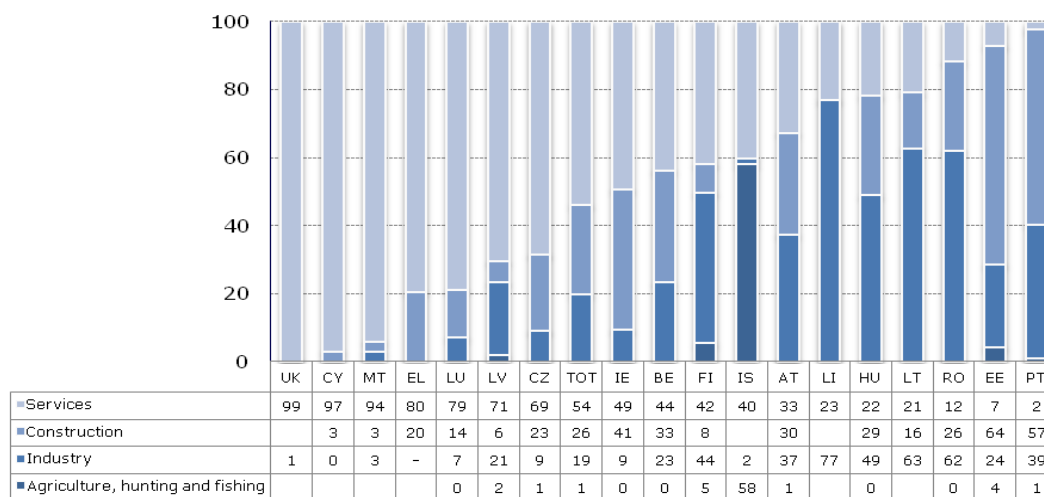


2.3.2.6 Postings by sector of economic activity

The majority of postings are sent to the services sector and the industry

The following graph illustrates the sectoral distribution of sent postings by sector of activity for 2007. Due to the fact that many countries (including France, Poland and Germany as important sending countries) did not provide a distinction by economic activity, reliable conclusions on the distribution of postings by sectors of economic activity cannot be made.

Graph 8: Postings by economic activity (%), 2007



Source: IDEA Consult/Ecorys NL based on data collection of European Commission

The data suggest that on average, almost 50% of postings were sent to the service sector, particularly financial intermediation, business activities and transport activities. Around 50% of postings were issued for activities in the industry sector, particularly to the construction sector (26.3%). Agriculture and fishing only represents 0.5% of the total number of postings.

The sectoral distribution of posting varies considerably according to the country of origin of the posted worker

Large differences in the sectoral distribution of postings can be observed according to the country of origin:

- Posted workers from Iceland (58%) are mostly concentrated in the agriculture.
- Posted workers from Lichtenstein (76.9%), Lithuania (62.8%), Romania (61.8%), Hungary (48.7%) and Finland (44.3%) are mostly concentrated in the industry sector.
- Posted workers from Estonia (64.3%) and Portugal (57.2%) are mostly concentrated in the construction sector.
- Posted workers from the United Kingdom (99.3%), Cyprus (97%) and Malta (94.1%) are almost all concentrated in the tertiary sector.



2.3.3 Results of the updated data collection exercise of the European Commission

2.3.3.1 Introduction

This part briefly presents data on the number of E101 certificates issued in EU Member States and Iceland, Norway, Liechtenstein and Switzerland during 2008 and 2009. It is an update of the previous data collections covering reference years 2005 to 2007. The data for 2008 and 2009 have been made available by the end of this research study. Therefore, this data has been included in this chapter by information but has not been assessed.

Almost all countries provided figures on E101 certificates issued for postings to specific Member States as well as cases linked to international transport, activities in 2 or more countries or other cases under the Regulation. Out of the 31 countries, 17 also provided a breakdown of data by sector of economic activity for 2009 (and 16 countries for 2008).

2.3.3.2 Postings by sending country, 2007 - 2009

Decrease in the number of postings between 2007 and 2009 due to the economic crisis

According to the updated data collection exercise of the European Commission, a total of 1.29 million E101 certificates were recorded across the EU-27 and Iceland, Liechtenstein, Norway and Switzerland in 2009. Of these, around 1.01 million related to postings to specific countries. The remainder of almost 279,000 cases fell into the categories international transport, persons active in 2 or more Member States or other cases. The overall figures for 2008 are very close.

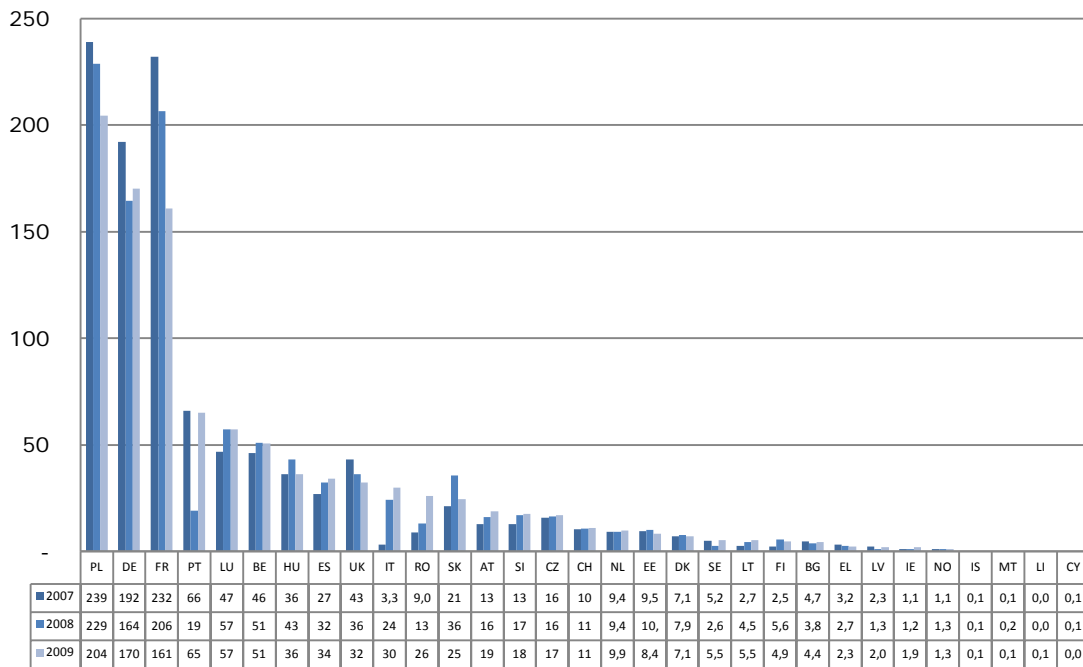
Graph 9 shows a comparison of the number of postings issued in the reporting countries in the years 2007, 2008 and 2009. Note that comparison is made with 2007 data but not with previous (2005-2006) years since the method of data collection (in particular the questionnaire) had been modified for the 2007 exercise and that the quality and completeness of the data was therefore better than in the past.

Compared to 2007, the data suggest a decrease in the number of postings to specific countries, most probably due to the economic recession in 2008 and 2009. It is to be noted that, if one takes into account the significant underreporting of the number of postings sent by Portugal for 2008 (and to a lesser extent Sweden), it appears that the decline in the number of postings took place mostly during 2009. In particular France, the UK and Poland sent significantly less posted workers abroad in 2009 - though this trend had already started in 2008. The evolution for France is particularly striking with a decline from 232.000 posted workers sent in 2007 to 161.000 in 2009.

From 2007 to 2009, the only remarkable increase was recorded in the number of posted workers from Romania (from 9.000 to 26.000) whereas their numbers also increased for Luxembourg, Spain, and Austria.



Graph 9: Postings by sending country, 2007 - 2009 (in thousand)²⁸



Source: IDEA Consult/Ecorys NL based on the updated data collection of European Commission

²⁸ Source: Administrative data from EU Member States, IS, LI, NO and CH on E101 forms issued according to Council Regulation (EC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community.

Notes: Figures for postings originating in the UK relate, for 2007 data to April 2007 to March 2008, for 2008 data to April 2008 to March 2009 and for 2009 data to April 2009 to March 2010. Figures for Germany relate, for 2008 data to 1 January 2008 to 30 November 2008 and for 2009 data to 1 January 2009 to 30 November 2009. Figures for Portugal in 2008 are underestimated since only 6 of the 18 district centres of social security provided the data. Figures for Sweden in 2008 are underestimated since they cover only the last six months of the year. For postings originating in Italy, the 2007 figures were underestimated as they covered only the last months of the year (the electronic processing of E101 started in the second part of 2007).



2.3.3.3 Postings by destination country, 2007 - 2009

The main destination countries remain stable since 2007

Each country provided data on the number of E101 certificates that were issued by their authorities for postings and other activities abroad. The countries did not provide statistics on the number of received postings. By summing up the corresponding numbers by sending country, it is possible to calculate the number of received postings for each country.

In 2008, four countries (Bulgaria, Estonia, Sweden and Switzerland) did not provide a breakdown by destination country i.e. postings originating in these four countries cannot be allocated to any receiving country (the same occurs in 2009 for two countries: Sweden and Switzerland). However, postings from the non-reporting countries made for only 2.8 percent of total postings occurring in EU and EFTA in 2008 (and 1.6% in 2009). Also for the E101 certificates related to international transport, activity in 2 or more Member States or other cases, a breakdown by individual destination countries is not possible.

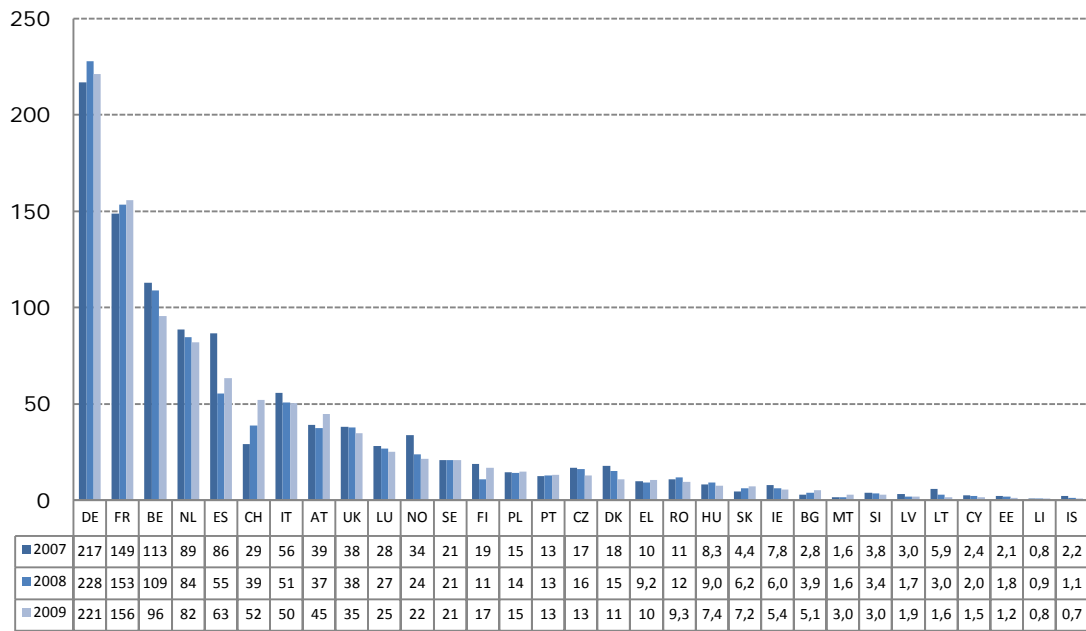
By this count, the number of posted workers received in 2009 was highest in Germany (221,000), followed by France (156,000), Belgium (96,000), the Netherlands (82,000) and Spain (63,000) (see Graph 10). The other countries, having received between 25,000 and 55,000 posted workers in 2009 were Switzerland, Italy, Austria, the UK and Luxembourg.

Graph 10 also shows a comparison of postings by destination country between 2007 and 2009. Compared to the picture by sending country, a comparison over time by receiving country is a bit more problematic due to the variation of countries which reported the countries of destination. However, as they never represent more than 3% of the total, the comparison remains essentially valid.

The comparison over time by destination country shows a rather stable pattern in the order of main destination countries. From 2007 to 2009, the following trends can however be noted: strong increase in the number of posted workers received for Switzerland (from 29,000 to 52,000) and to a lesser extent in Bulgaria, Slovakia and Austria; on the contrary, a decrease is recorded in Spain, Belgium, Norway and Denmark.



Graph 10: Postings by destination country, 2007 - 2009 (in thousand)²⁹



Source: IDEA Consult/Ecorys NL based on the updated data collection of European Commission

²⁹ Source: Administrative data from EU Member States, IS, LI, NO and CH on postings (E101 forms issued) according to Art. 14(1)(a), 14a(1)(a), 14b(1), 14b(2) of Council Regulation (EC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community.

Notes: Years not fully comparable due to variation of countries which reported postings. The posted workers from the following countries are not included since the countries did not provide data disaggregated by destination country: for 2007: RO and CH; for 2008: BG, EE, SE and CH; for 2009: SE and CH. Figures for postings originating in the UK relate, for 2007 data to April 2007 to March 2008, for 2008 data to April 2008 to March 2009 and for 2009 data to April 2009 to March 2010. Figures for postings originating in Germany relate, for 2008 data to 1 January 2008 to 30 November 2008 and for 2009 data to 1 January 2009 to 30 November 2009. Figures for postings originating in Portugal in 2008 are underestimated since only 6 of the 18 district centres of social security provided the data. Figures for postings originating in Sweden in 2008 are underestimated since they cover only the last six months of the year. For postings originating in Italy, the 2007 figures were underestimated as they covered only the last months of the year (the electronic processing of E101 started in the second part of 2007).



2.3.3.4 Postings by sector of activity

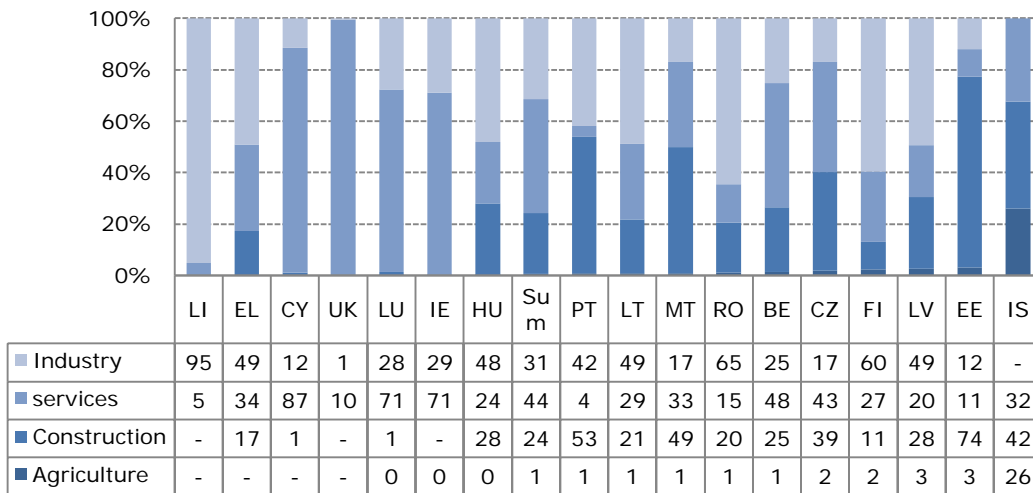
The industry becomes the most important sector for posting

Graph 11 shows the sectoral distribution of E101 certificates for the 17 countries which provided data by sector breakdown in 2009.

Due to the fact that many countries (including France, Poland and Germany as the by far most important sending countries) did not provide a breakdown by economic activity conclusions on the distribution of posted workers by sectors of economic activity are rather difficult.

The data from those countries which did provide a sectoral breakdown suggest that on average in 2009 around 55% of E101 certificates issued were for industry (of which less than half fall into the construction sector). This appears to be more than in 2007 when this share was about 45% among almost the same group of reporting countries. The share of the E101 certificates issued for activities in the service sector, at 44%, is consequently lower than in 2007 (54%) with a decline particularly pronounced for transport activities. Agriculture and fishing make for less than one percent of all certificates. However, as for 2007, large differences remain in the sectoral distribution of posting according to the country of origin.

Graph 11: Postings by economic activity (%), 2009³⁰



Source: IDEA Consult/Ecorys NL based on the updated data collection of European Commission

³⁰ Source: Administrative data from EU Member States, IS, LI, NO and CH on E101 forms issued according to Council Regulation (EC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community.

Notes: For missing countries no sectoral breakdown of E101 certificates available. Note that the shares are calculated among the total of the three main sectors (Agriculture, Industry and Services) and that E101 certificates for which the sector was not mentioned were therefore excluded from the total.



2.4 Results of the statistical data collection

2.4.1 *Methodological introduction*

The review of data sources revealed that the only available data sources related to posting on a cross-country basis are E101 certificates. However, as explained earlier, there is still uncertainty to what extent the number of E101 certificates recorded by countries is a precise proxy of the actual number of postings taking place.

Therefore, we decided to develop our own questionnaire with a broader focus on all (national) data sources on posting available in the country. We sent this questionnaire to a list of contact persons (Social Insurance organizations, Labour Inspection organizations, Ministries of labour, Ministries of migration, etc) in each country of the EU27 and EEA. The added value of this questionnaire can be summarized as follows:

- Broad focus on all types of national data sources (administrative data, surveys, etc.) to discover useful national data sources about posting.
- Collect E101 data for workers and self-employed workers separately and update the existing data for the years 2008 and (if possible) 2009.
- Receive methodological information about national data sources.

Low response of Social Insurance organizations to the questionnaire, unlike Labour Inspection organizations

In total, 18 countries out of 30 European Union Member states and EFTA-countries provided relevant data. An overview of the response and the contacted persons can be found in Annex 4. However, most countries only sent data on the number of received postings and not on the number of sent postings. Social Insurance organizations possess data on the number of sent workers based on the E101 forms but referred to the statistical data collection of the European Commission. By contrast, the participation of other organizations (e.g. labour inspection, ministries, etc) that possess data on the number of received postings is higher.

Table 17 gives an overview of the received data (sent workers or received workers) for each responding country. This table also shows the source of each data. The collected data as well as the data sources are assessed and described in the following paragraphs.



Table 17: Response on statistical data collection

Country	Sending	Data sources	Receiving	Data sources
Austria	No	/	Yes	Internal IT-System for received workers of Federal Ministry of Finance
Belgium	Yes	E101 from Social Insurance (Gotot-out)	Yes	Limosa-database from social insurance institution
Cyprus	Yes	E101 from Social Insurance	No	/
Estonia	Yes	E101 from Social Insurance	Yes	The number of issued residence permits for employment to posted workers from the police and Border Guard Board
France	No	/	Yes	Yearly survey of the departmental services of work inspection
Germany	No	/	Yes (construction)	Soka-Bau (construction sector)
Greece	No	/	Yes	Documents submitted to the Labour Inspectorate Body of Greece
Iceland	No	/	Yes	Database of labour inspection containing all legal posted workers
Lithuania	Yes	Register of Social Insurance	Yes	IT system of Occupational Safety and Health of State Labour Inspectorate
Luxemburg	No	/	Yes	Data from labour inspection
Malta	No	/	Yes	Notification to the Department of Industrial and Employment Relations
Netherlands	Yes	E101 from Social Insurance	Yes	E101 data from the Social Insurance
Norway	No	/	Yes	Central office of foreign tax affairs
Poland	Yes	E101 from Social Insurance	No	/
Romania	No	/	Yes	Data from labour inspection
Slovakia	Yes	E101 from Social Insurance	No	/
Slovenia	Yes	E101 from Social Insurance	Yes	E101 from social insurance
Spain	Yes	E101 from Social Insurance	No	/

Source: IDEA Consult/Ecorys NL based on own questionnaire.



2.4.2 Results of the data collection exercise

2.4.2.1 Statistics on the E101 forms by sending country

The collected data is in line with the data collected by the European Commission

Table 18 shows the number of E101 forms issued in each of the reporting countries according to our statistical data collection and the data collection of the European Commission. A distinction is made in our questionnaire between E101 certificates issued for posting to a specific Member State³¹, other types of E101 forms³² and self-employed workers.

Table 18: E101 certificates by sending country according to the questionnaire and the European Commission, 2007

Reporting country	According to the questionnaire IDEA Consult/Ecorys							According to European Commission		
	Posting according to Art. 14(1)(a), 14a(1)(a), 14b(1), 14b(2), Council Reg. 1408/71 to destination in ...				Total Other E101	Total Posting and other E101	Self-employed	Postings	Other E101	Total Postings and other E101
	EU-15	EU-12	EFTA	Total						
Belgium	36,923	1,024	137	40,027 ³³	n.a.	40,027	n.a.	46,212	17,371	63,583
Cyprus	68	152	0	220	1,409	1,629	21	143	1,347	1,490
Estonia	8,417	76	958	9,451	407	9,858	n.a.	9,454	407	9,861
Lithuania	2,007	114	1,176	3,297	n.a.	3,297	n.a.	2,743	1,961	4,704
Netherlands	37,292	941	689	38,922	38,922	77,844	1,267	9,437	59,662	69,099
Poland	202,802	8,800	13,769	225,371	3,214	228,585	13,407	238,946	0	238,946
Slovakia	9,515	4,596	421	14,532	8,110	22,642	2,763	21,213	6,627	27,840
Slovenia	12,132	432	218	12,782	373	13,155	212	13,032	257	13,289
Spain	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	26,885	19,943	46,828

Source: IDEA Consult/Ecorys NL based on own questionnaire

From the comparison of both data sources, it appears that the collected data are in line with the data collected by the European Commission (with the exception of the Netherlands). However, the collected data seem to indicate a lower number of postings. Part of the difference can be explained by the inclusion of the European Commission data on self-employment. On average, the share of self-employed workers amounts to 4.5% of total postings reported.

Therefore, the data collected for 2007 seem to be coherent and in accordance with the data collected by the European Commission. We can thus consider that the data collected for 2008 and 2009 are reliable. This data cannot provide us with information about the total number of postings in the EU-27 and EFTA countries in 2008 and 2009, but do provide us an interesting indication about the evolution of posting in some countries.

³¹ According to art. 14(1)(a), 14a(1)(a), 14b(1) and 14b(2) of Council Regulation (EC) No 1408/71),

³² E101 forms applying to international transport (art. 14(2)a) E101 forms for persons active in 2 or more Member States (art. 14(2)b) and E101 forms according to other cases (art. 14a(4), 14b(4), 14c(a) and 14e.

³³ 1.943 from non EU-member States.

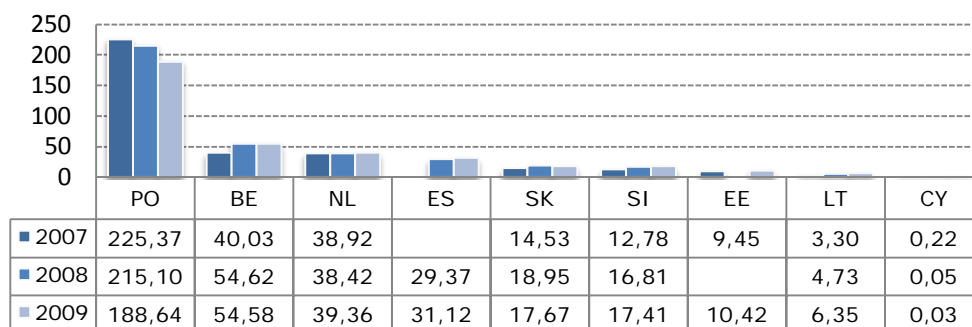


Only the data regarding the Netherlands seem to vary significantly to our data collection exercise (38,922 postings) and the data collection by the European Commission (9,437). The total number of postings and E101 forms are approximately the same (77,844 according to the data of the European Commission versus 69,099 according to the data collection exercise). The difference between the two sources lies therefore in the distribution between the number of postings and the total other E101 certificates. However, the data on the number of postings collected during this study seem to be more in accordance with the reality when looking at a comparable country (e.g. Belgium) and comparing with the 2005 and 2006 data from the EC. The EC itself observed that compared to postings to particular Member States and compared to other countries, the Netherlands reported an extraordinarily high number of E101 certificates for persons active in 2 or more Member States.³⁴ However, the data on the total number of other E101 certificates collected during this study also seem strange as this number corresponds exactly to the total number of postings. We understand that this could be a misinterpretation/calculation by the Dutch Social Insurance Organisation. Therefore, data on the total number of E101 for other reasons than posting for the Netherlands have to be interpreted with caution.

Postings stagnated between 2008 and 2009

Graph 12 shows the number of postings for 2007, 2008 and 2009 based on our statistical data collection.

Graph 12: Evolution in the number of postings by sending country (x 1,000), 2007-2009



Source: IDEA Consult/Ecorys NL based on own questionnaire

Different developments in the number of postings can be observed between countries. In some countries, the number of postings increased between 2007 and 2009:

- Lithuania (43.4% between 2007 and 2008; 34.3% between 2008 and 2009);
- Slovenia (31.5% between 2007 and 2008; 3.5% between 2008 and 2009).

A significant increase (324.9% in Slovenia and 62.5% in Lithuania) in the number of postings had already been observed between 2005 and 2007 in these countries. On the contrary, we observe a decrease of the number of postings each year between 2007 and 2009 in Poland (-4.6% between 2007 and 2008 and 12.3% between 2008 and 2009). This recent decrease is in sharp contrast with the pattern of postings in Poland in the period 2005-2007 (75.2%). However, it seems that in most countries the number of postings increased less or even decreased between 2008 and 2009 in comparison to 2007 and 2008. The

³⁴ European Commission, October 2009, Report on the use of E-101 forms – analyses of 2007 data.



stagnation or even decrease of the number of postings has also been observed in many countries according to the updated data collection exercise of the European Commission.

The changes in the number of postings between 2008 and 2009 are related to the economic crisis

According to the fact that in most countries, the quality of monitoring systems has increased with the time, this reduction in the number of postings indicates a real negative tendency towards posting during the period 2008-2009.

As explained in part 2 of this report, two factors could be cited to explain this negative trend in posting between 2008 and 2009.

First of all, this negative development could possibly be explained by the end of transitional measures regarding the free movement of workers imposed by some Old Member States to New Member States after their entry to the European Union. In theory, these restrictions could force some workers to choose posting because the free movement of workers is not possible for several years. Therefore, we could expect that the end of the restrictions on the free movement of workers could induce a negative impact on the number of postings from New-Member States. However, as the transitional measures vary widely from country to country (see Part 2 of the report), it is difficult to find any evidence of the impact of this factor on posting. Moreover, according to most stakeholders, it is difficult to regard posting as a substitute for the free movement of workers, as posting requires the provision of service by the employer. So, unlike the free movement of workers, posting is rather a choice of the employer and not of the employee. According to the updated data collection exercise of the European Commission; Romania might be an exception to this. It is so that, despite the crisis, the number of posted workers from Romania strongly increased between 2007 and 2009, in particular leading to Member states restricting the free access of Romanian workers.

Therefore, stakeholders think that the reduction of the number of postings between 2008 and 2009 could be explained by another important factor: **the economic context**. Most EU-countries have been strongly affected by the economic and financial crisis of 2009. According to stakeholders, the economic crisis generated smaller demand from employers for foreign workers and thus a reduction in the number of postings. We will try to verify this hypothesis in more detail in the second chapter of this Part, by analysing data on posting in four countries, and by isolating all factors that could cause changes in the data on posting in these countries.



2.4.2.2 Statistics on the number of postings by receiving country

Differences between our data on received postings and the data of the European Commission

Table 19 shows the number of postings (or posted workers) from a receiving perspective, according to our statistical data collection and the data collection of the European Commission. As can be seen, there is a large difference between the data collected during this study and the data collected by the European Commission. For most countries, with the exception of Belgium and Norway, the data collected during this project show lower numbers of postings compared to the data collected by the European Commission.

Table 19: Number of postings in a receiving perspective according to our statistical data collection and the European Commission

Country	Type of data	Statistical data collection IDEA Consult/Ecorys					European Commission
		2009	2008	2007	2006	2005	2007
Austria	Announcements of posting ³⁵	12,061	10,570	5,204	5,842	848	39,142
Belgium	Announcements of posting	187,941	194,964	125,736			112,766
Estonia	Residence permit for employment of posted workers	246	26	1			2,059
France	Posted workers		95,261	68,071	37,924	26,466	148,610
Germany	Posted workers in construction sector		66,542	71,644			216,911
Greece	Posted workers	657	307	448	574	482	9,652
Iceland	Posted workers		267	201			
Lithuania	Posted workers	18	153	774			5,905
Luxembourg	Posted workers	14,699	13,030	11,041	8,560		27,969
Malta	Posted workers	104	243				1,634
Nederland	Announcements of posting	62,548	59,760	51,935	39,978	25,894	88,656
Norway	Posted workers	42,639					33,828
Romania	Posted workers	4,182	4,759				10,752
Slovenia	Announcements of posting	9	24	10	22	15	3,802

Source: IDEA Consult/Ecorys NL based on own questionnaire

These major differences between our data collection and that of the European Commission can be explained by the fact that all countries except the Netherlands and Slovenia use national data sources for the registration of received postings. As explained by some of the national organizations we contacted, most of the national data sources underestimate the total number of postings (see assessment of data sources in Annex 4). These data are collected by different national organizations (e.g. labour inspection, ministry of migration, etc). However, as explained in the assessment of data sources in Annex 4 and in the next chapter for the country cases, these sources present different methodological issues (see following chapter for further details).

³⁵ Posting according to Art. 14(1)(a), 14a(1)(a), 14b(1), 14b(2), Council Reg. 1408/71.



Given the major differences in the quality of these data, they are not used to support any conclusion on the development of posting from a receiving perspective. It is thus better to use data based on E101 forms from the reporting countries (figures on postings sent with geographical breakdown) to derive figures on the receiving countries than to ask the country directly how many postings they received (strong under evaluation).

2.5 Conclusion

The review of existing EU data sources showed that the only data source containing information directly related to the number of postings is the administrative data based on E101 social security forms. Moreover, these data source are the only data source which allow for a cross-country comparison of data on posting in the EU. However, there is still uncertainty as to what extent the number of E101 certificates recorded by countries is a precise proxy of the actual number of postings taking place.

Our data collection exercise also showed that for the number of received postings, national data sources can also provide interesting information. However, we observed significant differences in the number of received postings according to our data collection and that of the European Commission (with the exception of Belgium). This can be explained by the fact that most national data sources present different methodological issues. These issues are discussed in more detail in the following chapter, after an in-depth analysis of the monitoring systems of 8 countries. Therefore, we can conclude that it is preferable to use data based on E101 forms from the reporting countries (figures on postings sent with geographical breakdown) to derive figures on the receiving countries, than to ask the country directly how many postings they received based on their national registration systems (strong under-evaluation).

Based on this observation, we can conclude that **E101 forms are the only administrative data source containing coherent and comparable information on an EU-level related to postings from both a sending and receiving perspective.**



3 SIZE AND CHARACTERISTICS OF POSTING OF WORKERS AT NATIONAL LEVEL

3.1 Introduction

After having analyzed the size and characteristics of posting of workers at EU-level, we focus on data regarding posting based on national sources in this chapter.

We start this chapter with a description of the context of each country case. The economic context of each country as well as the existence of transitional measures for the free movement of workers may influence the number of posted workers in each country. Therefore, these explanatory elements and their possible impact on posting in each country case are described below.

The data on posting for each country also depends on the quality of the monitoring system. Therefore, the monitoring systems of each country cases (Belgium, Bulgaria, Denmark, France, Germany, the Netherlands, Poland and Spain) are described and evaluated. Before describing the monitoring systems in the country cases, we also discuss the issue of variation in the definition and implementation of posting, as this may have an important impact on the monitoring system of each country. The information for each country is available in Annex 5 of this report. In this chapter we only focus on the general statements that can be made based on this review.

It is important to note that this information is based on the information collected during the field research (interviews with stakeholders). Therefore, the information may be not exhaustive.

Finally, we analyze in detail all available data for 4 of the country cases (Belgium, France, the Netherlands and Poland). These cases have been selected because of the importance of posting for these countries and the **availability of accurate data** on posting in these countries. These data are discussed in this chapter, bearing in mind the specific context of each country and the quality of the monitoring system. By comparing the data at the end of this chapter, it is also possible to note some observations on the quality of the collected data.



3.2 Review of statistical data sources on national level

An overview of the monitoring system of the 8 country cases³⁶ shows that most countries possess data on the number of sent postings based on E101 forms. This is not the case for Bulgaria, where no unified central registry or other system of unified data on postings has been introduced yet.

When an exchange of information regarding E101 forms is organized with other Member States, it is also possible to obtain information on the number of received postings based on E101 forms. However, most countries analysed (except the Netherlands, Poland and Spain) also possess data on the number of received postings based on a national mandatory registration system of posting companies.

However, the quality of this information varies considerably across countries, depending on following elements:

- The proportion of posting companies which submit the legal documents effectively varies strongly across countries due to different reasons:
 - In some countries, companies can fill in the legal documents on-line, while in other countries the documents must be completed on paper.
 - In some countries, companies are well informed about their obligations, while in others the information is less well provided (due to language problems, for example). In most countries, employers can obtain information at various places, such as the Ministry of Employment and/or Social Affairs, at the Labour Inspectorate and through employers' organisations in their sector. However, in some countries such as France, the information is difficult to obtain because of complex access and/or because of language barriers.
 - Some countries introduced a severe procedure to inspect companies which did not use the legal documents. In some cases, it is the local company which receives the posted worker that has to supervise the registration obligation of the sending company. If it is not the case, the local company can be punished.
- The centralisation of the national monitoring system. A major problem with the data for Spain is related to the decentralized nature of the Spanish public administration and the autonomy of the Comunidades Autónomas. Data, if any, are first collected at this level. Episodic attempts at collecting these data by national social security, for example, are met with huge difficulties due to decentralization.
- The computerization of the system. In some countries, information is not recorded in a computerized system but just kept in files. In this case, it is rather difficult to obtain reliable data on posting.
- The lack of personnel within the organisations prevents the introduction of a systematic monitoring system. Moreover, stakeholders in some countries indicated that there was no real motivation to introduce a monitoring system to control and monitor the number of posted workers.

All these methodological differences in the monitoring systems between countries explain why there are many differences in the quality of the data on posting across countries and why available data must be interpreted with caution. In the following chapter, we analyze in detail all available data for 4 of the country cases (Belgium, France, the Netherlands and Poland). These **cases** have been **selected** because of **the importance of posting for these countries** and the **availability of accurate data on posting**.

³⁶ See annex.



3.3 National data for 4 cases

In this chapter, we analyze in detail the available data for 4 of the country cases (Belgium, France, the Netherlands and Poland). These cases have been selected and reported extensively because of the importance of posting for these countries and the **availability of accurate data** on posting.

3.3.1 *Case of Belgium*

3.3.1.1 *Methodological introduction*

In this section, we analyse data for Belgium based on two databases:

- **The on-line application Gotot OUT:** This database provides detailed data of posting from a **sending perspective**. These data are based on **E101 forms** and inform us about the number of postings (not the number of individuals posted). Moreover, this database **also includes non-EU countries**, as the Belgian State concluded bilateral social security agreements with some non-EU countries (e.g. USA, India, Japan, Maghreb-countries) for the posting of workers. Finally, according to the Belgian Social Security Organisation, this data is considered to be an under-estimation of the number of real postings, since not all posted Belgian workers request an E101 form (especially for (very) short-term postings) as this is not mandatory.
- **Limosa database:** This database provides detailed data of posting from a **receiving perspective**. These data is based on a **national mandatory register system of foreign employers posting their workers to Belgium**. This data contains information on the number of **posted individuals** over one year. Moreover, this data **includes only the number of employees and not the number of self-employed workers**. This data is often considered to be the most accurate data about posted workers received in Europe. Of course, according to some stakeholders, the data on posted workers based on the Limosa-database is still an underestimation of the real number of posted workers as not all companies fulfil the obligation to declare their activities in Limosa.



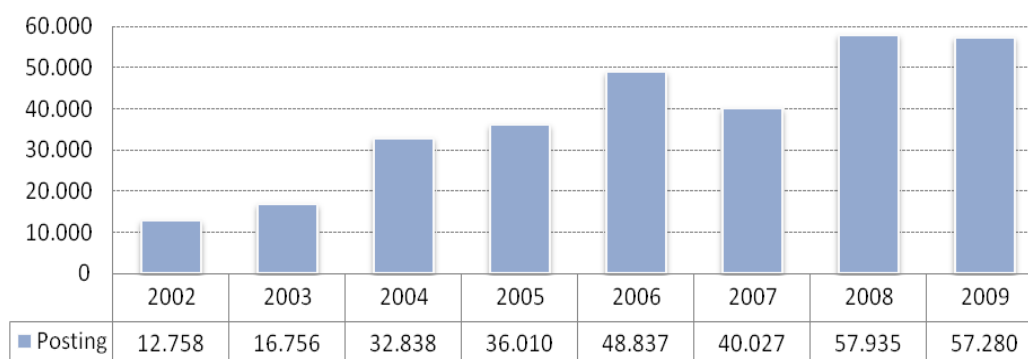
3.3.1.2 Results in a sending perspective (gotot-out data³⁷)

The number of posted workers from Belgium has largely increased since 2002

As shown in Graph 13, 57,280 E101 forms for posting were issued in Belgium in 2009. From 2002 till 2009, the number of postings increased with 349% (from 12,758 in 2002 to 57,280 in 2009). This increase illustrates the growing use and success of posting. However, the positive trend in the number of postings can also be explained by methodological changes during the period under consideration. Namely, that the growth in the number of declarations between 2002 and 2005 is not only the result of a real increase in the number of postings but also due to the computerization of the system. Therefore, the number of E101 forms heavily increased in the period 2002-2005 as it became much easier and faster to request an E101 form.

If we analyze the yearly growth in the number of postings, we observe some peaks and troughs. A large increase in the number of sent postings can be observed between 2004 and 2005 (96%) and 2007 and 2008 (44.7%), while postings have decreased between 2006 and 2007 (-18%) and 2008 and 2009 (-1.1%). The decrease in the number of postings between 2008 and 2009 can be explained by the economic crisis of 2008 which affected all type of temporary work (and thus also posting). The Belgian Social Insurance Institution could not provide any explanation for the significant reduction of the number of postings in 2007.

Graph 13: Number of postings from Belgium (E101 forms for posting in a sending perspective)



Source: IDEA Consult based on data from Belgian Social Security of E101 forms issued for posting.

³⁷ Based on the number of E101 forms issued for posting to a specific Member States (according to art. 14(1)(a), 14a(1)(a), 14b(1) and 14b(2) of Council Regulation (EC) No 1408/71).

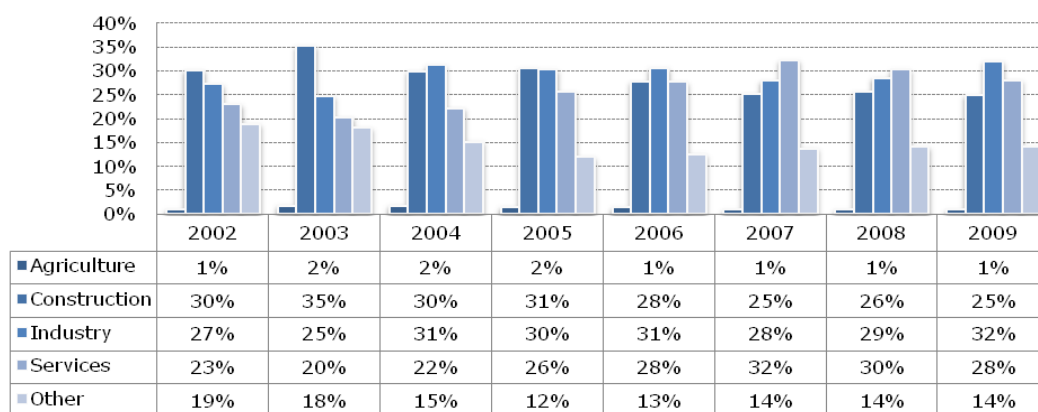


Posted workers from Belgium are over-represented in the construction and industry sectors

Graph 14 shows the percentage of postings from Belgium by sector of activity. This graph indicates that in 2009, around 1 in 3 posted Belgians worked in the industry sector and 1 in 4 worked in the services sector or construction sector. We can also observe large increases in these sectors of activity for posted workers since 2002. The share of postings in the service sector has continuously increased since 2002 (from 23% in 2002 to 28% in 2009) while this of construction sector has decreased since 2002 (from 30% in 2002 to 25% 2009).

Despite these developments, if we compare the share of posted workers by sector to the sectoral distribution of all employees in Belgium, we observe that posted workers are over-represented in the construction and industry sector. In 2008, only 11% of Belgian employees worked in the construction sector and 8% in the industry. Compared to the percentage of posted Belgians in these sectors, we can conclude that the construction and the industry sectors are key sectors for posting of Belgian workers.³⁸

Graph 14: Number of postings from Belgium (from a sending perspective) by sector of destination (based on E101 forms for posting)³⁹



Source: IDEA Consult based on data from Belgian Social Security of E101 forms issued for posting

14% of postings from Belgium were assigned to the temporary agency sector

A proportion of the posted workers from Belgium were also sent to another country to work in the temporary agency sector. According to Belgian Social Security data,⁴⁰ in 2009, 7,921 postings from Belgium out of the 57,280 total postings were assigned to the temporary agency sector. This represents around 14% of all postings. The postings to the temporary agency sector seem to have increased since 2002 (from 11.1% in 2002 to 16.7% in 2010). These postings are mostly destined for the Netherlands (42.2%) and France (25.3%).

³⁸ The construction sector is therefore used as a sector case and is discussed further below (see part 4 of the report).

³⁹ These sectors cannot be compared with the sectors relating to a receiving perspective. The sectors in a receiving perspective are based on NACE-codes while the sectors in a sending perspective are based on codes of joint industrial committees.

⁴⁰ See tables in Annex

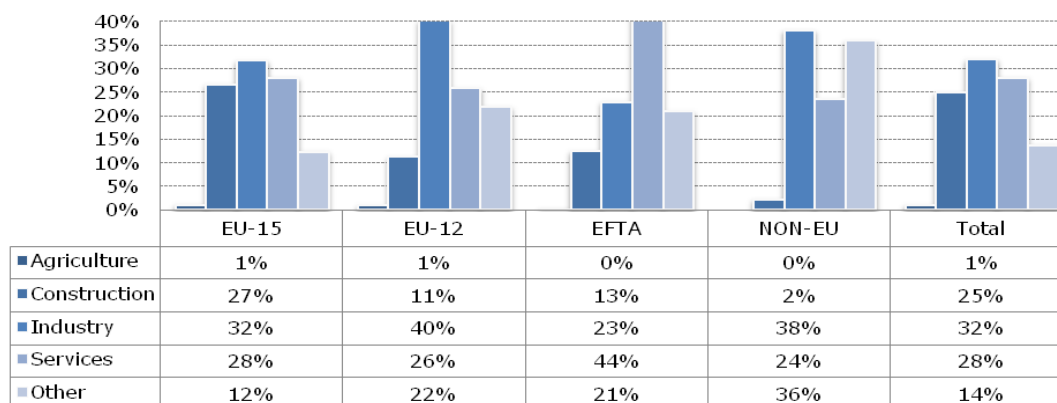


The sector of activity of posted workers from Belgium depends on the country of destination

As can be seen in Graph 15, there are large differences in the sectoral distribution of posted workers from Belgium according to the country of destination of the worker:

- The sectoral distribution of posted workers from Belgium to EU-15 countries corresponds to the general sectoral distribution of posting (in total). This can be explained by the fact that EU-15 countries are the most important destination countries for Belgian workers.
- Posted workers from Belgium to EU-12 countries are mostly concentrated in the industry sector (40%). Only a small percentage of posted workers from Belgium to EU-12 countries are posted to the construction sector (11%).
- Posted workers from Belgium to EFTA countries are mostly concentrated in the services (44%). Only a small percentage of posted workers from Belgium to EFTA countries are posted to the construction sector (13%).

Graph 15: Number of postings from Belgium (in a sending perspective) by sector of destination and country in 2009



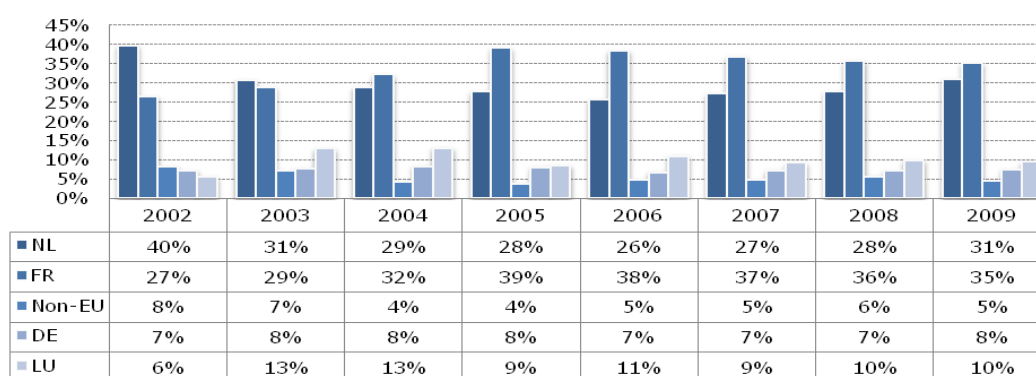
Source: IDEA Consult/Ecorys NL based on data from Belgian Social Security of E101 forms issued for posting



Belgian workers are almost exclusively sent to neighbouring countries

Graph 16 shows the percentage of postings from Belgium according to the country of destination. Only the most important countries for posting from Belgium are showed in the graph (5% or more). This graph indicates that the neighbouring countries of Belgium are the most important countries for posting. In 2009, 35% of postings from Belgium were assigned to France, 31% to the Netherlands, 10% to Luxembourg and 8% to Germany. However, these shares have changed considerably since 2002. The share of postings to France and Luxembourg increased respectively from 27% in 2002 to 35% in 2009 and from 6% in 2002 to 10% in 2009; while the share of postings to the Netherlands reduced from 40% in 2002 to 31% in 2009. The Belgian Social Insurance Institution could not provide any explanation for these developments.

Graph 16: Number of postings from Belgium (in a sending perspective) by country of destination (based on E101 forms for posting)



Source: IDEA Consult/Ecorys NL based on data from Belgian Social Security of E101 forms issued for posting

Posted workers from Belgium worked on average 65 days in the construction sector

Graph 17 shows the average number of days of posting from Belgium in the construction sector. Before analysing this data, it is important to make some methodological comments. First of all, this data does not represent the duration of stay by Belgian posted workers in another country but the duration of a particular work project. In the construction sector, employers have the obligation to communicate the duration of the work project (yard) for which a worker is posted to another country.

In some cases, the information conveyed concerning the duration of a work project represents the duration of one particular project. After this project, if the worker stays in the country to work on another project, a new E101 form is requested and a new duration is completed. In other cases it represents the duration of different successive work projects. This depends of the interpretation of the employer who completes the E101 forms. Because of this, the interpretation of the data on the duration may be biased. To obtain data on the duration of stay of workers, the length of each work project undertaken by each individual worker therefore has to be totalled.

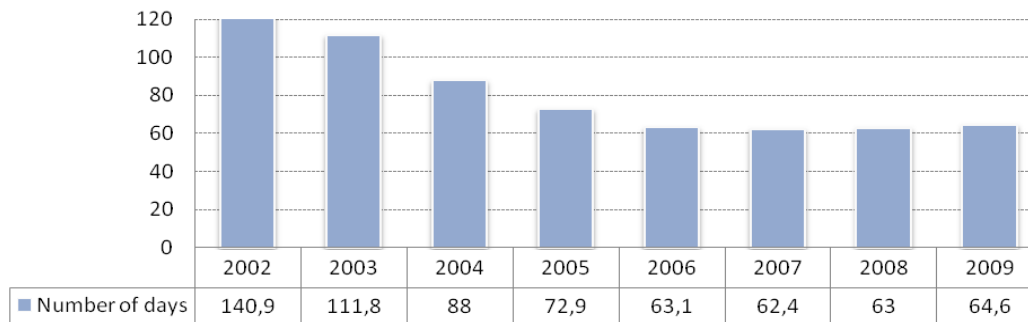
In other sectors, employers do not have the obligation to convey the duration of a work project but the length of stay of their worker in another country. The problem, according to Belgian Social Security, is that most employers do not fill in the real duration of stay for their worker but the maximum duration allowed by E101 forms (1 year). Therefore, it is not possible to analyse the duration of posting in sectors other than construction.



According to Graph 17, posted workers were sent from Belgium in the construction sector of another country for work projects of 65 working days on average in 2009. Of course, this data does not say anything about the length of stay of the worker. In the same year an individual worker could be sent for different times (for different work projects) in the construction sector of another country. To obtain data on the length of stay of workers, one would have to calculate the total length of work projects undertaken by each individual worker.

Graph 17 also shows that the average duration of work projects seems to decrease continuously from 2002 until 2010 (from 141 days in 2002 to 65 in 2009).

Graph 17: Average number of working days of posted workers from Belgium (from a sending perspective) in the construction sector (based on E101 forms for posting)⁴¹



Source: IDEA Consult/Ecorys NL based on data from Belgian Social Security of E101 forms issued for posting.

⁴¹ Only 'occasional' or classical posting.

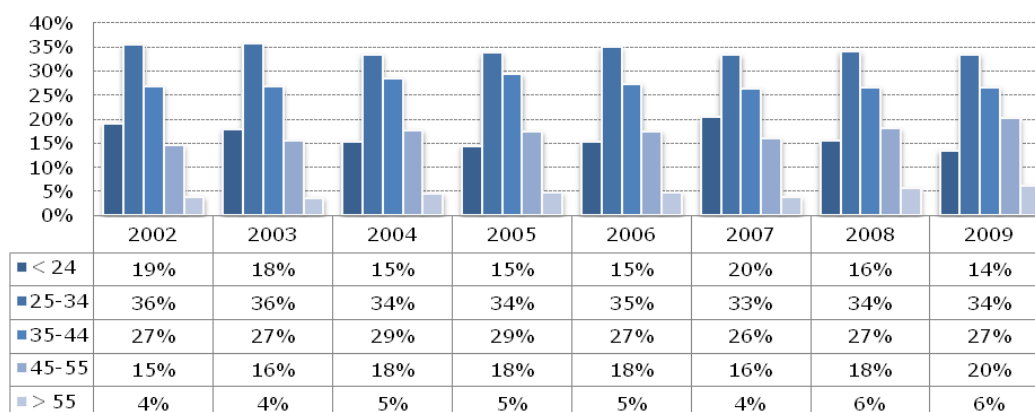


Posted workers are relatively mature workers

Finally, Graph 18 illustrates the distribution of posted workers from Belgium according to their age. It appears from this graph that most posted workers are aged between 25 and 34 years (34%). Another significant group of posted workers are aged between 45 and 55 years (20%). Since 2002, we can also observe an increase in the number of posted workers from Belgium who are over 45 (from 19% in 2002 to 26% in 2009).

If we compare the distribution of posted workers from Belgium according to their age with the distribution of the total population of employees in Belgium, we clearly observe an over-representation of more mature workers being posted. In 2008, the total population of employees in Belgium counted 10% of workers younger than 24 years, 26% of workers aged between 25 and 34 years, 28% between 35 and 44 years, 26% between 45 and 55 and 10% older than 55 years. From these statistics it is clear that younger workers (under 34 years) are under-represented in posting, while more mature workers (older than 34 years) are over-represented. This result can be explained by the fact that older workers, due to familial constraints, tend to move more to another country for a short duration. Younger workers, on the contrary, are more pre-disposed to move to another country for a longer or permanent duration.

Graph 18: Number of postings from Belgium (from a sending perspective) by age of the posted worker (based on E101 forms for posting)



Source: IDEA Consult/Ecorys NL based on data from Belgian Social Security of E101 forms issued for posting



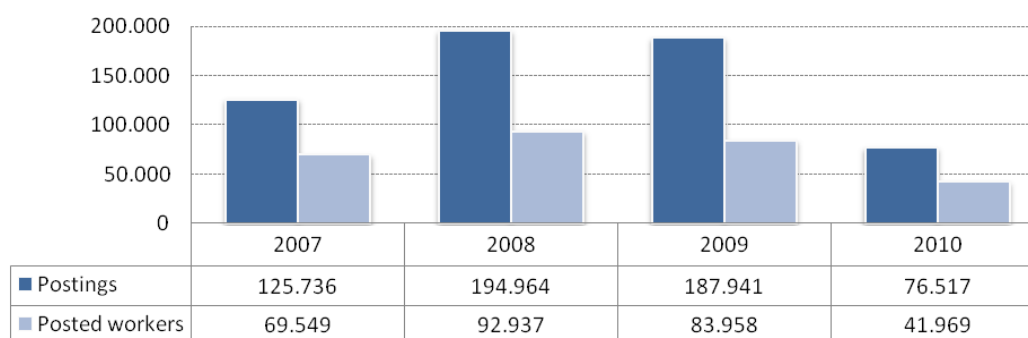
3.3.1.3 Results from a receiving perspective (Limosa data)

Strong increase in the number of received postings between 2007 and 2008, but reduction in 2009 due to the economic crisis

As shown in Graph 19, Belgium received 83,958 individual workers in 2009, which corresponds to 187,941 announcements of postings. From this data we can conclude that, on average, workers are posted to other Member States twice a year. Moreover, the average number of postings by workers seems to increase between 2007 and 2009 (from 1.8 on average to 2.2). However, this data does not say anything about the distribution of postings by worker. It is possible that the average of two annual postings by worker is pushed up by some workers (or sectors) where many postings by year are the standard (e.g. in the construction sector).

This graph also demonstrates that the number of postings strongly increased between 2007 (125,736) and 2009 (187,941). However, if we analyze the yearly growth rate between 2007 and 2009, we observe that the number of postings and the number of posted workers decreased between 2008 and 2009 (respectively -3.6% and -9.7%). This decrease in the number of postings between 2008 and 2009 has already been observed at the EU-level and can be explained by the economic crisis of 2009 that affected most EU-countries.

Graph 19: Number and growth of postings and posted workers in Belgium (in a receiving perspective based on Limosa)⁴²



Source: IDEA Consult based on data from Belgian Social Security of Limosa database

⁴² 2010: from January to April 2010.

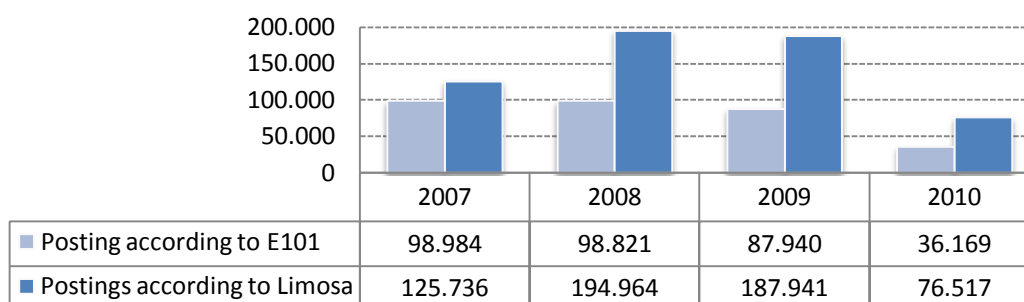


Data based on E101 forms are under-estimates of the number of postings compared to Limosa database

Graph 20 compares the data on posting according to the Limosa database and to E101 forms.⁴³ This graph shows that the number of posted workers based on E101 forms is smaller than the number of postings according to the Limosa database. Moreover, the difference between the two databases seems to increase in time. This can be explained by the improvement of the Limosa database during the last few years.

However, if we compare this data with the data collected by the European Commission for 2007 based on E101 forms, we observe that the data collected by the European Commission are close to the Limosa data. By comparing the data on sent postings by geographical breakdown, the European Commission pointed out that Belgium received 112,766 postings in 2007 (for 125,736 for Limosa and 98.984 for gotot-in). Therefore, when using E101, it is better to derive figures from the receiving countries based on all sent E101 forms than on data from one social insurance organisation (as these organisations do not always receive all the E101 forms of other countries).

Graph 20: Number of postings according to E101 forms (GOTOT-IN database) and Limosa-database (in a receiving perspective)



Source: IDEA Consult based on data from Belgian Social Security of Limosa database and E101 forms issued for posting

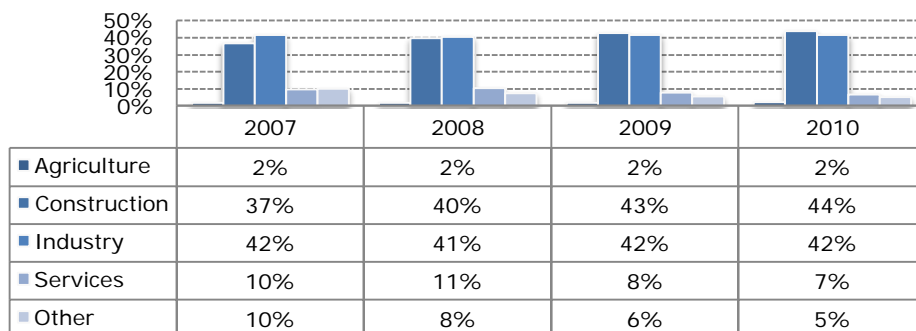
Posted workers to Belgium are over-represented in the construction and industry sectors

Graph 21 shows the percentage of received postings according to the sector of activity. This graph shows that most of the received postings are concentrated in the construction sector (43% in 2009 and 44% in 2010). 1 in 4 postings are also concentrated in the industry sector.

⁴³ Gotot-in.



Graph 21: Number of postings in Belgium (in a receiving perspective based on Limosa) by sector⁴⁴



Source: IDEA Consult based on data from Belgian Social Security of Limosa database

If we compare the share of received posted workers by sector to the sectoral distribution of all employees in Belgium, we observe that the construction and industry sector are over-represented in the posting phenomenon. In 2008, only 11% of Belgian workers worked in the construction sector and 8% for industry. Compared to the percentage of posted workers to Belgium in these sectors, we can suggest that the construction and the industry are key sectors for posting (in a receiving as in a sending perspective). The over-representation of posted workers to Belgium in the construction and industry sectors could be explained by the lack of Belgian workforces in these sectors.

The share of posted workers to the Belgian construction sector increased between 2007 and 2009

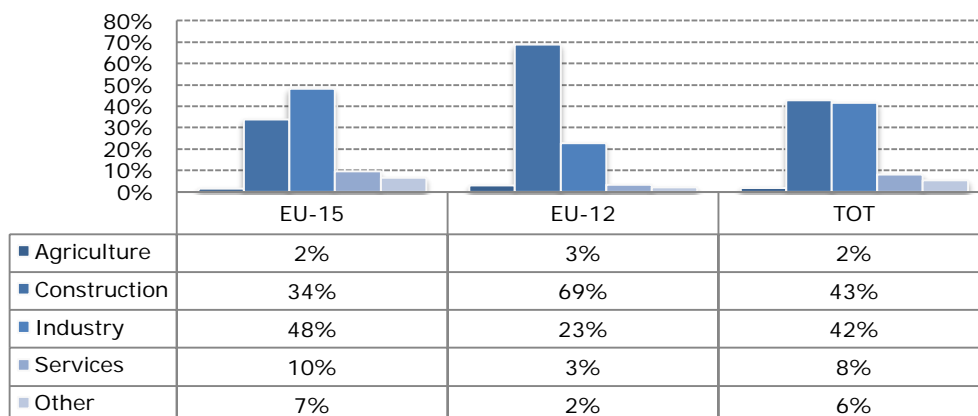
The number of received postings of workers to the construction sector increased since 2007 (from 37% in 2007 to 44% in 2010) while in the other sectors the share of postings was constant or even decreased. This increase in the number of received postings in the construction sector is in line with the reduction of the sent postings from Belgium to the construction sector of other countries.

This development can be explained by the sectoral distribution of received posted workers according to the country of origin and the increased importance of received posted workers from some countries. As can be seen in Graph 22, in 2009 most postings to Belgium from New Member States were concentrated in the construction sector (69% versus 34% for EU-15), while postings from EU-15 were concentrated in the industry sector (48% versus 23% in EU-12). The services sector is also more important for EU-15 countries (10%) than for EU-12 countries (3%).

⁴⁴ These sectors cannot be compared with the sectors in a sending perspective. The sectors in a receiving perspective are based on NACE-codes while the sectors in a sending perspective are based on codes of joint industrial committees.



Graph 22: Number of postings in Belgium (from a receiving perspective based on Limosa) by country of origin (of the employer) and sector in 2009⁴⁵



Source: IDEA Consult based on data from Belgian Social Security of Limosa database

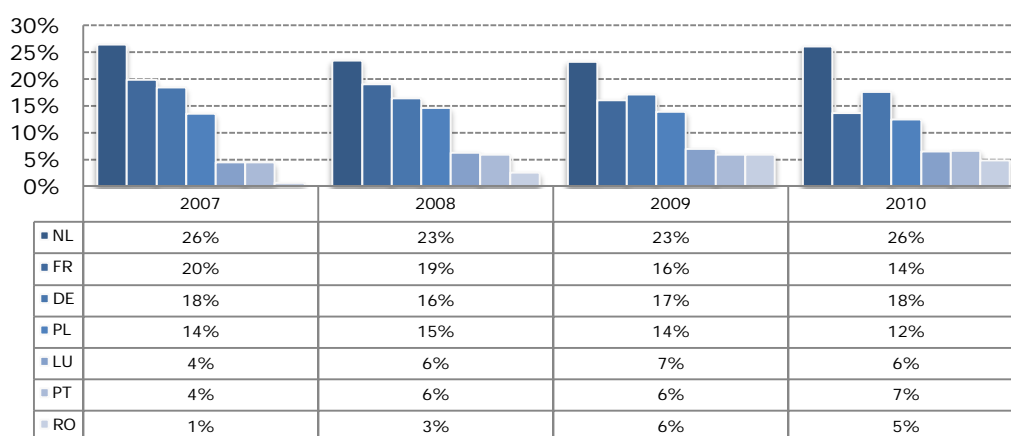
Belgium's neighbouring countries are the most important for posting from both a sending and receiving perspective

Graph 23 illustrates the percentage of postings according to the country of origin of the employer. Only the most important countries are represented on the graph (more than 5%).

This graph shows that Belgium's neighbouring countries are their most important countries for posting. In 2009, 23% of postings in Belgium originated from the Netherlands, 16% from France, 17% from Germany and 4% from Luxembourg. Poland is also an important country for posting to Belgium (14% in 2009).

These percentages have not changed significantly since 2007. The only important variation concerns the increasing number of postings from Romania (1% in 2007 and 5% in 2010) and Luxembourg (4% in 2007 and 6% in 2010), and the decreasing number of postings originated from France (20% in 2007 and 14% on 2010). The Belgian Social Insurance Institution could not provide any explanation for these developments.

Graph 23: Number of postings in Belgium (from a receiving perspective based on Limosa) by country of origin (of the employer)



Source: IDEA Consult based on data from Belgian Social Security of Limosa database

⁴⁵ Idem.



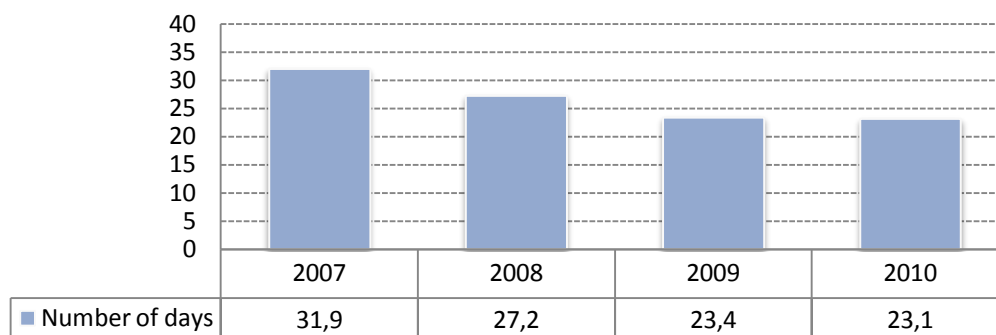
Posted workers sent from Belgium to the construction sector of another country are posted for a longer duration than workers posted to Belgium

Graph 24 shows the average number of days of posting in the construction sector in Belgium. To interpret this data, it is important to keep in mind the methodological comments made earlier.

This graph shows that in 2009, workers were posted to Belgium in the construction sector for work projects for very short durations - only 23 working days on average. Moreover, the average number of days seems to decrease from 2007 until 2010 (from 32 working days in 2007 to 23 in 2010). Of course, these data do not say anything about the duration of stay of posted workers in Belgium. In 2009, an individual posted worker could be sent different times (for different work projects) to the construction sector of Belgium. To obtain data on the duration of stay of posted workers to Belgium, the total durations of each individual worker's work projects would therefore have to be calculated.

We can observe that, on average, posted workers sent from Belgium for a work project in the construction sector of another country are posted for a longer duration (65 working days in 2009) than posted workers for a work project in the construction sector in Belgium (23 working days in 2009).

Graph 24: Average number of working days of posted workers in the construction in Belgium (from a receiving perspective based on Limosa)⁴⁶



Source: IDEA Consult based on data from Belgian Social Security of Limosa database

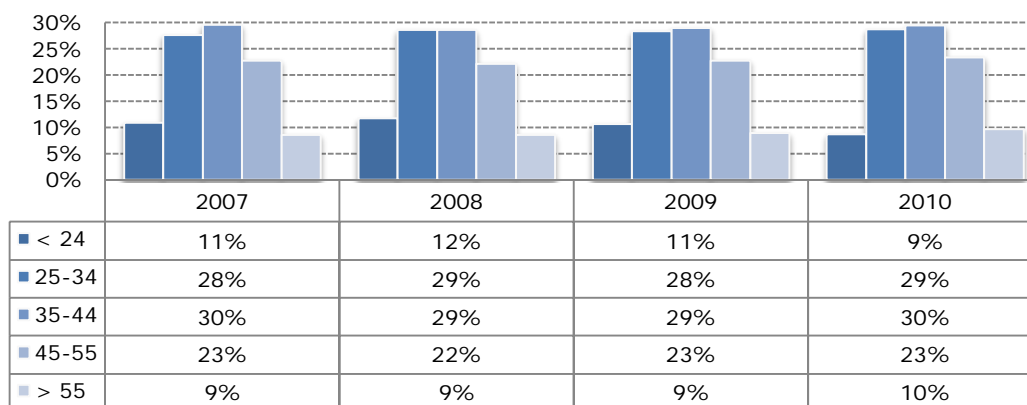
Posted workers to Belgium are on average older than migrants

Finally, Graph 25 illustrates the distribution of posted workers according to their age. It appears that most posted workers are aged between 25 and 34 years (28.7%) or between 35 and 44 years (29.5%). Almost 1 in 3 posted workers is older than 45 years. We can thus conclude that posted workers to Belgium are relatively mature workers. No important changes in the age distribution of posted workers can be observed since 2007.

⁴⁶ Only 'normal' postings.



Graph 25: Number of posted workers in Belgium (from a receiving perspective based on Limosa) by age⁴⁷



Source: IDEA Consult based on data from Belgian Social Security of Limosa database

If we compare the age distribution of posted workers to Belgium with the age distribution of migrants, it appears that migrants are, on average, younger than posted workers. This can be explained by the fact that older workers, due to familial constraints, tend to move more to another country for a short duration. Younger workers, however, are more likely to move to another country for a longer or permanent duration.

Posted workers sent from Belgium are on average younger than posted workers to Belgium

Finally, if we compare the age distribution of sent and received posted workers, it appears that posted workers sent from Belgium are, on average, younger than posted workers to Belgium. This does not correspond to the image of the young posted Polish worker. However, it is important to note that the countries which posted workers to Belgium the most are from the Netherlands, France and Germany. As with Belgium, these countries face an ageing population. Poland only comes in the fourth place.

⁴⁷ Age at the end of the year. The total amount varies from the total number of individual workers.



3.3.2 *Case of France*

3.3.2.1 *Methodological introduction*

French data are under-estimations of the real number of postings

Since 2003, the French Ministry of Labour conducts an annual report on the number of postings and posted workers and the trends in development by year, geographical area, sector, and country of origin. The latest published data (year 2008) are presented and discussed in this section.

This publication is based on the data of pre-posting declarations of employers to the departmental directorate of labour (direction départementale du travail) of the place where the service will be provided. A questionnaire is sent annually by the Ministry of Labour to each departmental labour inspectorate to collect the data. These data therefore concern the number of received postings. Moreover, unlike data based on E101 forms, these data also record the number of postings announced, as well as the number of individual posted workers.

However, it is important to note that not all French departments have sent the required data to the Ministry. In 2008, 89 of the 96 departments sent data. According to the Ministry of Labour, the number of departments which sends data tends to increase with the time. But still, the presented data are an underestimation of the real number of posted workers.

Another important problem with these data are that the compulsory pre-declaration is not fulfilled by all companies. Pre-declaration hardly seems to be a regular practice: according to Lefebvre B. (2006), 85% of the enterprises that post workers in France fail to make a declaration. Despite the control exercised by the labour inspections, apparently only a small number of undeclared postings are discovered through inspections.

All these methodological issues have to be borne in mind when interpreting the data based on this source.

3.3.2.2 *Results in a receiving perspective*

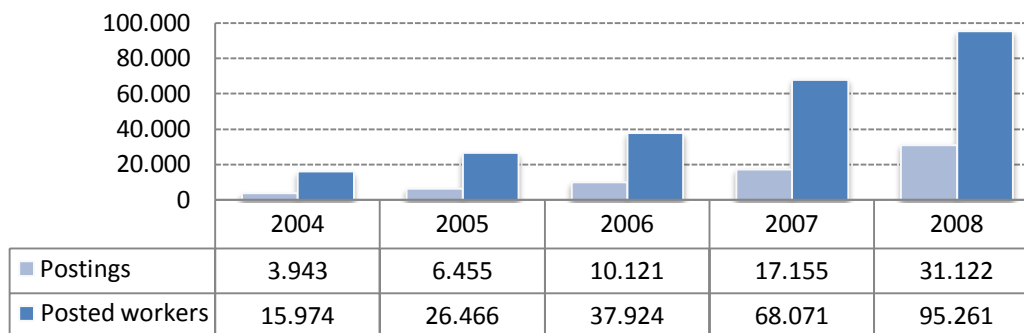
The French Ministry of labour estimated the number of received postings to be between 210,000 and 300,000 workers

As shown in Graph 26, France received 31,122 announcements of postings from 95,261 individual posted workers in 2008. If we compare these data with the data of the European Commission based on E101 forms (see Graph 6), large differences can be observed. According to E101 data, 148,610 announcements of postings were counted in 2007. According to the French national data source, the number of postings fell to 17,155 in 2007, with the number of individual posted workers at 68,071. This comparison seems to confirm that the data based on the French national data source are a large underestimation of the real number of postings.

The French Ministry of Labour is aware that the presented data are an underestimation of the real number of posted workers. Therefore, the Ministry subsequently estimated the number of posted workers by taking into account the number of departments which failed to answer to the questionnaire. According to this methodology, the Ministry estimated that the number of posted workers in France in 2008 was between 210,000 and 300,000. These data seem to be more in accordance with the data of the European Commission based on E101 forms. However, according to Lefebvre B. (2006), government departments still appear to underestimate the extent of such labour movements.



Graph 26: Number of announcements of postings and posted workers in France (from a receiving perspective)



Source: IDEA Consult/Ecorys NL based on data from Ministry of Labour in France

The number of received postings in France increased mainly due to the improvement of data

A comparison of the number of posted workers based on E101 data and on French data confirmed that the French data on received posting have to be interpreted with a great caution. However, according to the French Ministry of Labour the quality of the data tend to increase with the time and provides a general trend of the characteristics of posting in France.

The improvement of the French data on the number of received postings can also be observed in Graph 26. This graph shows that the number of postings increased continuously between 2004 and 2008. This evolution can be explained by improved statistical data collection, a better application of the registering rules and an increasing workforce that is posted in France.

However, the growth of the number of posted workers seems to have reduced between 2007 and 2008 (39.9%, as compared to an increase of 79.9% between 2006 and 2007). Rather, the growth of the number of announcements of postings seems to increase continuously (81.4% between 2007 and 2008 compared to a growth of 69.5% between 2006 and 2007). We can thus conclude that increasing numbers of foreign companies tend to post workers to France, but that fewer workers tend to be posted to France.

Finally, as these data do not provide any information concerning the situation in 2009, it is difficult to assess the possible impact of the economic crisis on the number of received postings in France.

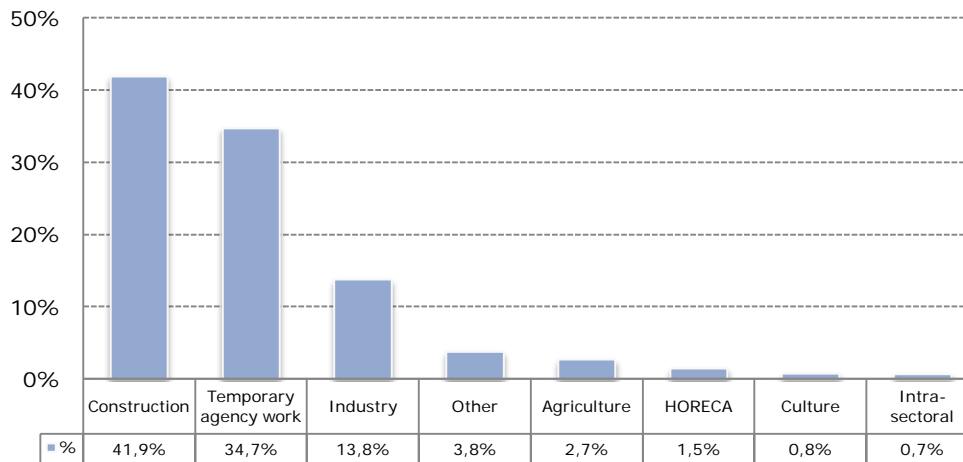
The construction sector and temporary agency sector are the most important sectors for posting in France

Graph 27 shows the percentage of received postings according to the sector of activity. This graph shows that half of the postings in France are concentrated in the construction sector (42.8% in 200). Around 4 in 10 postings are also concentrated in temporary agency work. According to interviews with French stakeholders, posted temporary agency workers are most active in the construction and in the agricultural sector (seasonal work). These people are mainly less qualified workmen. The language requirement to occupy the position in these sectors is not so strict and most of them do not even have basic communication skills in French. On the contrary, foreign posted workers are less prominent in the HORECA sector (1.5%), because those workers have to master the French language.



According to the French Ministry of Labour, the importance of the temporary agency work in posting is a new phenomenon (since 2008). The increasing importance of this sector in posting after 2008 could be explained by the EU Temporary and Agency Workers Directive (2008/104/EC). This Directive was agreed in 2008 and seeks to guarantee those working through employment agencies equal pay and conditions.

Graph 27: Number of postings in France (in a receiving perspective) by sector in 2008



Source: IDEA Consult/Ecorys NL based on data from Ministry of Labour in France

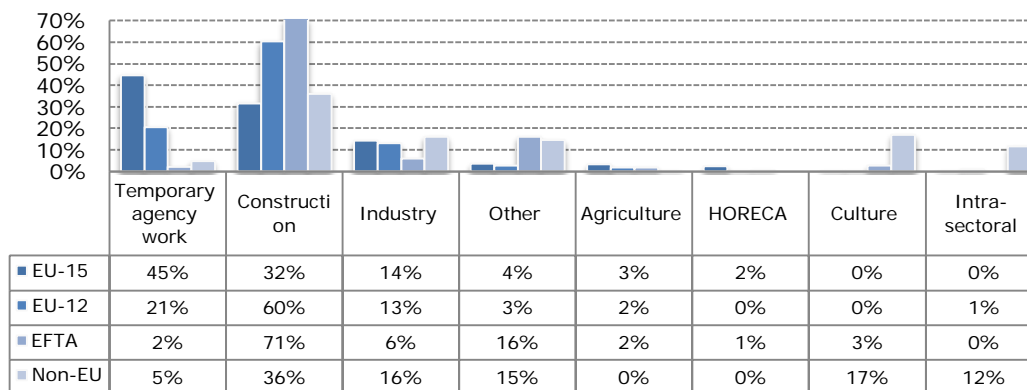
Posted workers from New Member states are often posted to the construction sector while workers from Old Member states are posted to the temporary agency work sector

As with Belgium, the sectoral distribution of posted workers varies considerably according to the country of origin of the worker. Graph 28 shows the distribution of postings according to the sector and country of origin of the employer. This graph shows that in 2008 most postings to France from a New Member State were concentrated in the construction sector (60% versus 32% for EU-15), while postings from EU-15 were concentrated in the temporary agency work sector (44.7% versus 20.7% in EU-12).

The sectoral distribution of posted workers in France cannot be compared identically with that of Belgium as the categories of sectors are not the same in the two countries. However, it appears that in both countries, posted workers from New Member States work predominantly in the construction sector.



Graph 28: Number of postings in France (in a receiving perspective) by country of origin (of the employer) and sector in 2008



Source: IDEA Consult/Ecorys NL based on data from Ministry of Labour in France

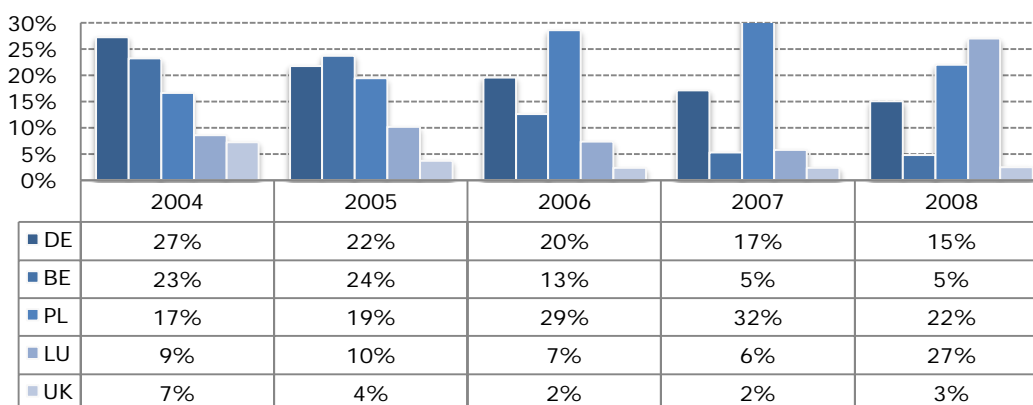
Posting in France is used as a type of cross-border work

Graph 29 illustrates the percentage of postings according to the country of origin of the employer. As with Belgium, this graph shows that the neighbouring countries of France are the most important countries for posting. In 2008, 27% of postings in France originated from Luxembourg and 15% from Germany. Poland is also an important country for postings to France (22% in 2008).

The importance of neighbouring countries for posting tends to indicate that posting is used as a type of cross-border work. This can be confirmed by sub-regional data on posting for France. The Ministry of labour noted in its annual report on posting that the number of declarations of postings predominate in French border regions.

The percentages of postings according to the country of origin seem to have changed considerably since 2004. In 2004, the two most important partners for posting to France were Germany (27%) and Belgium (23%). The importance of these countries fell to 15% and 5% in 2008, respectively.

Graph 29: Number of postings in France (in a receiving perspective) by country of origin (of the employer)



Source: IDEA Consult/Ecorys NL based on data from Ministry of Labour in France



Postings from Luxembourg to France grew due to the increasing importance of the temporary agency sector in posting

The importance of Poland (17% in 2004 and 32% in 2007) and especially Luxembourg (6% in 2007 and 27% in 2008) increased during the period under consideration. According to the Ministry of Labour, the important increase in the number of postings from Luxembourg between 2007 and 2008 can be explained by the increase of the sector of temporary agency work. This sector represents 86% of the postings from Luxembourg. In fact, many temporary work agencies installed in Luxembourg employ French workers. These workers are then placed in French companies. This practise has, according to the Ministry, increased after the introduction of the EU Temporary and Agency Workers Directive (2008/104/EC). This Directive has been agreed in 2008 and seeks to guarantee those working through employment agencies equal pay and conditions.

Posting from Poland to France decreased between 2007 and 2008 due to the improvement of the socio-economic context of Poland

The share of posted workers from Poland reduced between 2007 and 2008 from 32% to 22%. According to the Ministry of Labour, this reduction can be explained by different actions of the Polish government which were taken in order to encourage the return of Polish workers and avoid the loss of its workforce. This is the case in the sector agriculture sector, for example, where different actions have been undertaken to increase the salary of the workers.

However, this reduction in the number of received posted workers from Poland could also be explained by the suppression of the restriction on the free movement of workers to France from New EU Members states. On 1 July 2008 – a year earlier than planned – France opened its labour market to workers from the 2004 accession countries. This reduction could indicate that posting was used by some Polish workers as a substitute to the free movement of workers. However, most stakeholders have their doubts about this explanation. According to them, it is rather difficult to use posting as a substitute for the free movement of workers, since posting requires the provision of service by the employer so it is rather a choice of the employer and not of the employee (on the contrary of the free movement of workers).

For most stakeholders, the decrease of posting from Poland could be explained by improvements in its socio-economic context. The Polish economy is growing and wage differences between Poland and other EU-countries are decreasing. Some sectors (e.g. construction) also suffer from a growing shortage of workers. Therefore, over the past few years, there has been a decrease in the incentives previously given by companies to send Polish workers to New Members States.

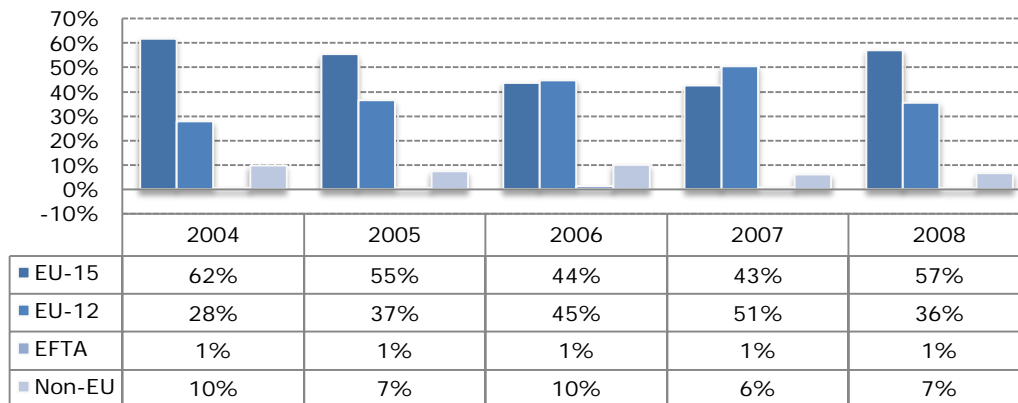
New Member States are more important partners for posting for France than for Belgium

The increasing importance of workers from New Member States (specifically from Poland) between 2004 and 2007 and the reduction between 2007 and 2008 can also be observed in the graph below. The number of posted workers who are nationals from New Member States increased from 28% in 2004 to 51% in 2007. Thereafter, the share of posted workers to France with an EU-12 nationality has reduced from 51% in 2007 to 36% in 2008.

Graph 30 shows also that 57% of the posted workers in 2008 had a nationality from EU-15, 36% from EU-12 and 7% had a non-EU nationality. If we compare these shares with the same shares for Belgium we observe that many more posted workers to France have an EU-12 nationality than in Belgium.



Graph 30: Number of posted workers in France (in a receiving perspective) by nationality of the worker



Source: IDEA Consult/Ecorys NL based on data from Ministry of Labour in France

On average, posted workers stayed in France for 44 days in 2008

Graph 31 shows the average duration of postings in France since 2004 by sector. Before interpreting this indicator, it is important to explain how it has been obtained.

In its questionnaire, the Ministry of Labour asked to each department to indicate the total number of working days of posting for each worker in all sectors (the real duration of stay). This indicator totals short durations for a specific and occasional work project and longer stays. To obtain an average duration of posting for each sector, the sum of working days by sector is thereafter divided by the number of posted workers by sector. So the average duration of posting does not say anything about the distribution of the duration and can thus include short periods of postings as longer period of postings. Finally, it is also important to note that, according to the Ministry of Labour, the information concerning the duration of posting is not completed effectively by the departments. Even if the quality of this indicator has increased over the years, this data has to be interpreted with caution.

In total, posted workers stayed for around 3 million working days in France in 2008. This corresponds to around 15,000 full time equivalent workers on a year, which therefore represent less than 0.1% of the labour force in France.⁴⁸ However, it is difficult to draw any conclusions based on this result as French data contain large under-estimations of the real number of postings.

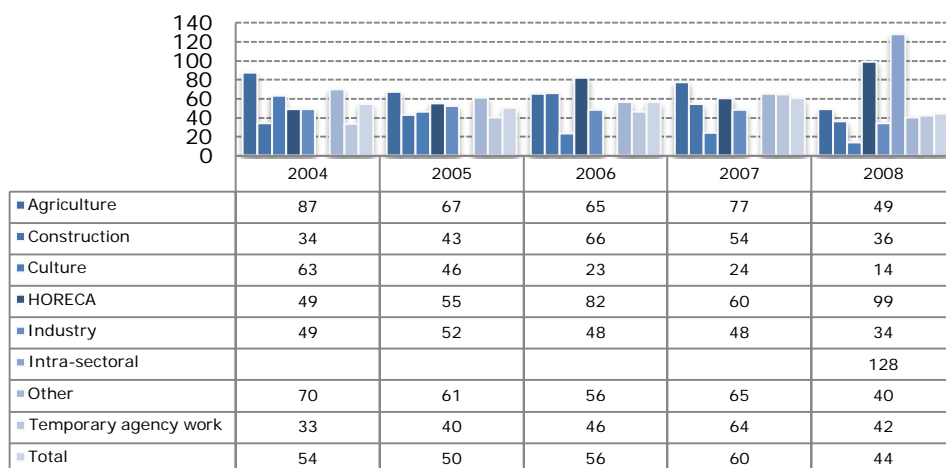
As can be seen in Graph 31, workers were posted to France for 44 days in 2008, on average. The duration of posting seems to have reduced between 2004 (54 days in average) and 2008 (44 days in average). This decrease in the average duration of posting had also been observed in Belgium.

Moreover, there seems to be a large difference in the duration of posting according to the sector. Workers are posted for a longer duration in the HORECA sector (99 days in average) than in the cultural sector (14 days), the industry (34 days) or the construction sector (36 days). These lengths of time appear logical, as workers posted to the HORECA sector are mostly posted for a season, while in the construction sector it is mostly for a specific work project.

⁴⁸ Assuming there are around 200 working days per year.



Graph 31: Average duration (in number of days) of postings in France by sector since 2004



Source: IDEA Consult/Encorys NL based on data from Ministry of Labour in France

3.3.3 Case of the Netherlands

3.3.3.1 *Methodological introduction*

The data analysed in this section are based on E101 data received from the Social Insurance Bank (SVB). Both data from a sending as well as from a receiving perspective are based on this datasource.

This datasource provides information on the number of postings but not on the number of annual individuals. Moreover, these data are considered to be an underestimation of the real number of postings, as E101 are not always completed effectively. Therefore, the data based on E101 forms can be viewed as the absolute minimum number of postings.

The data on the number of received workers also have to be interpreted with caution as these data are based on the E101 forms sent by the sending country. However, not all countries sent the required data. Moreover, the quality of the data varies a lot between countries. For example, the quality of the data from France are limited as the system in place is very decentralized (departments have to send the requested data).

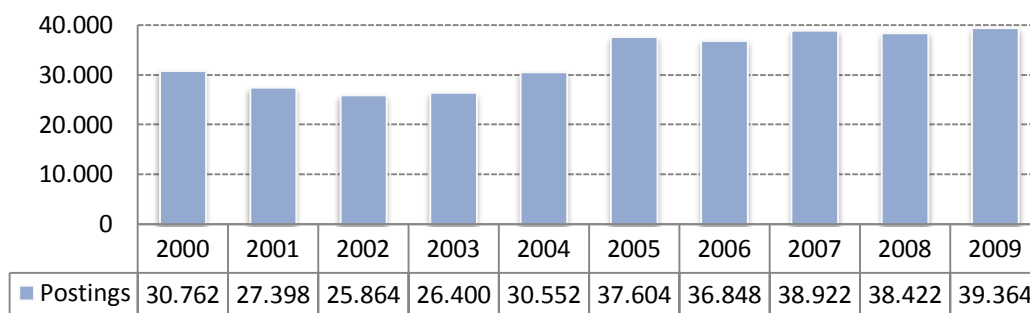
3.3.3.2 *Results in a sending perspective*

A strong correlation can be observed between posting from the Netherlands and economic activity

As shown in Graph 32, the Netherlands sent 39,364 announcements of postings in 2009. This graph also shows that the number of postings increased with 28% between 2000 (30,762) and 2009 (39,364). However we observe a disparate yearly growth in the number of postings from the Netherlands since 2000. The number of postings has decreased between 2000 and 2002, while it increased between 2002 and 2005, before decreasing again in 2006. After 2007, the number of postings remained fairly stable.



Graph 32: Number of announcements of postings based on E101 from the Netherlands (in a sending perspective)



Source: IDEA Consult/Ecorys NL based on data from Social Insurance Bank in the Netherlands

As the monitoring system in the Netherlands has not registered any important changes over the past few years, these developments can be explained by other factors.

We suggest that an important explanatory factor for these developments is the economic activity during the last few years (in countries where most Dutch workers are sent). This is due to the fact that the number of postings was at a minimum in 2002, which also corresponds to the economic crisis of 2002, which affected most EU-countries. The steep increase in the number of postings between 2002 and 2005 is also ahead of the economic recovery in most EU-countries. These evolutions may indicate that there is a strong correlation between postings and the economic activity.

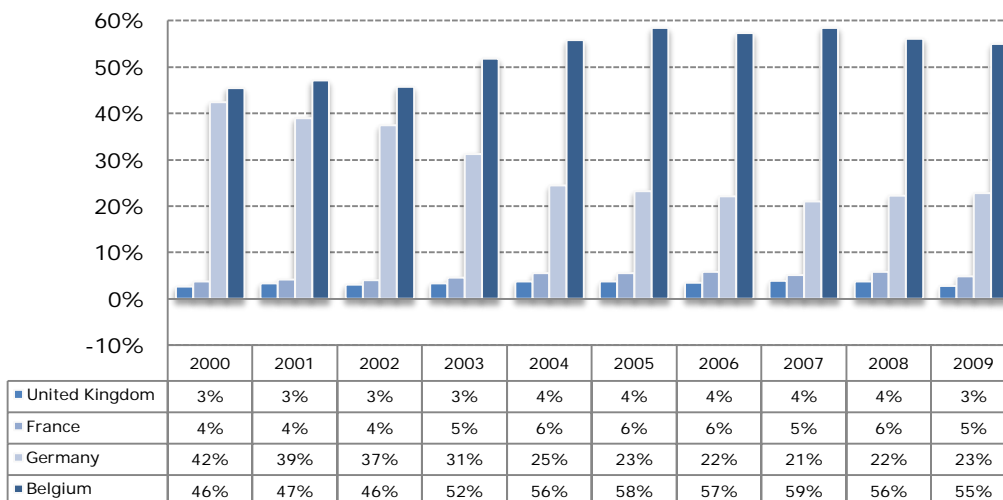
After 2005, the number of postings remained fairly stable. This cannot be said about the economy of most EU-countries, which boomed (until 2007) and then went into recession.

For the Netherlands, neighbouring countries are the most important countries for posting

Graph 33 shows the percentage of postings from the Netherlands according to the country of origin of the employer. This graph shows that most Dutch workers are posted to the neighbouring countries of the Netherlands. In 2009, 55% of postings from the Netherlands were assigned to Belgium and 23% to Germany. However, we observe that the importance of postings from the Netherlands to Germany has reduced considerably since 2000 (42.4% in 2000 to 22.8% in 2009).



Graph 33: Number of postings based on E101 from the Netherlands (from a sending perspective) by country of destination



Source: IDEA Consult/Encorys NL based on data from Social Insurance organisation in the Netherlands

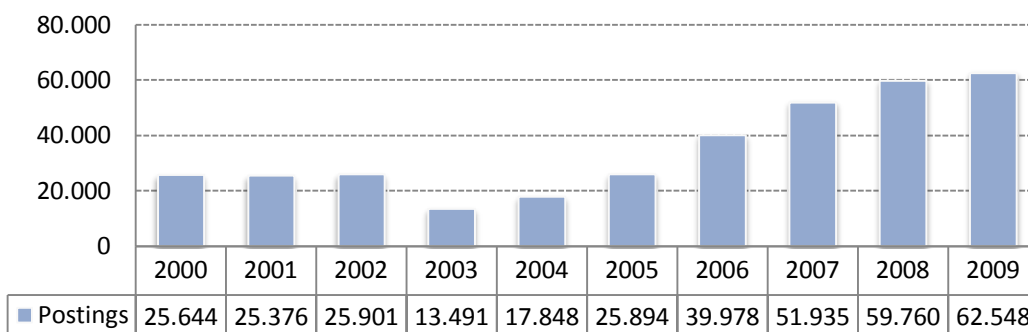
3.3.3.3 Results in a receiving perspective

The number of postings to the Netherlands increased faster than the number of postings from the Netherlands

As shown in Graph 34, the Netherlands received 62,548 announcements of postings in 2009. This graph demonstrates that the number of postings to the Netherlands increased by 144% between 2000 (25,644) and 2009 (62,548). Between 2000 and 2009, the number of postings to the Netherlands increased faster (144%) than the number of postings from the Netherlands (28%).

The largest increase of the number of postings to the Netherlands can be observed between 2004 and 2007. This is in light of a very different scenario, as a large decrease of the number of postings can be observed between 2002 and 2003 (from 25,901 to 13,491). The numbers of postings only returned to 2002 levels in 2005.

Graph 34: Number of announcements of postings based on E101 to the Netherlands (in a receiving perspective)



Source: IDEA Consult/Encorys NL based on data from Social Insurance Bank in the Netherlands



The change in the number of postings to the Netherlands is linked to its economic context

We note that an important explanatory factor for these developments is the Dutch economic context during the last few years. This is due to the fact the number of postings reached a minimum in 2003, before the business cycle reached a low point in August 2003. The steep increase in the number of postings between 2004 and 2008 is also ahead of the economic recovery in the Netherlands. These figures may indicate that there is a strong correlation between postings and economic activity.

In 2009, the number of postings continued to increase in the Netherlands, despite the economic crisis in that year. However, we observe that this increase is relatively limited in comparison with the increases observed earlier. Moreover, according to the SVB's, the increase in the number of received postings in 2009 may be explained by the improvement of the quality of the data. It seems that more counterparts in other Member States actually send the certificates to the SVB.

Posting has not been used as a substitute for the free movement of workers to the Netherlands by New Member States

Moreover, it is also interesting to note that the end of the restrictions on the free movement of workers do not seem to have any influence on the data on posting. On 17 September 2006, the Dutch government opened 16 sectors of its labour market to workers from the EU-8 states. The decision concerned sectors where workers are scarce or where there had been a high percentage of illegal workers. In 2007, the Dutch government lifted all restrictions for workers from the 2004 accession countries. We do not observe any reduction in the number of received postings in the Netherlands in 2006 and 2007, which seem to indicate that posting was not used by New member States as a substitution for the free movement of workers to the Netherlands.

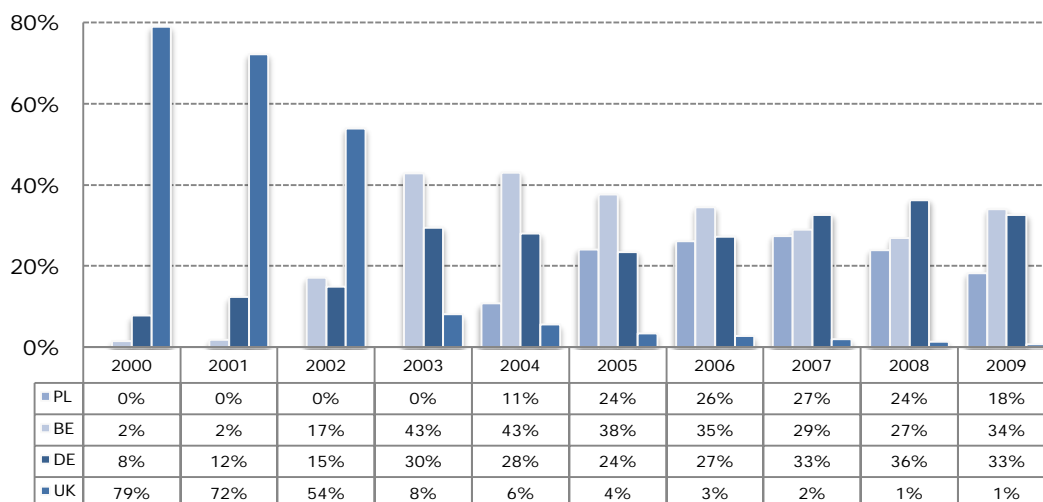
Neighbouring countries and Poland are the most important countries for posting to the Netherlands

Graph 35 shows the percentage of postings to the Netherlands according to the country of origin of the employer. This graph shows that the neighbouring countries of the Netherlands and Poland are the most important countries for posting. In 2009, 34.1% of postings to the Netherlands originated from Belgium, 32.6% from Germany and 18.2% from Poland. However, we observe large evolutions in the share of postings to the Netherlands, according to the country of origin of the employer. In 2000, 79% of all postings to the Netherlands originated from the United Kingdom, while only 7.8% originated from Germany, 1.6% from Belgium and 0% from Poland.

However, these developments can be explained by modifications in the monitoring systems of the country of origin. According to the Dutch Social Insurance Institution, the number of E101 forms from Germany increased largely between 2002 and 2003 after a request by the SVB. The opposite has been observed in the UK, after they switched to an electronic system. Therefore, the changes in the number of received postings to the Netherlands have to be interpreted with caution.



Graph 35: Number of postings based on E101 to the Netherlands (in a receiving perspective) by country of origin (of the employer)



Source: IDEA Consult/Ecorys NL based on data from Social Insurance organisation in the Netherlands

3.3.4 *Case of Poland*

3.3.4.1 *Methodological introduction*

The data analysed in this section are based on E101 data received by the Social Insurance Institution (ZUS). Only data from a sending perspective are available for Poland. Therefore, as with other databases based on E101 forms, these data only provide information regarding the number of postings and not on the number of annual unique posted individuals. Moreover, these data are considered to be an underestimation of the real number of postings, as E101 forms are not always completed properly.

3.3.4.2 *Results from a sending perspective*

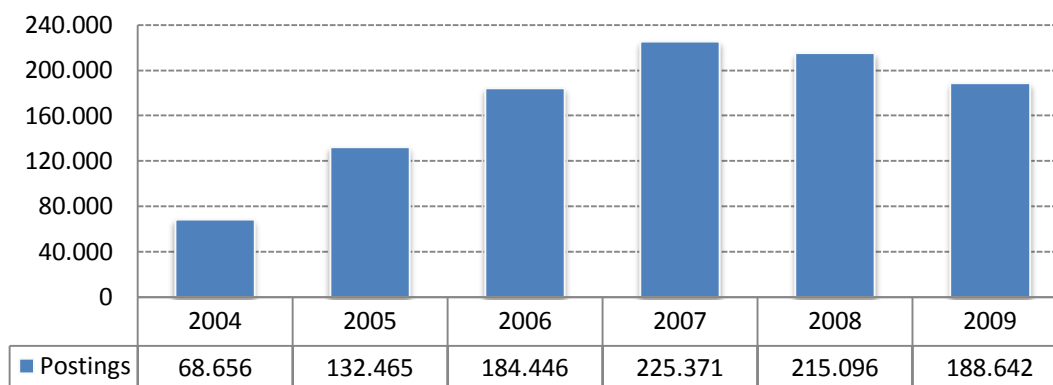
Strong increase in the number of postings from Poland between 2004 and 2007 but decrease after 2008

Poland is primarily a country of emigration and a sending country as regards posting. This can also be seen in Graph 36. In 2009, Poland sent 188,642 announcements of postings. Moreover, this graph shows that the number of postings increased strongly between 2004 (68,656) and 2009 (188,642).

Between 2004 and 2007 the number of postings from Poland increased with 228%. After 2008, the number of sent postings from Poland has started to decrease each year (-4.6% in 2008 and -12.3% in 2009).



Graph 36: Number of announcements of postings based on E101 from Poland (in a sending perspective)



Source: IDEA Consult/Ecorys NL based on data from Social Insurance organisation of Poland

Difficult to isolate the factors which induced the strong decrease in the number of postings from Poland after 2008

The stakeholders interviewed offered differing explanations for this reduction in the number of postings after 2008. First of all, those changes could have been caused by the economic crisis in Germany - the country where the most Polish workers are posted to. Because of this crisis, the demand for posted workers in the German market decreased.

Other interviewees stated that posting decreased because of the changes in the transitional measures. In 2004, all EU 15 member states - with exception of the UK, Ireland and Sweden - imposed restrictions on the free movement of workers. In 2006, possibilities for the free movement of workers broadened because most countries abolished restrictions that were imposed in 2004. Only Austria and Germany decided to prolong restrictions to their labour markets for at least three additional years, and possibly until the end of transition period - 2011. In theory, due to these restrictions to the free movement of workers, posting could be used by some Polish workers as a substitute for the free movement of workers. The end of the transitional measures in some countries could therefore induce a reduction in the number of postings. However, most stakeholders have their doubts about this explanation. According to them, it is rather difficult to use posting as a substitute for the free movement of workers as posting requires the provision of service by an employer so it is rather a choice of the employer and not that of the employee (on the contrary of the free movement of workers).

For most stakeholders, the decrease of postings from Poland could be explained by the improvement of the country's socio-economic context. The Polish economy is growing and wage differences between Poland and other EU-countries are decreasing. Some sectors (e.g. the constructions sector) are also suffering from a growing shortage of workers. Therefore, during the last few years, companies have had less incentive to send Polish workers to New Members States.

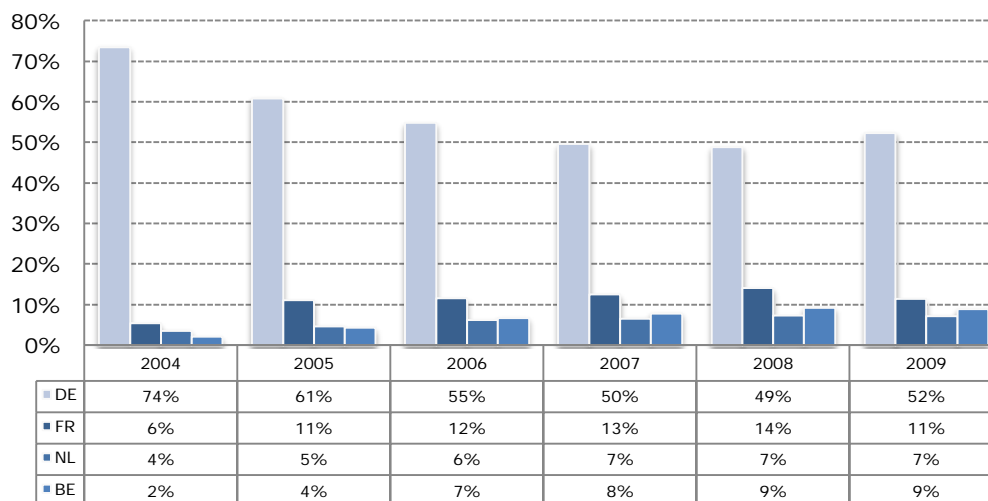
Germany is the first country of destination of Polish posted workers, but the importance of this country is decreasing

Graph 37 shows the percentage of postings from Poland by country of destination. This graph shows that Germany is the most important country for posting for Poland. Around 1 in 2 posted workers from Poland went to work in Germany in 2009. However, since 2004 the importance of Germany has strongly decreased (from 73.5% in 2004 to 52.4% in 2009). Countries such as France



(11.4%), Belgium (8.9%) and the Netherlands (7.2%) also became important countries for posting from Poland. Nevertheless, Germany still largely maintains its first place. According to some interviewees, this is a continuation of old emigration paths. Germany has always been the most important destination for Polish migrant workers.

Graph 37: Number of postings based on E101 from Poland (in a sending perspective) by country of destination



Source: IDEA Consult/Ecorys NL based on data from Social Insurance organisation in Poland

As parts of the German service market remain relatively closed, Polish service providers also became active in alternative markets

According to the Ministry of Social Affairs, the most important sector for posting from Poland is the construction sector.⁴⁹ However, there are bilateral agreements with Germany and Austria which limit the number of workers that can be posted to these countries. Access to the German construction sector for Polish companies is further restricted by a temporary provision which will be in force until 2011. It sets an annual limit on the total number of Poles working in the German construction sector.

From September 2008 to October 2009, only 40% of the quota of posted workers in Germany was used by Polish employers. According to the report, this reduction in the number of Polish companies working in the Germany construction sector is caused by the relocation of services to other EU countries where there are no transitional arrangements restricting access to the local labour market and services, such as Belgium.

⁴⁹ Reports on Monitoring of movement of workers between Poland and the EU Area, 2010



3.3.5 *Assessment of the different national data sources*

The Limosa-database can be considered the most accurate database on posting... but E101 forms allow better country comparisons

One means of assessing the validity of the different data sources is to compare the data with each other. For Belgium and the Netherlands, for example, data are available from both sending and receiving perspectives. For Poland data are available from a sending perspective and for France data are available from a receiving perspective. By comparing the different databases it is possible to compare them and calculate the differences. In this way it is possible to assess the quality of the different databases. The following table gives an overview of this exercise.

Table 20: Comparison of the data on posting for the country cases

			2004	2005	2006	2007	2008	2009
Posting from Belgium to France	from Belgian data (E101)		10,586	14,077	18,737	14,718	20,759	n.a.
	French data (national source)		915	1,535	1,279	916	1,481	n.a.
<i>Difference</i>			<i>9,671</i>	<i>12,542</i>	<i>17,458</i>	<i>13,802</i>	<i>19,278</i>	
Posting from Belgium to the Netherlands	from the Belgian data (E101)		9,500	10,004	12,483	10,886	16,119	17,769
	Dutch data (E101)		7,701	9,769	13,794	15,060	16,073	21,323
<i>Difference</i>			<i>1,799</i>	<i>235</i>	<i>-1,311</i>	<i>-4,174</i>	<i>46</i>	
Posting from the Netherlands to France	from the Dutch data (E101)		1,668	2,121	2,184	2,021	2,286	n.a.
	French data (national source)		23	19	36	83	110	n.a.
<i>Difference</i>			<i>1,645</i>	<i>2,102</i>	<i>2,148</i>	<i>1,938</i>	<i>2,176</i>	
Posting from the Netherlands to Belgium	from the Belgian data (Limosa)		n.a.	n.a.	n.a.	33,249	45,541	43,549
	Dutch data (E101)		n.a.	n.a.	n.a.	22,758	21,548	21,655
<i>Difference</i>						<i>10,491</i>	<i>23,993</i>	<i>21,894</i>
Posting from Poland to Belgium	from the Belgian data (Limosa)		n.a.	n.a.	n.a.	17,037	28,557	26,188
	Polish data (E101)		n.a.	n.a.	n.a.	17,910	19,706	16,838
<i>Difference</i>						<i>-873</i>	<i>8,851</i>	<i>9,350</i>
Posting from Poland to the Netherlands	from the Dutch data (E101)		1,926	6,247	10,420	14,231	14,270	11,379
	Polish data (E101)		2,475	6,245	11,361	14,890	15,719	13,651
<i>Difference</i>			<i>-549</i>	<i>2</i>	<i>-941</i>	<i>-659</i>	<i>-1,449</i>	<i>-2,272</i>
Posting from Poland to France	from the Polish data (E101)		3,806	14,700	21,475	28,321	30,302	n.a.
	French data (national source)		655	1,251	2,890	5,447	6,847	n.a.
<i>Difference</i>			<i>3,151</i>	<i>13,449</i>	<i>18,585</i>	<i>22,874</i>	<i>23,455</i>	

Source: IDEA Consult/Ecorys NL based on data collection exercise

Based on this table, we can stress the following observations:

- In all the comparisons, data of posting from France seems to be much smaller than the same data from other countries (Polish, Belgian and Dutch data). The data from France seems to be a large underestimation of the real situation of posting. However, even if the amounts vary between data sources, the data from France seems to follow the same trends. For example, the reduction of the number of postings from Belgium to France in 2007 and the increase in 2008 are observed in both databases (French data and Belgian data). So, even if the data from France cannot be used to inform us about the exact number of posting, it



can be used to tell us about general developments and characteristics of posting in France.

- The smallest differences between databases are observed when E101 forms are used. Based on these observations, we can conclude that E101 forms allow more effective country comparisons. This source induces the smallest differences between data sources and thus the lowest incoherencies. However, there is still uncertainty to what extent the number of E101 certificates recorded by countries is a precise proxy of the actual number of postings taking place.
- In all the comparisons, Belgium's Limosa database seems to provide the highest numbers for postings (compared with data for the Netherlands and Poland).



4 CONCLUSION

Based on the analysis presented in section three, 'Size and characteristics of posting', one can draw a variety of different methodological conclusions and observations about the profile and size of the posted worker sector. The main **methodological conclusions** are the following:

The review of existing **EU data sources** shows that the only cross-border data source containing information directly related to postings is the administrative data based on E101 social security forms. However, there is still uncertainty as to what extent the number of E101 certificates recorded by countries is a precise measure of the actual number of postings taking place, since measuring the size of posting by the number of E101 forms contains some methodological points of attention:

- The number of postings is not equivalent to the number of posted persons, as one person can request several E101 certificates per year. Therefore, E101 forms can be used to monitor the number of postings, but not the number of posted workers.
- Some companies do not apply for E101 forms when workers are posted. This is particularly the case for (very) short-term postings. Naturally, there is no information on undocumented postings.

The E101 data collection of the European Commission fills an important information gap concerning the posting of workers. Given the fact that E101 forms are the only data source allowing for an EU comparison of the number of postings, we recommend to continue this exercise in the future. However, different actions should be undertaken to improve the quality of this data source:

- To improve the data collection exercise of the European commission and the exchange of information on E101 forms between countries, the registration system of E101 forms should be **electronic and mutually compatible** in all EU Member States. An introduction of a uniform electronic registration system of E101 forms in each country is recommendable.
- To ensure the quality of data it is important to increase the number of companies in each country that fulfil procedures around E101 forms correctly (even for very short periods). Therefore, three actions should be undertaken:
 - Improve the information strategies by liaison offices towards companies: The most important reason for companies to not complete the required documents is because they do not know that this is expected of them. So, the procedure has to be better explained to each company, taking into account possible language barriers.
 - Reduce the administrative burden for companies to fulfil the E101 procedures (e.g. by introducing a computerized and on-line registration system). Undertake a stricter supervision by the labour inspectorates toward companies: To make sure companies respect the E101 procedures, stricter controls should be introduced (e.g. with penalties).

Next to EU data sources, **national data sources** are also interesting sources of information regarding posting from a receiving perspective. However, these sources bring with them a variety of methodological issues, as they are of very differing quality, depending on the country. Moreover, the introduction of a uniform registration system in all EU Member States, based on other data than E101 forms, would induce disproportionate administrative burdens for countries



and companies. Therefore, we can conclude that it is better to use data based on E101 forms from the reporting countries (figures on postings sent with geographical breakdown) to derive figures on the receiving countries than to ask the country directly how many postings they received based on their national registration systems (strong under-evaluation).

Furthermore, administrative data could also be completed by referring to qualitative information concerning posting based on a survey. One possibility is to include questions about issues such as the characteristics of posted workers, the role of posting, motives for posting, and the type of work performed, in company surveys carried out by European (or International) organizations. The European Company Survey (ECS) carried out by Eurofound is one example of the kind of survey which could be used. Administrative data should thus be used to obtain data on the number of postings and the survey used to obtain qualitative information about posting.

Based on the data of the European Commission, our own questionnaire and national data sources, it seems that the following main observations concerning the **size and characteristics of postings** can be made:

- In 2007, a total of approximately 1.3 million E101 certificates were recorded across the EU-27 and EFTA countries. Almost 1.06 million (81%) relate to postings to specific countries. In relative terms, the number of postings accounted for an average of 0.37% of the active population of EU-15 sending countries and 0.74% of the active population of EU-12 sending countries. However, it seems that the number of postings represents 18.5% of non-nationals EU-27 citizens in the labour force.⁵⁰ These statistics show that posting is an important phenomenon in labour mobility flows, especially in some countries and sectors. These figures must be interpreted with caution since E101 certificates recorded by countries count the number of postings. So the posting phenomenon could be more important in practice, since we compare the number of cases of posting (and not individuals) with the number of non-nationals EU-27 citizens in the labour force. An individual could have been posted several times a year to another Member State.
- Almost 87% postings are sent to EU-15 countries. However, only 65% of postings originate from EU-15 countries. On the contrary, EU-12 countries received 7.3% of total postings while 34% of postings originate from these countries. We can thus conclude that, in relative terms, a large part of postings originate from the New EU Member states (more specifically from Poland) and that these workers are mostly posted in EU-15 or EFTA countries.
- It seems that the main sending countries are Poland (238,946 or 22.5% of total number of postings); France (232,102 or 21.8% of total number of postings) and Germany (192,093 or 18.1% of total number of postings). France and Germany are also the most important countries for posting from a receiving perspective (respectively 216,911 or 20.8% of total postings and 148,610 or 14.2% of total postings). This is not the case in Poland, as this country represents only 1.4% of the total postings in 2007.
- The country of destination varies significantly, and according to the country of origin of the posted worker. The country destination seems to follow geographical location, historical and business traditions, though some countries have one or two leading destinations, and some tend to spread the workers across several countries. For example, it appears that almost half of postings from the New Member States were sent to Germany in 2007

⁵⁰ Posted workers are not included in statistics concerning the number of non-nationals in the labour force, but this statistic is an interesting element of comparison.



(45.9%). However, this percentage is strongly elevated by the important number of postings from Poland to Germany. On the contrary, the Old Member States seem to be more oriented towards their neighbouring countries.

- In total, the number of sent postings has increased with 24% in the period from 2005-2007. This change in the number of postings varies significantly between countries. We can roughly conclude that the number of sent postings has increased more in the New EU Member States than in the Old Member States.
- The number of postings seemed to stagnate or even decrease between 2008 and 2009. This is also confirmed by the updated data collection exercise of the European Commission. One explanation for this recent development is the economic crisis of 2008/2009. Therefore, we can conclude that posting is strongly correlated to the economic activity. We could not find any evidence concerning the impact of transitional measures for the free movement of workers on the number of postings. This tends to indicate that posting is not used by New Member States as a substitute for the free movement of workers. However, according to the updated data collection exercise of the European Commission, Romania could be an exception (strong increase of the number of postings from Romania between 2007 and 2009).
- The available data suggest that, on average, almost 50% of postings were sent to the service sector, particularly to financial intermediation, business activities and transport activities. Around 50% of postings were issued for activities in the industry sector, particularly to the construction sector (26%). These data have to be interpreted with caution due to the absence of EU-wide statistics on the sectoral distribution of posting. However, it appears from the available national and European statistics that there are large differences in the sector distribution of postings according to the country of origin. It appears that New Member States (especially Poland) are particularly present in the construction sector. However, posted workers from old Member States have a more balanced spread across sectors.
- It is difficult to assess the length of posting, as limited information is available on this subject (only for Belgium and France). Moreover, the data for Belgium do not provide information on the duration of posting but the duration of a work project in the construction sector. Based on the available statistics and the interviews with stakeholders it appears that the average duration of posting is relatively short. However, there seems to be a large difference in the duration of posting according to the sector. According to data for France, workers seem to be posted for a longer duration in the HORECA sector than in the construction sector. This duration seems to be logical, as posted workers to the HORECA sector are mostly posted for a season, while in the construction sector the duration is usually limited to a specific work project.
- Only limited information is available concerning the profile of posted workers. Based on national data sources, only information concerning the age of posted workers is available. Based on data for Belgium, we observed that posted workers seem to be relatively mature, unlike migrant workers. This finding can be explained by the fact that older workers, due to family constraints, tend to move more to another country for shorter periods. However, younger workers are more pre-disposed to move to another country for a longer or permanent duration.
- No information (at national or European level) is available concerning other profile characteristics of posted workers such as the educational level of posted workers; their gender; the frequency of postings, or the number of companies where workers are posted.



Part 4: ECONOMIC AND SOCIAL EFFECTS OF POSTING OF WORKERS



1 INTRODUCTION

The framework for the study of the economic and social effects associated with the phenomenon of posting is based on the methodology for evaluation of socio-economic policy measures.

In this chapter, we focus on: the drivers and barriers regarding posting; the results of posting in terms of the profile of posted workers and activities performed; and the wider economic and social effects related to posting. The information in this chapter is based on the following sources:

- Desk research covering the existing documents and literature on posting in the EU.
- Field research in the eight selected countries. The countries were visited and interviews were held with government institutions, sector organisations (e.g. social partners) and other stakeholders (e.g. individual experts, companies).
- Web-based survey among national sector federations in order to collect additional information regarding the outcomes/effects of posting on the five selected sectors: construction, transport, HORECA, agriculture and temporary work agencies.

We stress that the study investigates the effects related to the phenomenon of posting as understood in the Posting of Workers Directive but is not intended to be an impact study of the Posting of Workers Directive itself.



2 DRIVERS AND BARRIERS RELATED TO POSTING

In this section, the main drivers and barriers related to posting are described. The analysis is based on literature findings, the field research and the web-based survey which was distributed amongst representatives of employers' federations. Drivers are defined here as elements in the context which effect a change in posting or in certain aspects of it. A driver is commonly understood to contribute to the positive developments or growth in postings. Barriers contribute to or influence the negative developments or decreases in postings.

The analysis of the drivers and barriers related to posting leads to a **broad range of influencing factors of an economic, social or regulatory nature**. It is clear that these drivers and barriers are context specific. This implies that some factors only play a role in certain situations, such as the simplicity of the administrative procedure or the cost motive; while other factors are more general of nature, such as the decision to enter new markets. The context typically differs between New and Old Member States; between different types of posting; and between different sectors. Moreover, the drivers and barriers are dynamic in nature. This means that their importance can vary over time. A clear example is the correlation of posting with transitional measures for access to the labour markets of the Old Member States.

The main perspective taken for identifying drivers and barriers is the **perspective of companies** sending or receiving posted workers in EU Member States. If a different perspective is used, such as the perspective of the worker or particular government, this will be specifically mentioned.

2.1 Main motives and drivers related to posting

2.1.1 *Motives and drivers for sending countries*

We describe below the drivers from the perspective of the sending companies.

- **Entering new markets:** companies looking to expand often consider entering new geographical markets. Once they have started offering services in another Member State they often make use of posting during the start-up period. Experienced staff from the company is sent to support the development of business abroad (e.g. Czommer and Wortman, 2005, specifically mentioning the motive for companies from New Member States).
- **International focus** of companies and the creation of business networks: multinational companies tend to organize themselves on a larger geographical scale (e.g. European scale) for internal activities such as R&D and for subcontracted work (e.g. maintenance contracts on EU level). This increases the need for short term international staff mobility (country study of Belgium).
- **Increasing cost of long-term international assignments:** the traditional expatriate assignment, where an employee works for the same multinational enterprise in another country on a longer term basis (at least a year to a couple of years and longer), may become less important due to cost and staff considerations. Instead, other so-called 'alternative' forms of international mobility are going to increase. Other such alternatives include extended business travel, international commuters and more local hires (Green, A.E., Baldauf, B. and Owen, D. (2009) 'Short-term Mobility, Report to the European Commission for Study on Workers' Mobility Lot 2: Short-Term International Assignments', Warwick Institute for Employment Research).



- **Using own workforce** and maintaining a **higher degree of control** over the work performed: companies prefer to send experienced and specialized staff to supervise or assist to the work done in other countries (country studies Denmark, the Netherlands).
- **Gaining experience and learning** through working abroad: companies and employees want to benefit from improved competences gained through work abroad (country study Poland).
- **Natural market includes neighbouring countries:** in small countries such as Belgium and the Netherlands, parts of the neighbouring countries are part of their natural markets. This leads to short-distance posting between company subsidiaries (country study Belgium, Netherlands).
- **Offering cheaper workforce** than in the receiving country: sending companies have a competitive advantage compared to companies in receiving countries because of lower labour costs (country studies Bulgaria, Poland).
- **Relatively simple administrative procedure** for companies: in some countries like Belgium the procedure to follow in the case of EU posting is simple and has been digitalized. However, this does not influence the fact that the legal context remains extremely complex (country study Belgium).
- **Weak demand in the home market:** there can be a negative relation between the economic climate in the sending country and the amount of postings in a sector, whereby a decline in the home market can force companies to look for work abroad and an increase in the home market reduces this need. This was demonstrated in Poland's case. The relationship between the economic climate and the number of postings was also illustrated in Part 3: Size and characteristics.

Box 2: Decreasing drivers in the Polish construction sector

According to a representative of a Polish employers' organisation in the construction sector, the Polish construction industry experienced a crisis between '99 and '08 and posting workers to other Member States was important for the survival of some companies. However, since there is no longer a shortage of work in the construction sector in Poland, the incentive to post workers abroad has decreased. In addition, the cost incentive is also diminishing, as the difference of pay level in Poland and the old EU Member States is decreasing. Moreover, after 2004, accession of Poland towards the EU Member States opened up possibilities for individual labour mobility. There are now more alternatives to posting than before 2004.

Source: IDEA Consult/Ecorys NL based on interviews

Taking into account the results of the literature, field research and the web-based survey, we believe that the most important type of drivers seems to be economic in nature: the cost advantage compared to competitors in receiving countries; the will to enter new markets; and the creation of international business networks.

From the perspective of the employees, there is not much specific evidence available on the drivers for posting. According to the literature, the motives listed below play a role when workers decide to accept a posting abroad. However, these motives are also relevant to other forms of labour mobility e.g. permanent labour migration. Further research on this issue would be required. The motives, according to the literature, are:

- **The expectation of better wages** when working in the receiving country: employees take part in postings because they either dissatisfied with their income in their home country or because they need extra money.



- Risk of becoming unemployed:** When the risk of becoming unemployed is high, individual workers may be more inclined to accept or to maintain work involving posting assignments abroad. A recent study on Europeans' attitudes to worker mobility shows that unemployment is a powerful reason to move. In 2009, 48% of Europeans would consider moving permanently or temporary to other regions or countries for work if they lost their job.

Finally, the context specificity of the drivers is illustrated in the table below. This shows the interviewees' opinions on the main drivers for posting workers for each of the sending countries included in the field research.

Table 21: Perceived drivers to sending posted workers

Country	Perceived drivers to sending posted workers
Belgium	<ul style="list-style-type: none"> International dynamics of companies require international staff mobility Relatively simple procedure with respect to social security Geographical reasons: strategic location near France, the Netherlands, Germany and Luxembourg
Bulgaria	<ul style="list-style-type: none"> Motives related to higher earnings for employers and employees (higher salary) The use of posting as an instrument for employment relationships in countries with higher standards of living. Availability of much cheaper workers than if directly hired in the receiving country Posting often is the easier and more convenient option, as the freedom of movement of workers has been restricted by the 'transitional agreements' concerning currently Bulgarian and Romanian workers
Denmark	<ul style="list-style-type: none"> More options for jobs, higher disposable wages in some countries Posting makes it possible to use people with special knowledge in other countries and to maintain a higher degree of control. Posting can then be an alternative to hiring people in another country
Netherlands	<ul style="list-style-type: none"> For employers: making money on other markets Using own workforce that it trusts to manage work abroad
Poland	<ul style="list-style-type: none"> Economic motive for employers and employees (earnings) Experience that can be gained through working abroad (improved competences/knowledge)

Source: IDEA Consult/Ecorys NL based on interviews



2.1.2 *Motives and drivers for receiving countries*

The analysis of the drivers for receiving countries focuses on the receiving companies in the Old Member States, which are the most important receivers of posted workers as described in Part 3: Size and characteristics of posted workforce.

Considering the different information sources for the study, we find that the following drivers play a role for receiving companies to work with posted workers:

- **Competitive prices of foreign-service providers** due to lower wage and labour costs: posting can decrease the cost of services purchased if the labour costs of posted workers are below that of workers from the host country doing comparable work.
- **Labour supply shortages**: this motive refers to labour shortages in the local market (Chotkowski 2006, Hansen and Andersen 2008). Those shortages can be due to the lack of suitable or skilled local labour or, as is the case of the horticultural and agricultural contracting sectors in the Netherlands, given that work in the sector is not attractive to the local population (Chotkowski 2006).
- **Flexible capacity and seasonal demand**: posted workers can be hired on short term contracts in accordance to the needs of a company. In this way, a company can adapt the volume of the workforce to the demands of seasonal labour or other labour demand fluctuations (Czommer and Wortmann, 2005, Dølvik and Eldering, 2006 and 2006a). The enhanced flexibility regarding working hours of posted workers is also seen as a driver to employ posted workers (Hansen and Andersen, 2008; Dølvik and Eldering, 2006 and 2006a).
- **Restrictions for free movement of labour**: as explained in Part 2 Context of posting transitional restrictions can force some workers from the New Member States to choose for posting because free movement of workers is restricted for a period of several years. Austria and Germany however have the possibility to restrict the freedom to provide services through posted workers in certain vulnerable sectors.
- **Externalisation of costs**: experienced posted workers are immediately productive whereas newly recruited employees need training (country study Germany)
- **Work attitude and flexibility** of posted workers: in general posted workers have the reputation to work hard and to be flexible with respect to working hours (country study the Netherlands and Spain).

The main findings of the field research on drivers for receiving posted workers in the selected countries are illustrated in Table 22.



Table 22: Perceived drivers to receiving posted workers

Country	Perceived drivers to receiving posted workers
Belgium	<ul style="list-style-type: none"> • Labour shortage for specific professions in the country • Lower labour costs, competitive prices
Denmark	<ul style="list-style-type: none"> • Labour shortage in certain sectors (construction, agriculture, hotels and catering); especially before the financial crisis • Lower labour costs
France	<ul style="list-style-type: none"> • Labour shortages in the local economy (e.g. in seasonal agricultural work and slaughterhouses) and lack of local qualification in certain professions (e.g. carpentry, plumbers,) • Lower labour costs, competitive prices of foreign service providers due to lower social security contributions in the country of origin
Germany	<ul style="list-style-type: none"> • Lower labour costs and competitive prices • Recruitment of employees to perform tasks for which native workers are increasingly hard to find • Externalisation of costs, like costs for education and training, as educated workers can be posted directly
Netherlands	<ul style="list-style-type: none"> • Labour shortage in the Dutch market and high skills level of specialist posted workers (e.g. tunnel building, underground gas storage, thatching roofs) • Lower labour costs (e.g. in the construction sector, the company does not have to contribute to the sector training fund), also because of the lower social security contributions. • Posted workers generally work hard and complain little (work attitude)
Spain	<ul style="list-style-type: none"> • Labour shortage before the economic crisis • Competitive prices of Portuguese companies due to lower labour costs and more efficient entrepreneurial management • Geographical reason: in bordering areas it may be convenient to use posting from a free market perspective • Posted workers are more flexible with regard to working hours and productivity and they are not unionized

Source: IDEA Consult/Ecorys NL based on interviews

To conclude, we can state that companies in receiving countries are mainly driven by the lower costs of using foreign-service providers and the subsequent effect this has on their competitiveness, by labour shortages in their home market, and by the need for flexible capacity.



2.2 Main barriers to posting

2.2.1 *Barriers for sending countries*

In this part we analyse the barriers to sending posted workers. Some are general issues whilst others are country or sector specific. Some barriers are related to the legal framework and how it influences the convenience of resorting to posted workers – or sending them abroad. Others are of a more practical nature.

An overview of barriers to sending posted workers includes the following hindering factors:

- **Perception of and/or experience with administrative barriers related to the procedures for posting workers:** this relates to the (possible) costs of fulfilling the required procedure in order to comply with social security and labour law (such as obtaining documents, filling in forms, waiting for responses). The difficulty is mainly caused by the fact that documents, procedures, and institutions vary between sending and receiving countries. Moreover, rules are not always easy to know or to understand, often due to language issues. Nevertheless, it is generally acknowledged that much administrative information is made available to companies.
- **Complexity of legal framework** governing posting: companies have difficulties finding out and interpreting the conditions of employment and rules related to posting given the different national legal frameworks (see Table 8 in Part 2).
- **Modalities of posting:** certain elements of the implementation of posting can be a hindering factor, such as the uncertainty about the maximum duration of posting as understood in the Posting of Workers Directive, mandatory notification or registration in some countries.
- **Organisational barriers:** this factor relates to transportation and accommodation costs. It also relates to the need to have structures abroad in the case of intra-company posting. A lack of companies with structures abroad is a barrier to send posted workers e.g. Bulgaria. The distance to the host market plays a role as well.
- **Reluctance of employees to be geographically mobile:** employees can be reluctant to go on international assignments e.g. for family reasons (country study Belgium).
- **Linguistic barriers:** language plays a role in communication with the host country company and its employees, with the host country population and with public authorities and sector organisations. It often occurs that posted workers do not speak the host country language and vice versa (see also analysis of receiving countries).
- **Cultural barriers:** these are related to cultural differences e.g. at the workplace.
- **Application** to foreign workers of all or a great part of all **working conditions** integrated in universally binding collective agreements: employers believe that posting workers to other countries can be too costly if the legislation in host countries implies an application of host country working conditions to posted workers going above and beyond the nucleus of social protection as described in the PWD Art. 3 (country study the Netherlands).

The main barriers, according to the interviewees, for the selected sending countries are illustrated in Table 23.



Table 23: Perceived barriers to sending posted workers

Country	Perceived barriers to sending posted workers
Belgium	<ul style="list-style-type: none"> • Transportation and accommodation costs for employers • Reluctance of employees to be geographically mobile e.g. for family reasons • Communication and language barriers
Bulgaria	<ul style="list-style-type: none"> • Little interest by employers in posting because of the reluctance to comply with the requirements of the PWD and to pay social contributions, and because of the fear that the relevant administrative procedures are heavy • Lack of companies with structures abroad which limits in-company posting • Reduced number of active population as a significant number of migrant workers already left the country in early 2000 • The global economic and financial crisis which shrank the national and especially the trans-border activity of Bulgarian employers
Denmark	<ul style="list-style-type: none"> • Related to migration of workers: different rules in another country, family reasons, differences in culture, foreign language.
Netherlands	<ul style="list-style-type: none"> • Administrative and financial requirements, especially for SMEs • The application of working conditions that are made universally binding in some host countries. Employers think this hampers the competitiveness of Dutch companies compared to companies in the host country. • Local methods and local habits differ between countries and can constitute a barrier to posting • Distance to a market (so most posted workers are posted to Germany or Belgium) • Language barrier
Poland	<ul style="list-style-type: none"> • Interpretation of rules and the host state legislation on posting is often difficult to find out • Unclear which administrative procedures to fulfil and problems arising from the administrative procedure for issuing work permits required under the transitional arrangements in Germany and Austria concerning the freedom to provide services through posted workers • E101 forms are often refused, mainly for workers going to Germany • The maximum duration of posting (and the lack of precise regulation) • Cultural, language and organizational barriers

Source: IDEA Consult/Ecorys NL based on interviews



2.2.2 *Barriers for receiving countries*

Finally, the barriers for receiving posted workers are described below.

- Communication / language barrier:** Posted workers coming from other EU countries often do not speak the language of the receiving country. Posted workers' lack of linguistic skills can lead to communication problems in receiving companies. In addition, this lack of language skills can contribute to a failure to understand local working standards and security procedures by posted workers, thus dissuading companies from hiring posted workers (Hansen and Andersen, 2007). Other studies mention difficulties in the administrative procedures to authorise posting due to lack of knowledge of languages on the part of the civil servants who are sometimes unable to read documents in the language of the posted worker in the receiving countries (Chlebcová, 2007). The following box illustrates the language problem in France. This can also create a difficulty for sending companies.

Box 3: The language problem in France

In France, language has been identified by all interviewees as a key barrier to posting. The lack of linguistic and sometimes even basic communication skills in French (or English) negatively affects the entire process of posting, including getting familiar with the legal and administrative requirements in the receiving country, knowing the respective rights and obligations, fulfilling the obligations and looking for the protection of rights etc. The language barrier is just as high for the business partners, administrative authorities and workers.

First of all, pre-declaration is often not done because it can only be fulfilled in French. If it is done, and once inspectors control a company, they are often not able to talk with the employees as there is no common language.

Source: IDEA Consult/Ecorys NL based on interviews

- Legal barriers: from a governmental perspective** there is a lack of coordinated policies on the national level with regard to regulatory measures, registration and control of the conditions offered to service providers and posted workers. All Nordic countries (Denmark, Norway, Sweden, Iceland and Finland) have experienced this as a difficult area, and have continuously sought to develop arrangements and measures which involve the tax authorities, labour inspectorates and the social partners in various ways (Dølvik and Eldring, 2006b). Lack of comparability of Member State legislation also makes it difficult to assess rules and regulations (Chlebcová, 2007) and to take appropriate actions.
- Protective measures** in specific sectors in receiving countries especially from a legal perspective: for example, the transport sector in the Netherlands is somewhat protected from foreign companies providing cabotage services. Cabotage, which is the transport of goods or passengers between two points in the same country, is limited.⁵¹ This is also the case for other Member States. Another example is licensing requirements for temporary work agencies in certain countries.
- General contractor-liability principle** (construction sector): according to the literature review, the fact that the contractor is responsible for his subcontractors with regard to the implementation of PWD may prevent a company from hiring foreign service providers and their posted workers if the company is not able to control subcontractors (Worthmann, 2006, country

⁵¹ http://ec.europa.eu/transport/road/haulage/cabotage_en.htm



study Belgium). Companies try to avoid risks they cannot sufficiently manage and control.

- **Negative image** of posting: companies can be reluctant to work with foreign-service providers if posting has obtained a negative image in their country due to illegal work or work performed below minimum standards, as discussed in the press (country study Denmark and France).
- **Resistance among home companies to introduce competition** for local market players (country study France).
- Availability of other mechanisms for recruiting foreign workers (country study Germany and Spain).

Table 24 gives an overview of the perceived barriers to receiving posted workers in the selected receiving countries.

Table 24: Perceived barriers to receiving posted workers

Country	Perceived barriers to receiving posted workers
Belgium	<ul style="list-style-type: none"> • Language and cultural barriers
Denmark	<ul style="list-style-type: none"> • Language and cultural barriers • Negative attitudes among native Danish citizens as to whether posted workers work clandestine or below the agreed minimum
France	<ul style="list-style-type: none"> • Language barrier. The lack of linguistic skills in French (or English) negatively effects posting, including getting familiar with the legal and administrative requirements in the receiving country • Resistance to competition in the local market • Reluctance of local companies to engage in partnership with foreign service providers
Germany	<ul style="list-style-type: none"> • Construction sector: as posting is predominantly organised by German companies, there are hardly any barriers to posting • As soon as new constructions like self-employment became available for the 'import' of cheap labour, posting of workers <i>strictu sensu</i> has been less applied
Netherlands	<ul style="list-style-type: none"> • Legislation on posting is complex
Spain	<ul style="list-style-type: none"> • In agriculture other systems for recruiting foreign labour are more established (e.g. individual recruitment in the country of origin by farmers organisations) • High unemployment among Spanish workers after the crisis

Source: IDEA Consult/Ecorys NL based on interviews

2.3 Overview of barriers and drivers

The table below summarises the barriers and drivers for posting from the perspective of companies sending and receiving posted workers. Taking into account the preceding sections and this overview, the following findings can be presented:

- We distinguish between three types of drivers and barriers: economic, social and regulatory. It was difficult to create a ranking based on the available information. However, we tend to conclude that the economic aspects play an important role as a driver for posting whereas regulatory and social aspects are relatively more important barriers.
- There is a wide range of barriers but they are context specific, depending on sector, country, economic climate, and type of posting. Moreover, many



drivers and barriers are relevant for posting but not all of them are specific to posting.

- In any kind of context a combination of factors will play a role, which partly explains the volatility of posting as measured in the figures (besides the registration and monitoring issues).
- Postings between Old Member States and New Member States have specific characteristics and drivers, notably the transitional measures. As these measures fade out, new relationships may arise such as between Member States and EU Membership candidates or between Member States and Third Countries (China, Brazil, India).

Table 25: Overview of drivers and barriers for sending and receiving posted workers from the perspective of companies

	Sending perspective	Receiving perspective
Drivers	<p>Economic</p> <ul style="list-style-type: none"> ▪ Entering new markets and making money abroad ▪ International focus of companies and the creation of business networks ▪ Increasing cost of <i>long term</i> international assignments ▪ Using own workforce and maintaining a higher degree of control on the work performed ▪ Natural market includes neighbouring countries <p>Social</p> <ul style="list-style-type: none"> ▪ Offering workforce at lower labour cost than in the receiving country ▪ Gaining experience and learning through working abroad <p>Regulatory</p> <ul style="list-style-type: none"> ▪ Relatively simple administrative procedure for companies (in the sending country) 	<p>Economic</p> <ul style="list-style-type: none"> ▪ Competitive prices of foreign service providers due to lower wage and labour costs ▪ Flexible capacity and seasonal demand ▪ Externalisation of costs <p>Social</p> <ul style="list-style-type: none"> ▪ Labour supply shortages ▪ Work attitude and flexibility of posted workers <p>Regulatory</p> <ul style="list-style-type: none"> ▪ Restrictions on the free movement of labour
Barriers	<p>Economic</p> <ul style="list-style-type: none"> ▪ Application of working conditions in universally binding collective agreements beyond core of protection to foreign workers ▪ Organisational barriers <p>Social</p> <ul style="list-style-type: none"> ▪ Reluctance of employees to be geographically mobile ▪ Language barriers ▪ Cultural barriers <p>Regulatory</p> <ul style="list-style-type: none"> ▪ Perception of and/or experience with administrative barriers related to the procedures for posting workers ▪ Complexity of legal framework governing posting ▪ Different modalities of posting applied in the Member States 	<p>Economic</p> <ul style="list-style-type: none"> ▪ Fear for competition by local market players <p>Social</p> <ul style="list-style-type: none"> ▪ Communication / language barrier ▪ Negative image of posting due to illegal work or work performed below minimum standards <p>Regulatory</p> <ul style="list-style-type: none"> ▪ Protective measures in specific sectors ▪ Availability of other mechanisms for recruiting foreign labour ▪ General contractor-liability principle (construction sector)

Source: IDEA Consult/Ecorys NL



3 ECONOMIC AND SOCIAL EFFECTS OF POSTING

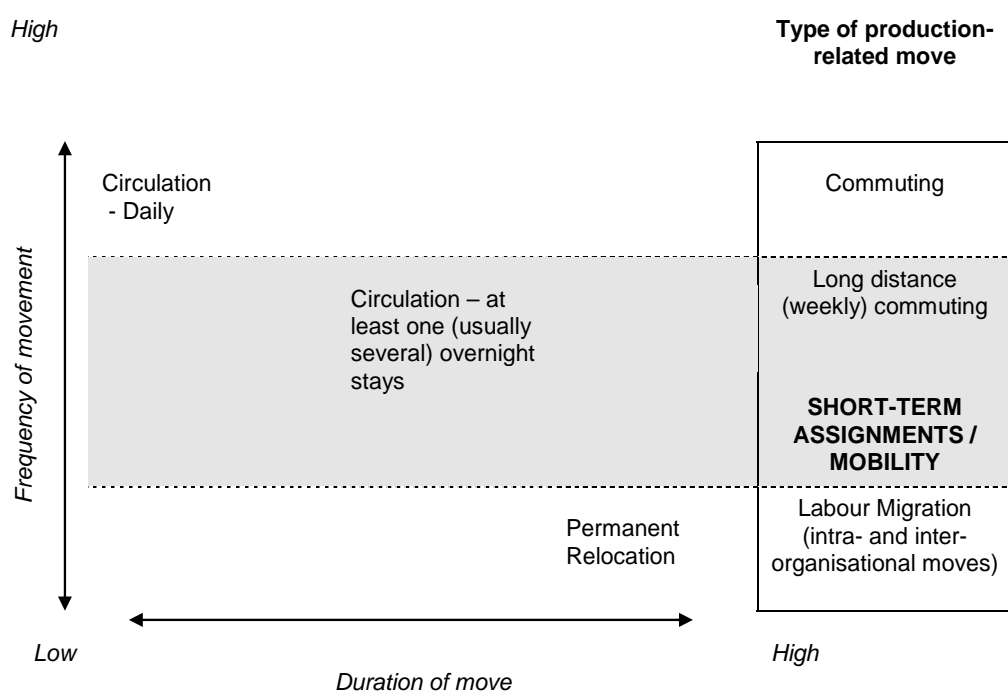
3.1 Profile and type of postings

Before describing the effects related to posting, posting is situated in the spectrum of geographical labour mobility. Furthermore, additional information on the profile of postings is provided, based on the country studies. This information is important for the subsequent interpretation and qualification of the effects.

3.1.1 *Posting as a form of geographical labour mobility*

According to the conceptual framework for geographical labour mobility, the different types of labour mobility are characterised by the frequency and the duration of the movement (Green, et al, 2009).

Figure 4: Geographical labour mobility: migration and circulation



Source: Green et al, 2009

According to Green et al. a short term assignment/mobility can be identified as one particular type of circulation of longer duration than long distance commuting, but one not involving a permanent relocation on a long-term basis. A short-term international assignment generally tends to be used for 'specific tasks', which may be career, experience or project-related. 'Short-term' is typically measured as 3-12 months. 'Assignment' is used in the context of work-related geographical mobility. In this concept, posting is considered as one of the different types of short term labour mobility covered by the notion 'short term international assignment'.



Although the duration is not specified in the Directive, we consider posting as understood in the Posting of Workers Directive, to be coherent with this concept.

Other examples of short-term labour mobility are: commuter assignments (e.g. bi-weekly returning home); (career) expatriates; internships; placement; rotational assignments;⁵² seasonal working and virtual assignments.⁵³ In some cases the Posting of Workers Directive will apply (e.g. expatriates), whilst not in others (e.g. virtual assignments).

By situating posting in this conceptual framework, a broader view on posting is given. Possible alternatives are mentioned. Derived from this framework, we assume that research findings on geographical labour mobility – which has been more intensely studied than the phenomenon of posting itself – will only apply to a certain extent given the specificity of posting.

⁵² Rotational assignment: An employee commutes from their home country to work in another country for a few months without changing their home; these assignments typically involve work in isolated or hardship locations (although they may be used more widely).

⁵³ Virtual assignment: A term used to describe a spell of employment whereby an employee does not relocate to a host location, but has international responsibilities for a part of the organisation in another country. This requires frequent business trips to the host country and reliance on communications such as telephone, e-mail, video conferences, etc.



3.1.2 *Profile of postings*

Results from the country studies

During the country studies we tried to collect more information on the profile and the type of work performed. The table below illustrates the various perceptions about the profile and activities of posted workers. When reading this table, we need to bear in mind that these results are very indicative and that opinions can easily be biased because of the lack of reliable data.

Table 26: Perception about profile and characteristics of posted workers

Country	Characteristics of the profile and work done by posted workers
Bulgaria (sending)	<ul style="list-style-type: none"> Absence of data, only rough estimations Women are primarily engaged in services (medical and home care); men in the construction business, young people in agriculture as HORECA In most sectors, posted workers are low-skilled (except highly qualified people in IT) Most posted workers come from the North-Eastern part of Bulgaria, where unemployment is extremely high
Poland (sending)	<ul style="list-style-type: none"> Posted workers often do not speak other languages, so individual migration is not an option for them Low educated, mainly skilled manual workers. Often well experienced Posted workers are generally older than migrant workers. They are often not interested in discovering new languages and cultures, which hinders their integration and causes isolation in the receiving country Almost exclusively men, besides women in the social care sector. Due to demand in the social sector in Germany and Italy, both men but now also women over 50 years who were previously housewives go and earn money abroad
Netherlands (receiving)	<ul style="list-style-type: none"> In the construction sector, most of the posted workers perform skilled work, often in the final phases of new buildings In the agricultural sector, it often concerns physical work (harvesting), often as seasonal workers
Denmark (receiving)	<ul style="list-style-type: none"> No detailed information on this Often unskilled workers in construction, agriculture and forestry
France (receiving)	<ul style="list-style-type: none"> Concentrated in specific sectors, namely construction and public work sector and in the temporary agency sector, and in specific regions, mainly in border regions in France Posted workers are mainly employed in the construction and agricultural sector (particularly the meat sector). Many workers are posted through temporary work agencies Fewer posted workers in the hotel and catering industry since it is necessary to know the French language in these countries
Germany (receiving)	<ul style="list-style-type: none"> Posted workers from the Western EU Member States predominantly perform activities which require specialisation (e.g. Austrian workers specialised in construction of tunnels) Posted workers from CEE countries mainly undertake physically demanding work for low-skilled workers in the construction sector, while such workers are often well-educated.

Source: IDEA Consult/Ecorys NL based on interviews



Posting is concentrated in certain sectors

From the analysis in Part 3: Size and Characteristics of Posting of Workers and from the country studies, it is clear that posting is concentrated in a relatively small number of sectors although there are few reliable data on the sectoral distribution of postings. Construction, the meat processing industry and agriculture are common in the different country studies. As shown in the statistical data collection, this sector orientation can differ between countries. For example, in Belgium the metal industry, the chemical sector and the social profit sector are also important. Agriculture and meat processing / food industry are less important in Belgium.

Profile of posted workers in relation to the type of posting

Regarding the profile of posted workers, there is also a small amount of information which can be found in statistical data sources. However, using this information and the information from the country studies, we can say that the following characteristics apply:

- **Age:** mature workers. Derived from this we assume that posted workers are usually experienced workers. A possible exception may be postings in the HORECA sector.
- **Gender:** mainly men, but women are active in the social sector (health care, housekeeping).
- **Educational level:** the average level of education is low according to the web-based survey. The type of work performed does not always reflect the worker's educational level. Sometimes well-skilled workers perform low-paid manual work (country study Germany). However, high-skilled profiles (managers, engineers, researchers) are also part of the posting population.
- **Type of jobs:** manual work (agriculture, maintenance, housekeeping), crafts (construction, HORECA), technical work, R&D, specialists (IT, engineers), management and training.

The variety in postings is reflected in the box below where the profile of individuals engaged in short-term international labour mobility is described on a continuum of types. Interestingly, the workers' profile is related to the type of work performed, to the situation before and after the assignment and skills.

Box 4: Continuum of types of individuals engaged in short-term labour mobility

There is not one single 'typical' individual engaging in a short-term international labour mobility; rather at either pole of the continuum of types of individuals engaged in short-term international labour mobility. There are managers and professionals in international corporations on the one hand, and seasonal workers engaged in less skilled work on the other. In the former case, short-term international moves are initiated by the individual, whereas in the latter case they are initiated by the individual, and often facilitated by an agency. The former is engaged in a job to job move, whereas the latter may be moving from unemployment to employment. Whereas the former is likely to be retaining the same occupation and enhancing his/her skills through short-term international mobility, the latter is more likely to be moving to an unrelated occupation and/or sector and is more likely to suffer occupational downgrading (although through an international assignment may gain useful soft skills (including confidence, networking ability and language skills). Both are likely to be relatively young, although the latter is likely to be younger than the former. Of course, between these two poles there are a variety of other individuals engaged in short-term international mobility for a variety of reasons and with some similar and some different characteristics.

Source: Green et al, 2009



In an attempt to structure the range of posting profiles, we suggest that one make use of the different types of postings. The Posting of Workers Directive distinguishes between three types of posting: a) posting between different companies, b) intra-company posting and c) posting through temporary agency work. The table below links the types of posting to the profile of posted workers under this type of posting. The classification will be used at a later point to discuss the effects associated with posting.

Table 27: Profile of posted workers in relation to type of posting

Type of posting	Profile of posted workers
Posting under a contract between different companies	Technically skilled workers, craftsmen Lower skilled workers, manual workers Specialists
Intra – company posting	Managers and specialists (engineers, technically skilled persons, sales)
Posting through temporary agency work	Low skilled and manual workers in agriculture/meat processing and HORECA

Source: IDEA Consult/Ecorys NL based on literature and country studies



3.2 The economic and organizational effects

The analytical framework for this study identified a number of possible effects (outcomes) at both economic and organizational levels. The following possible economic effects have been mentioned⁵⁴:

- Internationalisation and cross-border provision of services
- Innovation / learning
- Specialisation
- Subcontracting and market organization
- Market position (expansion/consolidation)
- Competitiveness and productivity of companies
- Pressure on local competitors of foreign service providers in local services markets (e.g. price competition)
- Entrepreneurship

In this chapter we will analyse the economic effects which have been related to the phenomenon of posting. The results are based on the different sources used for the study. It will be clear from the country studies that the effects are country and sector specific and also depend on the type of posting. This can be explained by the context specificity of the drivers and barriers influencing the phenomenon of posting. We consider the analysis and assessment in this study to be a first line assessment where we explore the fields where posting has an influence. The exploratory nature of this study must be stressed because the many relations between economic and social elements on one hand and posting on the other, have not been explicitly studied before.

3.2.1 *From a sending perspective*

With respect to the economic effects from a sending perspective, the effects of posting are not clearly distinguished from the effects of overall geographical labour mobility, including migration. However, it is clear that posting is an element of international dynamics which have become increasingly important for European economies. Internationalisation was also mentioned as an important driver for posting. Interviewees believe that the economic crisis has only temporarily slowed down the internationalisation of activities.

With respect to the economic effects of posting from a sending perspective, we found the following results:

- **Economic development of companies:**
 - Entering new markets: first of all, posting supports entry into a new cross-border market. Posting is often used because it is more flexible and efficient to send experienced staff to a new establishment to help set up the business. This is typical for intra-company posting.
 - Improving quality of cross-border services: posting is important in order to maintain and improve the amount and quality of cross-border services offered to international clients. It allows to companies to send

⁵⁴ In the analytical framework two other aspects were mentioned: management cost and administrative burden, and the relevance and perception of posting among stakeholders. These two items have been treated under the previous chapter as they are more related to drivers and barriers to posting.



experienced employees for a short period abroad to give training, or to install specialised equipment, for example.

- Geographical centralization of R&D and training: companies' research centres and training centres are increasingly organised on a European level, requiring mobility of research staff. This effect is typical for intra-company posting in multinational companies.
- **Possible contribution to economic growth:** the literature focuses on the economic impact of labour mobility or labour migration, not specifically on the impact of posting. Since posting can be considered to be a specific form of labour mobility (cfr 3.1.1 Posting as a form of geographical labour mobility), we explore to what extent the conclusions may hold. According to the literature, the balance of positive and negative effects of increased cross-border mobility on the sending countries depends mainly on whether labour migration is primarily temporary or permanent. Returning migrants may give a boost to economic growth by bringing in capital, skills and new ideas acquired abroad, which may offset the initial losses caused by brain drain (Heintz and Ward, 2006). Assuming that posting is a variant of returning migration, posting could have positive effect on the sending countries. However, the impact then depends both on the volume and the characteristics of posting.

The information on the perceived economic effects associated with posting per country case is presented below.

Table 28: Economic and organisational effects associated with posting – sending perspective

Country	Economic and organizational effects associated with posting – sending perspective
Belgium	<ul style="list-style-type: none"> • From the perspective of Belgian employers, posting contributes to the technical and economic development of companies, with differences between sectors. Posting contributes to entry into market, service to clients, to R&D activities, to EU networking • Posting is used both in multinationals and in SME's with international activities. In some companies both in-company posting and subcontracting plays an important role e.g. large pharmaceutical establishments, SME's with international activities
Bulgaria	<ul style="list-style-type: none"> • Cooperation with companies from other EU countries inevitably raises the capacity for innovation • It cannot be said that posting leads directly to the start of new business in Bulgaria • Administrative requirements increase the burden related to posting
Poland	<ul style="list-style-type: none"> • The effect of internationalisation is minimal, but may be larger for SME's in the construction sector and for temporary work agencies • Posting creates new jobs abroad and therefore has positive impact on growth but this depends on the economic climate • No special impact on innovation and specialization
Spain	<ul style="list-style-type: none"> • Increasing competitiveness in terms of quality and price • Not more innovation in the construction sector, as the techniques of Spanish and Portuguese construction companies are very similar

Source: IDEA Consult/Ecorys NL based on interviews

As a practical example of how different effects evolve in a specific national context, the assessment of the economic effects in Poland is described in the box below.



Box 5: Economic and organisational effects in the construction and temporary working agency sector in Poland

According to interviewees, posting and the PWD do not promote competitiveness, innovation and internationalisation in the Polish construction sector. At present, the construction sector in Poland is rather innovative and specialized. The impact on innovation and specialisation may be greater for SME's. For SME's companies in the construction sector, posting is reported to be important to access markets outside of Poland. Some Polish construction companies are solely active in the German market (and not in the Polish market). This only applies to a limited number of Polish construction companies that have specialised completely on the German market. Besides being important to access markets outside of Poland, posting can help a Polish company to gain good references for the home market. Experience gained in Germany can also be an asset while entering other MS markets (e.g. Finland, France). In general, posting has a limited effect even in the construction industry, where this is a relatively large phenomenon. Between 1999 and 2002, when the Polish construction industry experienced a crisis, posting of workers to other Member States was important for the survival of some companies. This is no longer the case, with the exception of the few companies that specialise in posting / providing services abroad.

Temporary working agencies can enter foreign markets as a result of the PWD. Although posted workers earn the same wage, the social security contributions are often lower than those of local workers, which give the temporary working agencies a competitive edge. This has a positive effect on internationalisation, entrepreneurship, market organisation, specialisation and competitiveness of smaller agencies with respect to local players and large international agencies.

Source: IDEA Consult/Ecorys NL based on interviews

3.2.2 From a receiving perspective

To date, it is largely the effects on receiving countries which have been studied in the literature. In addition, the literature focuses on the effects of subcontractor posting:

- **Increased production:** hiring posted workers can boost the production of the company (Dølvik and Eldring, 2006).
- **Improved flexibility:** companies' flexibility can increase both in terms of working hours and wage costs because foreign service providers and their posted workers can be hired in accordance with the – often fluctuating – labour demand in the company (Dølvik and Eldring, 2006 and 2006b). The flexibility factor was also mentioned as an important driver for posting (see also previous chapter).
- **Mixed impact on competitiveness:** the picture of the impact on competitiveness in the literature is mixed.
 - From the country field research we learn that the impact on the competitiveness and productivity of receiving companies is meaningful. Three effects play a role here: the increased flexibility of companies in terms of production capacity and in terms of work organisation, more continuity in production and service provision, the cost effect and having access to specialist skills (country studies and web-based survey). It is clear that this can improve the market position (e.g. market share) of companies. There is no significant effect on innovation or specialisation in receiving companies.
 - Some studies on posting mention that it can distort competition in the receiving countries (Hansen and Andersen 2008). Survival of (competing) enterprises in receiving countries can be at stake due to competition by labour costs; this could be due to lower wages or to



lower security contributions (or both) (Worthmann⁵⁵, 2006, Blanpain, 2006). In the case of the construction sector, the occurrence of unfair competition is often mentioned during the country studies. Interviewees stress, however, that unfair competition is very often the result of an unlawful use of posting. This means that normal working conditions are not respected, especially working hours and wages. More information on the construction sector is provided in the sector case study in the following chapter.

- **Growing role of temporary agencies and intermediate companies:** according to the literature, posting contributes to the growing role of temporary agencies in the recruitment of workers. The temporary work agencies seem to play a new and considerable role in the recruitment of Eastern European workers (and foreign workers in general). This is the case in the construction industry in Denmark, for example. Companies in the sector have had very mixed experiences with temporary work agencies. Some have been very efficient and competent collaborators, while others only wanted to make a quick profit (Hansen and Andersen 2008). However, the question is **to what extent this can be considered posting, as defined in the Posting of Workers Directive**. According to two sector studies, posting is one of three types of cross-border services and it is the less frequently used type of cross-border service. There are no reliable data on the number of posted temporary agency workers (Working Lives Research Institute, 2009 and Rodríguez, 2009, Part 1 of). Furthermore, temporary work agencies are not active in all sectors, and are excluded from the construction sector in Spain or the public sectors in both Spain and Belgium, for example (Rodríguez, 2009). The country field research did not provide specific information on the role of posting in temporary agency work because of a lack of quantitative data and studies on the national level. Anyway, there seems to be a discrepancy between different findings (increasing role for TAW / large share according to statistics in France and Luxembourg on one hand, on the other hand posting is least important type of cross border TAW, in most country studies posting not relevant for TAW and no information available). Clarifying this would require further information and research.
- **Networks of companies and subcontracting chains:** in the receiving countries posting of workers often occurs in the form of increasingly complex organisation of certain services and networks of companies held together by subcontracting relationships which have been referred to as 'extended companies'. This can lead to lack of transparency regarding responsibility. The subcontracting down the line can also lead to pay level deteriorations down the line (Lefebvre, 2006; Skarpelis and Brown, 2008; Hansen and Andersen, 2007). Although longer subcontracting chains are more typical in certain sectors and posting could be considered a consequence of this trend (rather than causing it), they were mentioned in the literature, especially in relation to posting. This issue is confirmed in the country case studies.

The results from the country studies are summarised in the table below:

⁵⁵ In relation to the construction sector in Germany.



Table 29: Economic and organisational effects associated with posting – receiving perspective

Country	Economic and organizational effects associated with posting – receiving perspective
Belgium	<ul style="list-style-type: none"> • Increased competitiveness. Subcontracting supports the production and service process (efficiency gains) • No significant effect on innovation and specialisation • Posting is considered to have an important economic effect in the construction sector. There are positive and negative effects. On the one hand it contributes to continuity in the local market in case of lack of skilled workers. It also provides companies with flexible capacity. On the other hand, unlawful application of posting leads to unfair competition.
Denmark	<ul style="list-style-type: none"> • Increasing competitiveness of companies • No direct impact on innovation and specialization • Increasing administrative burden
France	<ul style="list-style-type: none"> • More fierce competition for some French companies, but for others it is a way to respond to their labour shortage • Posting is sometimes seen to encourage unfair competition • Administrative and financial burden is increasing for trade unions and companies to expand the protection of their members/employees
Germany	<ul style="list-style-type: none"> • Economic effects like innovation and specialization are irrelevant • Construction sector: need to cut costs, prices become increasingly under pressure, cost-reduction achieved through the deployment of posted workers
Netherlands	<ul style="list-style-type: none"> • Posting can positively influence the market position of a company • In the construction sector, there is a tendency of chains of contractors and subcontractors which creates a complex and non-transparent market organization • Increasing competitiveness of companies through lower costs, but also through increased productivity (e.g. the work ethos of posted workers is often higher) • No direct effect on innovation, nor on specialisation

Source: IDEA Consult/Ecorys NL based on interviews



3.2.3 *Conclusion*

Main economic effects according to type of posting

The table below illustrates the different economic effects per type of posting. In short, we can say that posting under a contract between different companies is strongly concerned with economic aspects. First of all, the advantage of lower labour costs for receiving companies and higher earnings for posted workers can make a difference. There is also a tendency to search for efficiency at European level, whereby companies tend to centralise purchasing policies at European level, by closing contracts on EU-level for maintenance, ICT, for example. Posting has contributed in sectors where it plays a significant role - especially in the construction sector- noticeably to competitiveness and competition in the sector. Finally, posting between different companies is also related to the international provision of services in general. Service providers consolidate or expand their international market by servicing international clients through short-term assignments at the client's workplace. The purchasers of these services are also able to gain access to specialist skills across borders.

Intra-company posting is rather a phenomenon in multinational companies although specialised SME's with international activities also make use of it. International mobility is a necessity for these enterprises and it contributes to the overall development of the companies.

Temporary work agencies play an increasingly important role in the recruitment of workers from Eastern Europe and foreign workers in general. With respect to posting by means of temporary agency work, we cannot make a conclusion on the effects due to a lack of information and inconsistent findings.

Table 30: Main economic effects according to type of posting

Type of posting	Profile of posted workers	Main economic effects
Posting between companies	Technically skilled workers, craftsmen Manual/Lower skilled workers Specialists	Receiving: <ul style="list-style-type: none"> ▪ Outsourcing via subcontracting on EU level ▪ Competitiveness (productivity and cost reduction) ▪ Fiercer competition in the sector ▪ Access to specialist skills Sending: <ul style="list-style-type: none"> ▪ Market entry / market expansion ▪ On-site service to international clients
Intra – company posting	Managers and specialists (engineers, technically skilled persons, sales)	Internationalisation of services (market entry) Support to R&D and networking Quality of services to clients (tailor made and personalised service)
Posting through temporary agency work	Low skilled and manual workers in agriculture/meat processing and HORECA	No consistency in findings/lack of information

Source: IDEA Consult/Ecorys NL



Overall assessment of economic effects of posting

Combining all findings in relation to the economic effects, the research team assessed the possible economic effects related to posting identified in the analytical framework, as presented in the table below. We consider the contribution of posting:

- To be strongly positive in the field of the provision of cross-border services and internationalisation and competitiveness and productivity of companies (++)
- To be moderately positive in the field of market expansion/consolidation (+)
- In the field of subcontracting and market organization posting can be seen as a consequence of longer subcontracting chains and business networks (0). In the context of diverging labour costs in labour intensive sectors, posting contributes to the creation of more/longer subcontracting chains and intermediate agencies for recruitment thereby increasing market complexity and having a negative effect on market transparency (-)
- In specific sectors and countries where posting is highly concentrated, we believe that local competitors undergo fiercer competition (-)
- In the field of specialisation and entrepreneurship there is not enough information available to support an assessment (NA).

Table 31: Main economic effects associated with posting

Posting contributes to	Assessment*	Comment
Internationalisation and cross border provision of services	++	
Innovation / learning	0	
Specialisation	NA	
Subcontracting and market organization	0/-	Posting as a consequence of subcontracting (0) / posting contributing to more complex market organisation (-)
Market position (expansion/consolidation)	+	
Competitiveness and productivity of companies	++	
Pressure on local competitors of foreign service providers in local services markets (e.g. price competition)	-	In cases where posting is highly concentrated
Entrepreneurship	NA	

Source: IDEA Consult/Ecorys NL

* Legend: ++ strongly positive / + moderately positive / 0 no effect found/ - moderately negative / -- strongly negative / NA no information available



3.3 The social and labour market effects

The possible effects (outcomes) on social and labour market level which are analysed in this study now follow:

- Concentration in specific regions / communities or professions
- Functioning of local labour markets: addressing shortage of labour, shortage of skills
- Effect on local wages and employment opportunities for local workers
- Change in working and living conditions of posted workers (positive, negative, mixed).

The discussion of the social and labour market effects is based upon two different sources, literature and country studies.

The specific social and labour market effects of posting are **rarely addressed in the literature**, particularly for sending countries. Most attention is paid to the working and living conditions of posted workers in receiving countries. A study on intra EU labour mobility shows that the **determination of the employment and working conditions of labour migrants in the EU is very difficult** and the studies provide a mixed picture (Galgóczy et al. 2009). We believe that this conclusion also holds for posting as a specific form of labour mobility. In addition, the literature also has a tendency to focus on the negative social effects⁵⁶ of posting in relation to a specific type of posting, namely posting through subcontracting of manual workers and craftsmen. Therefore, the country studies were necessary to provide complementary information on the sending perspective, and on both positive and negative effects related to posting.

With respect to the **quantitative impact** of posting, we can refer to some of the main results of Part 2 and 3 of this study. It was found that posted workers represent a significant form of geographical labour mobility. However, compared to the total active population in the EU, posted workers represent a relatively small group (0.37% in EU-15 and 0.74% in EU-12). Due to the concentration of posting in countries and sectors, the relative size of posting can considerably vary within the EU. In terms of persons, posting can become more significant in specific cases. One example is provided for the construction sector in Belgium where posted workers received in the construction correspond to 11.30% of the number of employees in that sector in 2007 (see further Sector analysis construction). In terms of full-time equivalents, the relative size is again lower if we assume that assignments by posted workers usually represent (much) less than a full time equivalent.⁵⁷

⁵⁶ This bias in the literature has been described in Part 1, 2.1 Methodology.

⁵⁷ We lack sufficient data to draw more specific conclusions. The conclusion is based on data concerning France and Belgium in Part 3 Section 3.3 National cases.



3.3.1 *From a sending perspective*

In the sending country studies, information was initially sought as regards the labour market effects, including unemployment rates and brain drain; and secondly on mobility, employability and the working and living conditions of posted workers.

- In general, interviewees see relatively small effects on the labour market (macro level) due to the small number of posted workers compared to the total active population and compared to the more important permanent migration flows from the New Member States to the Old.⁵⁸ Another explanation is the fact that most posted workers return to their home country after the posting assignment (see also contribution of posting to economic growth). A positive but small effect on **unemployment rates** in Poland and Bulgaria was mentioned. Labour migration has a larger impact on unemployment in these two countries compared to posting. Moreover, the profile of posted workers is different from the profile of unemployed persons.
- The **brain drain** effect is also limited, under the assumption that the average duration of postings is limited and that posted workers mostly return home after their assignment. The eventual effect would depend on the number of posted workers eventually migrating to another country (as a next step in their journey) and on the profile of the posted workers involved. In the country study of Bulgaria it appears that if a posting assignment leads to more permanent migration, it often concerns specialists e.g. in IT and scientific staff.
- From the country study in Belgium, it is clear that posting facilitates **geographical mobility** in the form of short term assignments abroad. Working conditions and social security provisions in Belgium are usually better than abroad, so employees like to maintain the working conditions they are used to at home.
- **Employability and skills:** interviewees believe that skills and experience can increase because of the participation to posting assignments and the acquaintance with techniques in receiving countries. In the country study of Poland, it was also mentioned that construction techniques can differ between countries and that a new technique applied in the host country is not necessarily useful in the home country. Moreover, there is also an element of exporting skills since skills need is one of the drivers for working with posted workers and they are often experienced workers. There is, however, not much evidence available on this issue. The skills and competence factor would therefore need further investigation.
- Great variation in **working and living conditions** of posted workers. In order to discuss the main findings in this area we distinguish between the following topics: remuneration; payment and working hours; health and safety at work; social integration in the receiving country; and the personal situation of the posted worker. A great variation between working and living conditions of posted workers is found in a range of good (above minimum requirements), in line with minimum requirements (no more no less) or precarious and illegal (below minimum requirements). This will typically vary with the type of posted job, the profile of the posted workers and the type of posting. Intra-company posting of managers is likely to be found in the best

⁵⁸ Compared to the stock of resident foreign nationals in receiving countries posting can, however, be an important phenomenon, as was demonstrated in Part 2 of the study.



category whereas manual workers/low skilled workers/craftsmen have a much higher risk for precarious and illegal posting assignments.⁵⁹

- **Remuneration, payment and working hours:** minimum rates of pay and working time are important elements in the terms and conditions of employment considered by the Posting of Workers Directive. Depending on the profile of the posted workers and the type of posting, different findings appear. For postings of high skilled workers and managers (mostly intra-company posting or posting between different sectors) the working conditions are assessed to be sufficient and even above the minimum requirements, because employees would not accept inferior conditions. The posting of manual workers and craftsmen through subcontracting or intermediary agencies has led to many problems and violations of rates of pay, working hours and payment of wages. The literature pays considerable attention to these problems also referred to as 'race to the bottom' or 'social dumping'.⁶⁰ The country studies in Poland and Bulgaria, and the country studies in the receiving countries confirm the existence of precarious situations. It is impossible to establish how often these problems occur but it is clear that deviations from what is both legally permitted and socially acceptable are condemned by all interviewed stakeholders.
- **Health and safety at work:** problems arise especially for low-skilled posted workers. A lack of both language skills and an understanding of work standards and security procedures can lead to unsafe situations at work for posted workers and their local colleagues. This is especially a problem within specific sectors such as construction or agriculture, where working with machines is often required (Hansen and Andersen, 2007; Chotkowski etc, 2007; Dølvik and Eldring, 2006).
- **Social integration** in the receiving country: cases of social isolation and bad housing conditions are mentioned in the literature on posting about Nordic countries, France and Germany (Skarpelis and Brown, 2008; Geers, 2007; Dølvik and Eldring, 2006; Lefebvre, 2006 and Szewczyk and Unterschütz, 2009, Skarpelis and Brown, 2008). In the country studies, social isolation also was mentioned (Poland, Germany as receiving country), especially in relation to lack of contact with the local population and other local workers.
- **Personal situation of posted workers:** here information was collected on income, family life and execution of rights:
 - Posted workers from the New Member States can gain additional income compared to what they earn in the host country. The additional income can be saved or invested.
 - Posting can play a role in the disruption of family life due to the worker's absence from home. Reported examples are divorces, alienation from family, placing children in care homes, and alcoholism (country study Poland).

⁵⁹ It was not possible to collect specific data on wages, working and living conditions in relation to posted workers. The bibliography in annex contains an overview of consulted sources. This type of data could also not be collected during the field work of this study.

⁶⁰ Social dumping refers to the situation where posted workers are faced with working conditions that are substantially inferior to those of national workers (Dølvik and Eldring, 2006s; Cremers et al., 2007; Hansen and Andersen, 2008). The studies mention cases where posted workers get wages according to the minimum wage but never surpassing it (Carsten, 2008). There are also cases of wages of posted workers being below minimum wage (wage dumping) whereas wages of workers from the host country doing comparable work are paid more (Carsten, 2008; Dølvik and Eldring, 2006; Hansen and Hansen, 2008; Kahnmann, 2006; Krings, 2009).



- Finally, a problem in relation to information and rights was mentioned. Lower-skilled workers from New Member States do not often complain about problems related to bad working conditions, payment of their wage et cetera (country study Bulgaria and Poland). This can be due to a lack of knowledge about their rights or the attitude of the employer.
- In addition, the rise of **self-employment** is mentioned in the literature as a possible side-effect because it provides a channel for evasion of the terms and conditions laid down in the PWD in most European countries (Cremers et al., 2007).
- A last effect mentioned in the country study of Poland was a possible upward effect on **working conditions and wages** in the sending country because posted workers are able to compare the situations between the receiving country and their home country.

The results from the country studies in Belgium, Poland and Bulgaria are summarised below. The relatively recent experience of the Posting of Workers Directive in Bulgaria is described thereafter in a separate box.



Table 32: Labour market effects associated with posting from a sending perspective

Country	Effects on the labour market
Belgium	<ul style="list-style-type: none"> • Posting is considered to be an important instrument in HR-policies enabling and encouraging the geographical mobility of staff and providing security for employees. In this sense posting is a good example of the flexicurity approach. • Working and living conditions of posted employees are good
Bulgaria	<ul style="list-style-type: none"> • Posting reduces unemployment in Bulgaria and raises the standard of living. However, impact on the level of poverty in Bulgaria is marginal because of small numbers of postings compared to migration • Working conditions of posted workers abroad are not always good. It is sometimes accepted because it is compensated for by higher remuneration. Impressions are that working conditions of Bulgarians abroad are worse than those guaranteed by the Directive. But there are few workers complaints. • Long-term and medium-term posting has the potential to increase the professional development of workers and workers come back with good practices • Some brain drain is inevitable but its effect on the local market is marginal. Brain drain is worse in the case of real migration. However, some posted workers stay in the receiving country after their posting assignment (as in IT and scientific exchange). As a rule, more posted workers return to Bulgaria than migrant workers in general.
Poland	<ul style="list-style-type: none"> • Positive effect on unemployment in the country, but given the limited scale of posting, this effect is limited. However, there seems to be no match between unemployed people in Poland and those who are posted (there are many young unemployed people, but posted workers are often older experienced workers) • Brain drain occurs through regular migration, not through posting because this often includes low educational qualifications. Complaints about health and safety are increasing. • Salary abroad is better than in Poland (impact on one's savings), but there are many complaints about payment • Isolation of posted workers abroad • Posting can have a positive impact on employability as technical and managerial skills improve, increase of human capital • There is an impact on working conditions in Poland as posted workers are able to compare both situations. In construction, posting puts an upward effect on local wages (also attributed to the migration of workers) • Posting (especially long term and/or frequent posting) can cause disruption of family life in Poland (alienation from the family, divorces, leaving children in care homes during the stay abroad, alcoholism)

Source: IDEA Consult/Ecorys NL based on interviews

*Box 6: Perceived effect of PWD on the Bulgarian labour market*

Interviewees consider it too early to evaluate the impact of the Directive on the Bulgarian labour market. Still, it can be noted that the employers' associations have always supported flexible and open markets for services and less restrictions on business. However, with the continuing opening of markets, the outflow of qualified labour force from Bulgaria to other countries (including EU) will continue. From a legal point of view, the establishment of legal working conditions for workers in the same sector in all EU countries removes unfair competition between service providers and both parties can benefit from the employment relationship. A stronger HR policy by Bulgarian employers is needed to keep expertise in the country.

The correct implementation of the Directive should lead to positive impacts both for employers and for employees. It is designed to help companies enter foreign markets and reap higher benefits, while at the same time allowing Bulgarian workers to earn higher wages and to gain skills and qualification. However, when posting of foreign workers to Bulgaria happens, this represents competition for Bulgarians and this has a negative impact on local employment in the conditions of economic crisis (position of trade unions).

In reality, the limited and short implementation of the Directive has been also partly blocked by some negative practices used to avoid compliance with the Directive provisions. This has been to the detriment of employers – as it affects their image negatively despite the possible one-time profits: to employees, who are deprived of the protection provided by the PWD; and to receiving country's businesses and workers, because of the unfairly low cost of labour of such a posting. Bulgarian trade unions therefore believe that more control is needed in the implementation of the Directive in order to avoid possible abuses of workers' rights.

Source: IDEA Consult/Ecorys NL based on interviews

3.3.2 From a receiving perspective

From the perspective of receiving countries, the results focus on the importance of the local labour market, in terms of labour shortages in the receiving country; the possible effect on host country wages; working conditions and the displacement of local workers.

- Comparable to the findings for the sending countries, posting is only believed to have small effects on the host country labour market and only in specific sectors such as construction where posting is concentrated (Denmark, France, Belgium).
- Posting contributes to the **reduction of labour shortages** in the receiving country. With respect to labour shortages in specific sectors where posting is concentrated like construction, transport, and the meat processing industry, it is noted that posting contributes to reducing qualitative labour shortages. The qualitative labour shortage refers to a situation where not enough local workers can be found to do the job, as it may have a bad image of the job or involves difficult working conditions (e.g. agriculture and meat processing). The lack of sufficient workers with the right skills or the need for rare specialist skills also indicates a qualitative shortage of labour. This effect is specifically related to the posting of manual and technical workers and specialists. However, in periods of strong economic growth and in border regions, posted workers can also help to reduce a quantitative labour shortage.
- **Limited effect** on host country **wages and working conditions**. Some studies mention that posting can have a downward effect on host country wages and working conditions. This was mentioned in studies about Nordic countries, Ireland and Germany (Dølvik and Eldring, 2006; Flynn, 2006; Worthmann, 2006). Empirical studies find a small negative effect of increased migration on wages (Heinz and Ward, 2006; Kahanec and Zimmerman,



2010.) Other studies on intra EU labour mobility show that the impact on wages – larger wage decline or lower wage rise - are more common in sectors where foreign workers are concentrated (Galgóczy, etc 2009). In the country studies there was no mention of effect on host country wages. In relation to working conditions, an increase of undeclared overtime work and the negative effect on the reputation of a profession due to illegal work were reported in France. The increase of unsafe situations at work due to the presence of workers without sufficient language skills was mentioned in the Netherlands (agriculture).

- **Limited evidence of displacement of local workers.** The displacement of local workers by posted workers is not systematically studied in the literature about posting. A few studies mention the displacement of local workers in certain sectors in Germany. They show that since the EU enlargement there is some evidence of the displacement of workers in Germany as a result of increased competition from Eastern European service providers in sectors such as the meat industry and even in the metal and electronics industries, which previously had not been involved in the posting of workers (Krings, 2009; Czommer and Wortman, 2005). In the country studies the displacement effect was also mentioned in Belgium (construction and maintenance).

The labour market effects according to the stakeholders interviewed during the country studies are summarised by country in the table below.



Table 33: Labour market effects associated with posting from a receiving perspective

Country	Effects on the labour market
Belgium	<ul style="list-style-type: none"> • Posted workers only address local labour shortages e.g. specific skills in the construction sector to a limited extent • There are displacement effects e.g. in the maintenance and the construction sector. Indications are temporary economic unemployment of local staff while foreign subcontractors perform the work, decrease of staff directly through lay-offs or restructuring or indirectly (no replacement policy). • The working and living conditions of posted workers vary greatly. Unlawful application of working conditions and precarious living conditions exist in various sectors (e.g. transport, construction). It is difficult to obtain a good overview of the situation due to a lack of documented resources.
Denmark	<ul style="list-style-type: none"> • No effect on the general level of unemployment in Denmark, only on the level of unemployment for Danish construction workers • Concerning working conditions, rules are not always obeyed, especially safety at work in the construction sector • Posting has in times of high economic growth increased the match between supply and demand
France	<ul style="list-style-type: none"> • Destabilizing effect on labour market is marginal • Increasing direct employment (according to some) • Companies are reducing their costs, the posted (foreign) workers are low paid; they work a lot of extra hours; their working conditions are worse • There is more illegal work. This does not affect local workers negatively, but it provides a bad image of certain professions, in particular to temporary workers
Germany	<ul style="list-style-type: none"> • Working conditions have not become worse, there is however, more undeclared overtime • Increased effect on wages and working time for (low qualified) native workers • PWD helps to reduce distortions on the labour market • In construction sector: <ul style="list-style-type: none"> ◦ Crowding out must have taken place in the construction sector before PWD was implemented (1990s) ◦ Cases of posted workers under bad working conditions ◦ Posting is irrelevant for societal integration and related social activities because of the relative short duration of posting. Most posted workers work isolated
Netherlands	<ul style="list-style-type: none"> • No major effect on the Dutch labour market • In agriculture and construction language can create a barrier between local and posted workers and can lead to unsafe work situations. • Posting can improve the match between supply and demand when it comes to skills shortages (but not to labour shortages)
Spain	<ul style="list-style-type: none"> • Any social effect of posting in Spain is small in comparison with the huge social effects of the economic crisis, particularly in construction • Sometimes workers blame posting for the decrease in rates of pay while this is actually due to the crisis • In the construction sector, posting filled labour shortages during the boom but demand decreased in the last two years • There are often complaints about longer working hours and week-end work for workers posted from Portugal • Often only a percentage (e.g. 70%) of salary is given as such, the remaining part is given as cost allowance for travel and living expenses. So the basis for social security contribution of posted workers is lower. • In agriculture, contracting from abroad favours skill transfers: workers coming to the same Spanish farm every year learn new skills that sometimes reuse by starting a new business in their home country (this also refers to migration).

Source: IDEA Consult/Ecorys NL based on interviews



3.3.3 *Conclusion*

By way of conclusion, we assess the social and labour market effects analysed in the study:

- In general, the labour market effects of posting are considered to be minimal. This includes effects on unemployment rates, overall employment and brain drain or brain gain. This conclusion holds for both sending and receiving labour markets. However, significant effects can be found in sectors where posting is concentrated, with construction being the most obvious example.
- From a sending perspective, posting facilitates geographical mobility. From a receiving perspective, there is an effect on labour shortages/labour mismatch. The strongest impact is found for qualitative labour shortages in receiving countries.
- A possible limited effect on wages and working conditions was reported by the country studies, both in sending (upward) and receiving countries (downward), but this observation is not evidence based. In receiving countries there is limited evidence of displacement of local workers by foreign workers.
- A great variation between working and living conditions of posted workers is found, ranging from good (above minimum requirements) over in line with minimum requirements (no more no less) to precarious and illegal (below minimum requirements). This will typically vary with the type of posted job, the profile of the posted workers and the type of posting. Intra-company posting of managers is likely to be found in the best category whereas manual workers/low skilled workers/craftsmen have a much higher risk for precarious and illegal posting assignments. Detailed information on individual level such as data on hours worked, wage granted and payments could not be collected.
- The personal situation of posted workers can improve in the field of employability (skills, experience, language) and income and savings. Disruption of family life is mentioned as a negative element. Workers also do not make use of their rights sufficiently for information and complaints.

The assessment of the social and labour market effects is summarised below.

Table 34: Main social effects associated with posting

Effect	Assessment*	Comment
Concentration in specific regions / communities or professions	NA Concentration in countries ++ Concentration in sectors ++	No information collected on concentration in communities/professions Lack of sector information
Functioning of local labour markets: addressing shortage of labour, shortage of skills	Reduction of quantitative labour shortage + Reduction of qualitative labour shortage ++	
Effect on local wages and employment opportunities for local workers	Local wages 0 Employment opportunities for local workers - (in specific situations)	In cases where posting is highly concentrated
Change in working and living conditions of posted workers	General level: mixed: from ++ to -- compared to minimum requirements Individual level: NA	Depending on profile of posted workers

Source: IDEA Consult/Ecorys NL

* Legend: ++ strongly positive / + moderately positive / 0 no effect found/ - moderately negative / -- strongly negative / NA no information available



4 SECTOR ANALYSIS

4.1 Introduction

In the terms of reference for this study, it was requested that this study assesses the economic and organisational effects of posting in six sectors where posting is relatively more present - 'construction, transport, hotel, restaurants and catering, agriculture, fisheries and temporary agencies'.

Aside for the construction sector, it was not possible to find robust information. We conclude that information about the phenomenon of posting in different sectors is very limited and that the information available is fragmented and diffused. Therefore, it is difficult to gain a coherent picture of the size and characteristics of posting and of the effects of posting in different sectors.

Several reasons explain the information gap for the transport; hotel; restaurants and catering; agriculture; fisheries and temporary agencies sectors.

The first reason is the lack of quantitative data on the use and distribution of posting in sectors. Better data may exist at country level or at sector level, but the data are not exploited through reports or data sheets or are not transmitted to the researchers.

The review of existing literature (apart from the construction sector) showed that there is not sufficient information in sector studies or other economic and social studies enabling conclusions to be drawn in relation to the use or the effects of posting in the sector. Sector studies usually focus on competitiveness aspects with an economic and regulatory perspective. Sector studies regarding labour market conditions usually focus on the situation of host country workers.

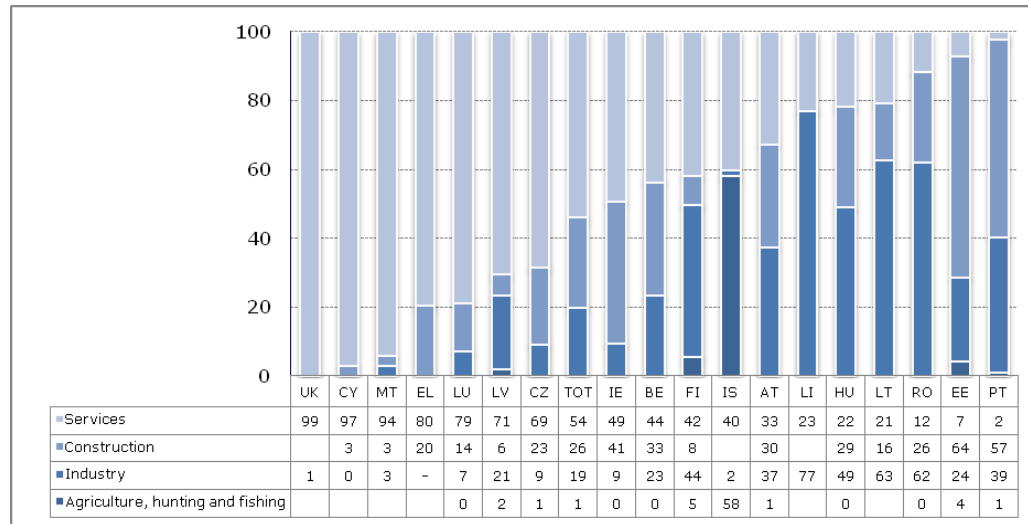
Thirdly, contacts with social partners of the different sectors (see Annex 5 for an overview) did not solve the information gap. A lot of statements have been made, but they are usually illustrated with ad hoc examples and are not evidence based. Most notably, almost no information is available on the employment and working conditions of posted workers in particular sectors.



4.2 Sector distribution of posting

Through the information that we have gathered through national data collection, we have provided a sense of the sector distribution of sent postings (see Part III). Again, due to the fact that many countries (including France, Poland and Germany, as important sending countries) did not provide a distinction by economic activity, reliable conclusions on the distribution of posted workers by sectors of economic activity cannot be drawn.

Graph 38: Postings by economic activity, 2007



Source: IDEA Consult/Ecorys NL based on data collection of European Commission

The data suggest that more than half of posted workers were sent to the services sector, particularly transport activities, financial intermediation and business activities. Around 46% of postings were issued for activities in the industry sector, particularly to the construction sector (26.3%). Agriculture and fishing only represents 0.5% of the total number of postings.

The construction sector is discussed in detail below. The construction sector is considered to be one of the most important sectors with regard to the size of posted workers. This sector is key to the Posting of Workers Directive as much of the initial consultation over the Directive took place in relation to the construction sector. Not surprisingly, this is the sector where most reliable information about posting is available. The information is gathered through the literature review covering the existing documents and literature on posting in the construction sector, field research in the eight selected countries the statistical data collection during the study, the EU-level interviews and the web-based survey.



4.3 Sector case: construction

In the following section, key characteristics and trends within the construction sector are described. Secondly, we look at the available data on the number of posted workers in the EU. Potential social and economic effects of posting in the construction sector are discussed in the third part. This section ends with two company cases of the construction sector, one in Belgium and one in the Netherlands.

4.3.1 *Characteristics*

Construction is a key sector in Europe employing more than 13 million workers, of which 1 out of 5 is self-employed. Compared with other industries, construction is one of the most labour-intensive industries with a lot of workers working on temporary basis. The construction workforce constitutes the heart of the business and is the main economic pillar. In this framework, the Posting of Workers Directive is considered to be one of the cornerstones of European legislation for the construction industry.

The construction sector is defined as relating to enterprises covered by NACE Rev. 2, Section F.⁶¹ The sector comprises of a wide range of companies which fall into several activity classifications. The largest of those activities in the EU-27, both in terms of employment and value added, is the general construction subsector (NACE 45.2). The construction industry is a key sector in Europe and is highly concentrated in Spain, Poland and Cyprus (Stawinska, A., 2010). It is known to have some specific characteristics (Coreel D., 2009):

- Highly fragmented and fierce competition between companies
- Complex subcontractor chains and a high amount of SMEs
- Particular working and employment conditions (e.g. weather)
- Social partners play an important role in regulating these conditions
- Highly labour intensive compared to other industrial sectors
- The workforce has a high degree of mobility

As regards the second point on subcontractor chains, significant changes have occurred in the work organization in the construction sector. Construction projects were previously undertaken by larger firms with a large number of well-educated construction employees. Nowadays, increasing numbers of tasks are being dismantled into simple parts and distributed among smaller companies.

Almost 13 million employees, more self-employed workers than in other sectors

The construction sector accounted for 12.7 million people employees in 2009 (although the economic downturn has inevitably had an impact on the number of persons employed). The construction sector in Germany was the largest among the Member States in 2009. The 2 million workers employed in these activities represented around 16.3% of the construction workforce in the EU27. Following the economic downturn which began in 2008, the construction industry has been hit quite hard. The amount of jobs becoming available has actually decreased, particularly in Spain and in the Baltic countries.

⁶¹ Definition Labour Force Survey from 2008. Prior to 2008, construction was defined according to NACE Rev. 1.1.



22.3% of all workers in the construction sector are self-employed. This is significantly higher than the average in all sectors (11.8%). However, the situation differs from country to country. The number of self-employed workers in construction is particularly high in Slovakia (70.3% against the average of 14.3% of self-employed workers in all sectors), the Czech Republic (50.5% against 14.6% in all sectors) and in the UK (48.5% against 11.6% in all sectors). From the countries that have been analysed in the field research, the highest amount of self-employed workers in the construction sector is found in Belgium (20.3%) and the Netherlands (20.4%).

Table 35: % of self-employed workers in all sectors and in the construction sector in 2009

	All sectors			Construction		
	Number Self-employed (in 1000)	Number Employees (in 1000)	% Self-employed / employees	Number Self-employed (in 1000)	Number Employees (in 1000)	% Self-employed / employees
EU27	21,187.9	180,153.3	11.8%	2,834.3	12,727.3	22.3%
Belgium	385.4	3,759.6	10.3%	46.9	231.1	20.3%
Bulgaria	246	2,815.6	8.7%	18.1	291.4	6.2%
Czech Republic	591.7	4,058.5	14.6%	151.3	299.7	50.5%
Denmark	126.6	2,483.2	5.1%	18.4	141.9	13.0%
Germany	2,205.3	33,998.2	6.5%	221.9	2,076.2	10.7%
Estonia	24.1	528.9	4.6%	N/A	50.6	N/A
Ireland	193.2	1,565	12.3%	31.2	94.8	32.9%
Greece	924.4	2,884.9	32.0%	59.6	250.8	23.8%
Spain	1,907.4	15,613.1	12.2%	260.9	1,444.3	18.1%
France	1,479.9	22,821.9	6.5%	168.6	1,483.7	11.4%
Italy	3,643.3	17,203.8	21.2%	450.5	1,222	36.9%
Cyprus	42.5	302.2	14.1%	6.8	32.4	21.0%
Latvia	57.2	845.9	6.8%	6.4	68.4	9.4%
Lithuania	107	1,222.7	8.8%	10.2	106.8	9.6%
Luxembourg	10.3	197.7	5.2%	N/A	11.2	N/A
Hungary	247.5	3291	7.5%	28.9	231.8	12.5%
Malta	14.3	139.2	10.3%	2.3	8.6	26.7%
Netherlands	732.4	7,360.6	10.0%	77.5	379.6	20.4%
Austria	253.5	3,512.7	7.2%	10.8	321.2	3.4%
Poland	2,225.9	12,180.4	18.3%	156.1	1,026.6	15.2%
Portugal	624.9	3,821.3	16.4%	72	383.6	18.8%
Romania	1492	6,206.2	24.0%	154.6	551	28.1%
Slovenia	64.3	819.2	7.8%	7	50.3	13.9%
Slovakia	284.6	1,988.3	14.3%	99.9	142.1	70.3%
Finland	206.7	2,110	9.8%	25.5	131.4	19.4%
Sweden	261.7	3,963	6.6%	34.4	230.7	14.9%
United Kingdom	2,835.7	24,460.1	11.6%	710.6	1,465.1	48.5%

Source: IDEA Consult/Ecorys NL based on Eurostat, Labour Force Survey



More temporary employees than in other sectors

The construction sector seems to use temporary employees more frequently than other sectors in the EU. Table 36 shows the total number of employees and the number of temporary employees in the sector. 17% of the employees in the construction sector in 2009 are temporary employees with a fixed-term contract (this exceeded 20% in 2007). This is significantly higher than the average over all sectors in the EU27 (13.4%). In Spain and Poland, the percentage of temporary employees in construction is much higher than in other sectors.

Table 36: (Temporary) employees in the construction sector in 2007

	All sectors			Construction sector		
	Number temporary employees	Number Employees	% temporary / employees	Number temporary employees	Number Employees	% temporary / employees
EU27	24,158.1	180,153.3	13.4%	2,157.9	12,727.3	17.0%
Belgium	308.7	3,759.6	8.2%	12.8	231.1	5.5%
Bulgaria	129.4	2,815.6	4.6%	27.1	291.4	9.3%
Czech Republic	306.3	4,058.5	7.5%	18.4	299.7	6.1%
Denmark	221.8	2,483.2	8.9%	22.8	141.9	16.1%
Germany	4,934.1	33,998.2	14.5%	290.1	2,076.2	14.0%
Estonia	13.2	528.9	2.5%	N/A	50.6	N/A
Ireland	131.9	1,565	8.4%	7.7	94.8	8.1%
Greece	349.1	2,884.9	12.1%	41.2	250.8	16.4%
Spain	3,973.8	15,613.1	25.5%	614.3	1,444.3	42.5%
France	3,041.8	22,821.9	13.3%	226.4	1,483.7	15.3%
Italy	2,143	17,203.8	12.5%	157.8	1,222	12.9%
Cyprus	40.7	302.2	13.5%	1.4	32.4	4.3%
Latvia	36.8	845.9	4.4%	4	68.4	5.8%
Lithuania	27.6	1,222.7	2.3%	5.4	106.8	5.1%
Luxembourg	14.2	197.7	7.2%	N/A	11.2	N/A
Hungary	277.3	3,291	8.4%	30	231.8	12.9%
Malta	6.5	139.2	4.7%	N/A	8.6	N/A
Netherlands	1,312.8	7,360.6	17.8%	46	379.6	12.1%
Austria	318.9	3,512.7	9.1%	36.4	321.2	11.3%
Poland	3,212.8	12,180.4	26.4%	396.7	1,026.6	38.6%
Portugal	840.8	3,821.3	22.0%	111.7	383.6	29.1%
Romania	62.5	6,206.2	1.0%	10.3	551	1.9%
Slovenia	132.7	819.2	16.2%	7.5	50.3	14.9%
Slovakia	84.9	1,988.3	4.3%	7.7	142.1	5.4%
Finland	305.6	2,110	14.5%	12.1	131.4	9.2%
Sweden	592.4	3,963	14.9%	21.5	230.7	9.3%
United Kingdom	1,338.5	24,460.1	5.5%	43.6	1,465.1	3.0%

Source: IDEA Consult/Ecorys NL based on Eurostat, Labour Force Survey



Higher number of usual weekly hours of work than in other sectors

Table 37 shows the number of usual weekly hours of work in 2009. The EU27 average in the construction sector lies above the EU27 average in all sectors. In all countries, the number of usual weekly hours is higher in construction than in other sectors.

Table 37: Average personnel cost and number of weekly hours of work in the construction sector in 2009

	All sectors	Construction
EU27	36.6	40.2
Belgium	35.2	39.1
Bulgaria	41.1	42.4
Czech Republic	40.3	42.8
Denmark	32.7	36.1
Germany	34.6	38.0
Estonia	38.7	40.1
Ireland	34.2	38.1
Greece	39.6	42.2
Spain	37.6	41.1
France	36.5	38.4
Italy	36.4	39.6
Cyprus	39.8	39.5
Latvia	39.4	40.5
Lithuania	38.7	39.6
Luxembourg	36.9	39.6
Hungary	39.6	40.8
Malta	38.4	39.6
Netherlands	29.4	37.1
Austria	36.9	39.8
Poland	39.8	43.6
Portugal	39.0	41.0
Romania	41.1	42.2
Slovenia	39.5	41.8
Slovakia	39.9	42.2
Finland	36.5	39.7
Sweden	35.6	38.9
United Kingdom	36.2	41.7

Source: Eurostat, Labour Force Survey



4.3.2 Posted workers in the construction sector

Data on the number of posted workers in the sector is incomplete but the following observations are made from the available data: (1) More than 1 out of 4 posted workers in the European Union is employed in construction. (2) From national data-collection, it seems that the share of posted workers in the total number of employees is rather small. In general, most postings in the construction sector occur through temporary agencies or through subcontracting. As the PWD is key to construction, the sector makes a lot of effort (on EU and on national level) to help firms and workers to identify which provisions need to be respected.

There is lack of data regarding the overall number and characteristics of posted workers in construction. Table 38 shows the number of E101 certificates in the construction sector for the 15 countries which provided data for 2007 (Part II).

More than 1 out of 4 posted workers are employed in construction

Based on the data received in the national data collection, we find that the construction sector is an important sector for the posting of workers. On average, more than one out of four (26.3%) of posted workers in these selected countries were issued for activities in the construction sector, with large differences according to the country of origin. Posted workers from Estonia (64.3%), Portugal (57.2%) and Ireland (41.4%) are predominantly concentrated in the construction sector. Due to the fact that many countries (including Bulgaria, France, Poland, the Netherlands, Spain and Germany – countries of the field research) did not make a distinction by economic activity, reliable conclusions for the EU27 as a whole cannot be made.

Table 38: E101 certificates in the construction sector per sending country, 2007

	Total number of E101 certificates	E101 certificates in construction	
		Number	% of total number of E101 certificates
Austria	12,978	3,880.4	29.9
Belgium	46,212	15,203.7	32.9
Cyprus	143	3.9	2.7
Czech Republic	15,803	3,555.7	22.5
Estonia	9,454	6,078.9	64.3
Finland	2,451	205.9	8.4
Greece	3,179	648.5	20.4
Hungary	36,178	10,600.2	29.3
Ireland	1,074	444.6	41.4
Latvia	2,277	138.9	06.1
Lithuania	2,743	447.1	16.3
Luxembourg	46,827	6,509.0	13.9
Malta	101	3.0	3
Portugal	66,001	37,752.6	57.2
Romania	903	237.5	26.3

Source: IDEA Consult/Ecorys NL based on data collection of European Commission. See also data collection in Part III



Share of posted workers within total number of employees is rather small

The underlying table compares the total number of employees in the sector in the respective country with the number of E101 certificates (data coming from the national data collection in Part III, see Table 38). With the exception of Luxembourg, these percentages suggest that the number of posted workers is small compared to the number of total employees in the sector. As a small country, Luxembourg has many companies which are established along the borders. Therefore, it was not difficult to imagine that posting of workers could quickly become a widespread practice for them.

Again, we must note that some important countries are missing, in order to make reliable conclusions for the EU27.

Table 39: Number of E101 certificates on total number of employees in the construction sector per sending country, 2007

	Total number of employees in construction in 2007	E101 certificates in construction by sending country in 2007	Number of E101 certificates (sent employees) on total number of employees in construction
Austria	297,500	3,880	1.30%
Belgium	227,600	15,204	6.68%
Cyprus	33,100	4	0.01%
Czech Republic	277,200	3,556	1.28%
Estonia	68,100	6,079	8.93%
Finland	134,200	206	0.15%
Greece	265,200	649	0.24%
Hungary	260,600	10,600	4.07%
Ireland	205,800	445	0.22%
Latvia	113,000	139	0.12%
Lithuania	148,200	447	0.30%
Luxembourg	16,000	6,509	40.68%
Malta	7,900	3	0.04%
Portugal	438,200	37,753	8.62%
Romania	526,100	238	0.05%

Source: Labour Force Survey and IDEA Consult/Ecorys NL based on data collection of European Commission

From a receiving perspective, we can estimate for Belgium that the number of posted workers received represents 11.3% of the total number of employees in the Belgian construction sector in 2007.⁶² This is a significant number. For other countries these estimates cannot be made due to a lack of data.

⁶² The estimate is based on the following data: number of postings 2007 (Limosa), share of construction sector in number of postings 2007 (Limosa), ratio postings/number of posted workers 2007 (Limosa) assuming that the ratio in the construction sector is equal to the overall ratio, total number of employees in construction in Belgium 2007 (LFS). Applying the same method to 2009 it appears that the ratio would be higher.



Some studies report higher actual numbers of posted workers. In Norway for example, Dolvik et al. (2006) found that companies in the construction and manufacturing sectors tended to employ workers from the central and eastern European Member States through service provision rather than via direct hiring. In these sectors, firms employed foreign workers more frequently: in 2009, the use of central and eastern European workers mounted up to 33% in construction and 39% in manufacturing (Eurofound, 2010).

An interviewee from the construction sector in Poland estimated the number of Polish posted workers abroad in construction to be at 30,000 in 2009. Those are said to be mostly posted to Germany, Belgium, France, Norway and the Netherlands. However, this trend is expected to decrease because accession opened up possibilities for individual labour mobility.

Interviewees from the construction sector in Bulgaria agreed that posting is a rather small phenomenon. They stated that few construction companies post workers, as most construction workers work directly for foreign employers.

Most postings in construction occur through TWA and subcontracting

Concerning the type of posting, interviewees claim that posting in construction often happens through temporary work agencies and via subcontracting. There is almost no in-company posting. Posting through temporary work agencies is said to have increased significantly. In addition, interviewees say that posted workers in construction often work in close-to-border markets as these areas are part of the natural home market. There are more posted workers who are particularly active in the renovation sector.

As concerns the characteristics of the posted worker in the construction sector, interviewees all agree that those workers are almost exclusively men between 30 and 45 years old and are mainly skilled manual workers.

European and national initiatives exist to provide information and monitor postings in construction

As the Posting of Workers Directive constitutes a central piece of legislation for the European construction industry, the European social partners in construction, FIEC and EFBWW, have jointly developed a website (<http://www.posting-workers.eu>) which compiles information on legal provisions and regulations affecting construction activities. This website aims to help firms and workers identify those national legal and conventional provisions which have to be respected when workers are posted from one EU country to another.

At national level, there are also initiatives in the sector to offer information on posting. The SOKA-BAU (www.soka-bau.de) website in Germany, for example, offers information on posting, the German holiday allowance fund and related registration procedures for the construction sector. In Italy, social partners have developed a new strategy to fight undeclared labour and to prevent irregularities. This has led to the introduction of the DURC – a Unitary Document Certifying the Regularity of Contributions. The system has, first and foremost, an effect on the procurement of public works. If companies want to participate by competing for certain projects in order to sign a public contract, a DURC-application is needed (CLR, 2006).



4.3.3 *Social and economic effects of posting in construction*

Most drivers and barriers for posting in the construction sector do not significantly differ from other sectors: economic and financial motives, together with labour shortages in the receiving country constitute the main drivers. Relative to other sectors, language constitutes a less important barrier in the construction sector.

As regards economic effects, posting seems to have a positive effect on competitiveness (reflected in costs) of the construction sectors, but with differences between sending and receiving countries. There are also social consequences, concerned with training provision and safety and health issues, which require further consideration.

In this chapter, drivers and barriers for posting in the construction sector are discussed and the economic and social effects are analysed. Many elements from the country analysis return here, but the focus is on distinguishing the construction sector from other sectors.

4.3.3.1 *Drivers and barriers*

The literature review revealed a range of drivers and barriers which were considered to influence the level of posting. Some evidence is enforced by interviewees in the countries and on EU level:

- Economic drivers and competitiveness

Foreign (posted) employees often have very competitive prices. A German interviewee pointed out the externalisation of costs as construction companies do not have to cover the costs of education and training for example, as educated workers can be posted directly. For longer distance posting, interviewees think that wage differences and market opportunities are the main drivers for posting.

Box 7: Example of the construction sector in Bulgaria

A Bulgarian interviewee gave an example about the big tourist complex 'Albena' on the North Black Sea coast in Bulgaria. Years ago, this company also had hotels abroad, in Austria and Switzerland. For repair or other construction works, the company posted its own employees rather than hiring the more expensive Austrian or Swiss workers.

Source: IDEA Consult/Ecorys NL based on interviews

The main advantage stressed by interviewees is that the mentality / work ethic of received posted workers in construction is generally very good. Posted workers are said to work hard.

- Labour shortages and lack of qualifications in the local economy

Shortage of labour supply in the local economy could be a driver to receiving posted workers. In addition, for some professions in the construction sector, competences and qualifications in technical aspects are lacking. In some countries such as France, the construction sector finds insufficiently qualified candidates to fill the market-place demands. Bulgaria, for example, has a lot of expertise in specific construction activities. In Germany, there are examples of Polish workers specialised in renovating old buildings. On the other hand, interviewees in the construction sector claim that posted workers from the CEE countries mainly undertake physically demanding work for low skilled, even if these workers are well-educated.

The relative importance of these drivers depends on the economic climate and is thus changing over time. In Poland, for example, the drivers for sending posted



workers in the construction sector are currently decreasing due to the economic crisis.

Box 8: Decreasing drivers in the Polish construction sector

According to a representative of a Polish employers' organisation in the construction sector, the Polish construction industry experienced a crisis between '99 and '08 and posting workers to other Member States was important to the survival of some companies. However, since there is no longer a shortage of work in the construction sector in Poland, the motive to post workers abroad has decreased. In addition, the cost incentive is also diminishing, as the difference of pay level in Poland and the Old EU Member States is decreasing. Moreover, after 2004, the accession of Poland opened up possibilities for individual labour mobility to the EU Member States. There are now more alternatives to posting than before 2004.

Source: IDEA Consult/Ecorys NL based on interviews

As regards the barriers, no significant differences with other sectors are detected. Apart from the economic climate, administrative and organisational barriers are mentioned. The language barrier is not considered to be as important in the construction sector as in other sectors (such as the services sector). In general, interviewees from receiving countries believe that posted workers in construction need less linguistic skills than in other sectors. Instructions (like safety instructions) are often showed through visual images.

4.3.3.2 Economic and organisational effects

The literature review revealed a range of (potential) economic and organizational effects related to the level of posting in the construction sector. Again, we try to distinguish the construction sector from other sectors. The significance of these effects remains rather small, because of the small number of posted workers compared to 'normal' employees:

- Posting can cause increasing bogus self-employment

A specific characteristic in the construction sector is the high level of self-employed workers. According to the FIEC, self-employed workers are important because they allow for the necessary flexibility in the sector. On the other hand, there are problems with bogus self-employment. In some countries, like Spain (see above), the share of self-employment is much higher than normal levels. According to Jorens Y. (2006), the free movement of services is considered to be one of the causes for the increase in bogus self-employment.

Some authors express concerns that the increase of flexible contracts, agency work and self-employment could affect stability since it undermines longer-term relationships. It could also affect future adjustment and upgrading of the sector through the associated negative effects on the provision of training.

- More competition in the sector

According to interviewees, posting of workers would contribute to more competition in the sector in the local labour market. One interviewee in France stressed that the Posting of Workers Directive would reward companies who are not competitive in their own local market but survive through using cheaper services available from foreign providers. It is thus a way for those non-efficient companies to survive for longer instead of going bankrupt. For receiving countries, posting in the construction sector is mainly about cutting costs and thus the search for cheap labour.

Interviewees add that the posting of workers in the construction sector is mainly about having low-skilled activities performed by foreign workers who are prepared to work for low payment and who are quickly employable. Economic



effects like innovation and specialisation are therefore rather irrelevant to the phenomenon of posting in the sector.

- Posting could have contributed to the trend of subcontracting in the sector

In Germany for example, interviewees say that the posting of workers enabled large construction companies to develop a completely different business model in which the organisation of large subcontracting chains plays a key role. Even though the management costs of such subcontracting chains are high, the cost-reduction achieved through the deployment of posted workers largely exceeds these costs.

4.3.3.3 *Social and labour markets effects*

The following social and labour market effects of posting in the construction sector are analysed in the literature. It must be kept in mind that in construction, labour market effects cannot be understood without taking into account the economic crisis. In 2009 there have been a lot of new unemployed workers in the sector throughout the EU.

- Loss of skills in sending countries and decreasing pressure for training provision

A study of the Manchester University (2006) states that measures enabling workers from New Member States to work elsewhere in the EU, like the Posting of Workers Directive, were considered to have had a positive impact on the receiving countries, notably in the UK, where the high level of demand for construction could not have been met without importing such labour. Not surprisingly, in sending countries, there were concerns about the loss of skills (e.g. Poland).

In both of those countries, one mentioned the consequences for training programmes, with concerns that the ability to recruit skilled workers had diminished the pressure for training provision in the UK and that Poland should increase its provision to enable its construction sector to employ local workers. The measures had been an incentive to find new ways of working and higher productivity in Poland.

These findings were also reflected in the interviews in the country cases. Sending countries, like Bulgaria and Poland, expressed their concerns about the loss of skilled labour, but this was complemented by the view that the measure had stimulated a search for higher productivity and new methods of working and so the overall judgment was not wholly negative.

- Limited effect on local workers and working conditions

Most interviewees observe that in companies where workers from abroad are posted, there has been a possible limited effect on wages and working time for (low qualified) local workers, following from the direct competition with posted workers. However, some interviewees consider this effect to be negligible on the level of wages in the sector as a whole.

According to Fellmer & Kolb (2009), there is the risk of crowding-out local workers. In Germany for example, this must have taken place, as a large number of construction workers were unemployed in the same period the number of posted workers from foreign countries increased.

- Negative health and safety issues in practice

According to the FIEC, if the PWD is applied correctly, it provides sufficient protection for workers. However, some interviewees (mainly employee representatives) claim that there are a lot of negative experiences in reality. It is noted that there were health and safety issues in the employment of workers,



mainly of those whose knowledge of the local language was poor. Opinions differ in this respect. In Germany, for example, health and safety at work does not seem to have become worse as the reported work-related accidents did not increase significantly over the last decades.

Some authors, like Cremers J. (2004) expected illegality to grow after the transition periods. Illegal work contributes to a distortion of competition, a downward trend in prices, wages, productivity and quality and gives the industry a bad image. This has been confirmed by the interviewees.

4.3.4 *Company case Belgium*

Profile of the company: the case described concerns a large construction company active in the public sector with large infrastructure works. The company's head quarters are in Belgium. It has subsidiaries in Belgium and abroad. Projects are usually won through (public) tendering procedures. The company is often a member of a consortium. The company also often works with subcontractors. The company employs over 3000 employees in Belgium and abroad, of which a considerable number are blue collar workers.

Use of posting from a sending perspective: posting has been used by the company for many years, mainly for management functions. Managers are usually posted for longer periods of time (several years). Technical staff and manual labour is hired locally. The number of expats decreases once the activity in a country is well established. One of the reasons is the fact that sending expats is very costly: expats want to keep their salary, social benefits and pension rights. They take their family with them which creates additional costs for the company.

In some exceptional cases where technical capacity and skills are low, technicians are being posted. Another example of posting blue collar workers is sending construction workers to a nearby building site, implying that employees can go home every weekend. In this example, it was arranged that employees worked 4 long days instead of 5 normal working days.

Implications of EU membership of the New Member States: the company was active in the Old Member States since the early 90s. Before EU membership, expats' social security was managed by DOSZ (Overseas Social Security Office www.dosz-ossom.fgov.be). After entering the EU in 2004, the DOSZ system could no longer be used. This caused a lot of problems which could only be solved by taking out private insurance in order to provide the posted employees with the same entitlements and social rights as before.

Experience with posting from a receiving perspective: it is rare to receive highly-skilled workers from abroad in the company; if it concerns a limited number of persons (e.g. 5 engineers) preference is given to hire them as Belgian employees (no posting).

In relation to the posting of manual workers and technical staff, it is clear that the use of posted workers from abroad is widespread in Belgium. Many companies working together with the company described in this case make use of posting: subcontractors, partners in consortia and competitors.

Effects of posting: the first effect mentioned is unfair competition because labour conditions (working hours and wages) are not respected by companies making use of foreign posted workers. This allows certain competitors to set low prices in bids, which are even considerably lower than prices estimated by the client. Margins in the construction sector are low that an hourly wage cost of 32 Euros compared to 26 Euros can make a big difference for the budget of a project



(these amounts are illustrative). The company believes that it has lost bids because of unfair competition caused by irregular working conditions of staff.

An important social effect is that the position of Belgian construction workers is threatened because the labour cost in Belgium is too high compared to the costs of posted workers, especially when the working conditions are not respected. It has been observed that construction companies are generally downsizing their pool of construction workers and make use of outsourcing and subcontracting more often. Specifically for the company case studied here, temporary unemployment sometimes occurs while a subcontractor is doing the work.

Posting is often debated during the works council where trade unions and the employer are represented. The replacement of work by subcontractors is questioned or unlawful labour conditions on building sites are raised by the trade unions.

Finally, it was mentioned that effects of posting have been felt in foreign subsidiaries e.g. in Poland. The EU Championship Football 2012 in Poland is a major event leading to big infrastructure investments. The Polish subsidiary needed to recruit from Ukraine and Moldavia because there were not enough workers in Poland as many Polish construction workers go to countries like Belgium.

Suggestions for the government: two suggestions have been made. Firstly, it should be a priority to tackle unlawful labour conditions by improving the effectiveness of control. Control and inspection are often targeted at the wrong places. Secondly, the government should assess its own tendering procedures for construction works. Price is an important selection criterion but what reality lies behind these kinds of price?

4.3.5 *Company case the Netherlands*

Profile of the company: the case described concerns a consortium or joint venture which is officially established in the Netherlands but is comprised of companies from different countries (Belgium/Netherlands, France and Italy).

The consortium is working as a subcontractor for another company which is the main contractor for the development of the Nuon Magnum, a new clean coal plant, which should generate electricity from gas, coal and biomass once finished and is located in the north of the Netherlands. The large energy company Nuon is investing approximately € 1,5bn into the power plant. The main contractor for this project thus uses subcontractors for specific parts of the project, including this consortium. The share of the work of the case company involved in the power plant is worth around € 250 million.



The consortium described is responsible for the mechanical and pipe installation and for the electrical and instrumentation installation of the power plant. With some exceptions, materials are supplied by the main contractor and installed by



the consortium, making it largely a service provider. After work on the power plant was stopped for 18 months due to issues with environmental permits, the project restarted in October 2009. Currently, the consortium's work is mainly preparatory and there are only a few employees on site. In 2011 and 2012 it will be working on site. During the peak of the work between August and October 2011, the company will deploy between 1,000 and 1,200 workers and some 200 white collar workers. An estimated 30 percent of the workers will be employees of the consortium and 70 percent of the workers will be employed by subcontractors of the consortium.

The consortium will work with employees from each of the members and will employ Dutch workers and posted workers from Belgium, France and Italy. Subcontractors of the consortium will post their workers from Portugal, Spain, the UK, Poland, Lithuania and Romania. Workers will be housed in a project hotel 'Envilla' which is being built for the Nuon Magnum project. The maximum capacity of the temporary housing will be 1,200 people. It provides for single-person accommodation and for communal areas for recreation and relaxation. A shuttle transport service to and from the construction site, catering and a supermarket on the premises will also be provided.

Use of posted workers from a receiving perspective

The consortium works with subcontractors from various EU Member States. The most economically advantageous subcontractors are selected, in which price is but one of the considerations. As part of the work is contracted to companies throughout the EU, subcontractors' workers are also posted from various Member States, which will result in large numbers of posted workers. Furthermore, most of the specialists skills needed for the project are not locally and sometimes nationally available and therefore will need to be found outside of the Netherlands. Nevertheless, where possible, the consortium works with local employees: it hires secretaries from the local labour market, for example. Costs are a consideration in this case as posted workers need to be housed in the project hotel. Once the project is finalised, Nuon will likely recruit most of the workers locally. A large share of the maintenance of the power plant is expected to be outsourced locally.

Use of posted workers from a sending perspective

Each of the consortium partners will be sending workers to the Netherlands for the Nuon Magnum project from other Member States. For one of the partners, working on large projects in various EU and North African countries, this is business as usual. It has offices in various Member States, while most of its workers work for the Belgian head office, which server as a pool. Workers from the pool are posted abroad to work on projects on a regular basis.

Barriers

The administrative costs of filling out A1 forms and requesting a social security number for each posted employee are relatively high. A back of the envelope estimate of 4 hours per worker at € 50 an hour times 1,200 workers adds up to € 240,000. From the employer's perspective, the A1 form and social security number also seem unnecessary as governments should be able to bilaterally exchange social security information without requiring employers to provide information.

Clarity of information on the rules and regulations governing posting of workers and access to relevant information could be better. It was suggested that, given



the size of the Nuon Magnum project, they would welcome the authorities to arrange for someone to come and explain the local rules to the contractors.

The fact that every Member State has its own different set of rules is another barrier to the use of posted workers. For example, in the Netherlands a social security number is required for posted workers and the Dutch tax authorities have specific regulations which need to be met. For Romanian workers posted to the Netherlands, a residence permit is also required. Similarly, in the Netherlands the daily sustenance allowance - which workers receive while working on a project - is taxed. A French worker who normally receives an allowance would earn less working on a project in the Netherlands than working on a French project due to this taxation system. The daily sustenance allowance, which is also received for work on distant locations in France, is not taxed in France. This leads to additional costs for the employer as workers want to be compensated for working abroad.

The interviewee could not comment on the social and economic effects of posting as these issues are out of his remit.

4.4 Conclusion

Compared with other industries, construction is one of the most labour-intensive industries with many workers working on temporary basis, so labour costs are an important element for companies. As the number of posted workers in this sector is relatively high, the Posting of Workers Directive is considered to be one of the cornerstones of European legislation for the construction sector.

Data on the number of posted workers in the sector are incomplete. The available data from the national data collection suggest that 1 out of 4 posted workers in the European Union is employed in construction. However, the share of posted workers in the total number of employees is rather small (with the exception of Luxembourg). At the moment, the construction sector makes a lot of effort to help firms and workers to identify which provisions need to be respected.

Most drivers and barriers regarding posting in the construction sector do not significantly differ from other sectors: economic and financial motives, together with labour shortages in the receiving country constitute the main drivers. As regards economic effects, posting seems to have a positive effect on competitiveness of the construction sector, but with differences between sending and receiving countries. There are some social consequences concerned with training provision and safety and health issues, which require further consideration.



5 CONCLUSION

Drivers and barriers regarding posting

In this section, the drivers and barriers regarding posting have been described. The analysis is based on literature findings, the field research and the web-based survey amongst representatives of employers' federations. Drivers are defined here as elements from the context that effect a change in posting or in certain aspects of it. A driver is commonly understood to contribute to the positive evolution or growth of posting. Barriers contribute to or influence the negative evolution or decrease of posting.

The analysis of drivers and barriers for posting leads to a broad range of influencing factors of economic, social or regulatory nature. The findings in relation to drivers and barriers can be summarized in the following way:

- The economic aspects play an important role as a driver for posting whereas regulatory and social aspects are relatively more important barriers.
- The main economic drivers are related to internationalization of the economy and costs, especially efficient use of labour costs. Labour shortages are the main social driver.
- The barriers are mainly situated in the regulatory and administrative framework governing posting. The language barrier is important. (Legal) protection from the local (receiving) market was also mentioned. From an economic point of view, organizational aspects (transport, accommodation, and infrastructure) also play a role.
- There is a wide range of drivers and barriers but they are context specific, depending on sector, country, economic climate, type of posting. Moreover, many drivers and barriers are relevant for posting but not all of them specific to posting, such as economic climate.
- In any kind of context, a combination of factors will play a role, which partly explains the volatility of posting as measured in the numbers (besides the registration and monitoring issues).
- Postings between Old and New Member States have specific characteristics and drivers, notably the transitional measures. As these measures fade out, new relationships may arise such as between Member States and EU Membership candidates or between Member States and Third Countries (China, Brazil, and India).

Economic and social effects of posting

Before analysing the economic and social effects related to posting, posting was situated in a conceptual framework of geographical labour mobility based on Green et al, 2009. We consider posting as understood in the Posting of Workers Directive to also be coherent with the short term labour mobility concept as defined in the framework. The profile of posted workers and postings was completed in a more qualitative way with information from the country studies. We structured the variety of posting profiles according to the type of posting as presented in the table below.



Table 40: Profile of posted workers by type of posting

Type of posting	Profile of posted workers
Posting between companies	Technically skilled workers, craftsmen Lower skilled workers, manual workers Specialists
Intra – company posting (b variant)	Managers and specialists (engineers, technically skilled persons, sales)
Posting through temporary agency work (c variant)	Low skilled and manual workers in agriculture/meat processing and HORECA

An assessment of the economic and social effects is considered to be a first-line assessment where we explored the fields where posting has an influence. The exploratory nature of this study needs to be stressed because economic and social effects of posting have not been comprehensively studied before and because the quantitative data sources show many problems.

Main economic effects according to type of posting

The table below illustrates the different economic effects per type of posting. In short, we can say that posting under a contract between different companies is strongly concerned with economic aspects. First of all, the advantage of lower labour costs for receiving companies and higher earnings for posted workers can make a difference. There is also a tendency to search for efficiency on a European level, whereby companies tend to centralise purchasing policies on that level, by closing contracts on EU-level for maintenance, or ICT, for example. Posting has contributed in sectors where it plays a significant role - especially in the construction sector- noticeably regarding competitiveness and competition in the sector. Finally, posting between different companies is also related to the international provision of services in general. Service providers consolidate or expand their international market by servicing international clients through short term assignments at the client's workplaces. The buyers of these services are also able to have access to specialist skills across borders.

Intra-company posting is rather a phenomenon of multinational companies although specialised SME's with international activities also make use of it. International mobility is a necessity for these enterprises and it contributes to the overall development of the companies.

Temporary work agencies play an increasingly important role in the recruitment of workers from Eastern Europe and foreign workers in general. With respect to posting by means of temporary agency work, we cannot make a conclusion on the effects due to a lack of information and inconsistent findings.

Social and labour market effects

By way of conclusion, we assess the social and labour market effects analysed in the study below.

- In general, the labour market effects of posting are considered to be small. This includes effects on unemployment rates, overall employment and brain drain or brain gain. This conclusion holds for both sending and receiving labour markets. However, significant effects can be found in sectors where posting is concentrated, with construction being the most obvious example.
- From a sending perspective, posting facilitates geographical mobility. From a receiving perspective, there is an effect on labour shortages/labour mismatch.



The strongest impact is found for qualitative labour shortages in receiving countries.

- A possible limited effect on wages and working conditions was reported by the country studies, both in sending (upward) and receiving countries (downward), but this observation is not evidence based. In receiving countries there is limited evidence of displacement of local workers by foreign workers.
- A great variation between working and living conditions of posted workers is found, ranging from good (above minimum requirements) over in line with minimum requirements (no more no less) to precarious and illegal (below minimum requirements). This will typically vary with the type of posted job, the profile of the posted workers and the type of posting. Intra-company posting of managers is likely to be found in the best category whereas manual workers/low skilled workers/craftsmen have a much higher risk for precarious and illegal posting assignments. Detailed information on individual level such as data on hours worked, wage granted and payments could not be collected.
- The personal situation of posted workers can improve in the field of employability (skills, experience, language) and income and savings. Disruption of family life is mentioned as a negative element. Workers also do not sufficiently make use of their rights for information and complaints.

The sector analysis of the construction industry confirms many of the findings made above. The high presence of posting can amongst other things, be explained by the labour intensity of the industry and the high share of temporary work. The other drivers and barriers do not differ significantly from other sectors: economic and cost motives, especially related to labour costs, together with labour shortages in the receiving country constitute the main drivers.