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Improving the Monitoring of Posted Workers in the EU: Towards an Exhaustive Approach of Employment Statistics

The actual employment in a country at a specific point in time may differ greatly from the figures published in national employment statistics, for the following reasons. First, because there is still too little administrative or survey data available on the inflow and outflow of temporary cross-border labor mobility, including the provision of services abroad. In that respect, steps should be taken to improve the measurement of temporary cross-border labor mobility. Second, several types of temporary labor mobility are excluded when measuring employment in a country. For instance, the inflow and outflow of posted workers is not taken into account. As a result, the real extent of employment in a number of labor-intensive sectors, mainly in Western European Member States, is strongly underestimated.

THE CHANGING FACE OF CROSS-BORDER LABOR MOBILITY IN THE EU: FROM PERMANENT TOWARDS TEMPORARY MOBILITY

As already stated in the introduction to this special issue on posted workers, cross-border labor mobility in the EU does not only cover “permanent” cross-border mobility or cross-border commuting but also all types of “temporary” cross-border labor mobility such as business trips, seasonal work, circular labor mobility, and posting of workers. In 2020, the total number of EU-movers of working age in the EU-27 amounted to almost 10 million persons. Furthermore, there were 1.3 million intra-EU frontier workers and 650,000 to 850,000 intra-EU seasonal workers. The posting of workers represents the main channel of temporary labor mobility in the EU (OECD 2019). Based on 2019 data, there were around 2 million “registered” posted workers and 5.8 million postings in the EU. However, the volume of labor mobility in the EU for just a few days or hours is probably much higher than the posting figures seem to suggest. For instance, in 2019 around 25 million cross-border trips for professional reasons were carried out in the EU. This comprises a wide range of professional/business trips: attending meetings, conferences or congresses, trade fairs and exhibitions; giving lectures, concerts, shows and plays; promoting, purchasing, selling, or buying goods or services on behalf of non-resident producers (i.e., employers).

QUANTIFYING THE NUMBER OF POSTED WORKERS IN THE EU: A VERY CHALLENGING TASK

While there is need and demand for statistics on cross-border labor mobility, producing comprehen-

sive and comparable statistics on the topic remains very challenging (UNECE 2018). This is especially the case when it comes to collecting data on the extent of temporary labor mobility. In this instance, workers are active in the economy of the host country for only a few months, weeks, days or even hours, often without changing their country of usual residence and/or without being employed by a resident employer. In 2019, guidelines were published by the United Nations Economic Commission for Europe UNECE to support improved measurement of international labor mobility. Several recommendations to guide national statistical offices in realizing this objective have been formulated.

In this contribution, the focus is on measuring the group of non-resident foreign workers whose employment relation is with a non-resident entity, the so-called “posted workers.” There is a strong link between the export and import of services and the use of intra-EU posting as the former may require the physical presence of workers. Consequently, the evolution of intra-EU posting, a form of labor mobility that is employer-driven (unlike the “worker-driven” types of labor mobility under the free movement of workers and the freedom of establishment), may depend on the evolution of cross-border trade of services. The Balance of Payments (BoP) provides data on international trade in services.¹ Under the General Agreement on Trade in Services (GATS), services can be traded internationally in four different ways – known as the four modes. Mode 4 refers to the presence of persons in the territory of another country for the purpose of providing a service (UNECE 2006). Data on trade in services covering mode 4 would probably be the best source to collect data on posting (i.e., non-resident foreign workers whose employment relation is with a non-resident employer). However, statistics on this matter are scarce at the national and European level. Therefore, alternative data sources should be used.

The two main sources of information on intra-EU posting are data from the so-called “Portable Document A1” (PD A1) and data from the national prior

¹ In the production of data on International Trade in Services the references are the IMF’s BPM6 and the United Nations’ Manual on Statistics of International Trade in Services.



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declaration tools. In order to prove that a worker or a self-employed person remains subject to the social security system of the Member State of origin, a “Portable Document A1 (PD A1)” can be requested by the posting undertaking or the self-employed person. The current legal framework provides that the employer or the self-employed person must inform the competent authorities about their planned transnational activities, whenever possible before these activities take place (this also applies to “business trips”). Furthermore, Member States may require that a service provider established in another Member State makes a “simple declaration” containing the relevant information necessary in order to allow factual controls at the workplace. All Member States used this possibility to implement a prior declaration tool for incoming posting undertakings and the workers concerned.

The statistics that become publicly available by reporting data from the PD A1 and the prior declarations tools are almost the only source of comparable information at the European level to estimate the number of postings and posted workers. Consequently, these data are frequently used by scholars as well as in political debates. Therefore, when using and citing both data sources, it is of the utmost importance that one is aware of the limitations of these data.

The availability of data on intra-EU posting and the completeness of it largely depends on the extent to which companies are obliged to declare these posting activities in both the sending Member State and the receiving Member State. In practice, authorities in the sending and receiving Member State are not always informed about the posting activities. In that regard, there will be a discrepancy between the number of posted workers with a PD A1 or the number of workers notified in the prior declaration tools and the actual number of outgoing and incoming posted workers, for the following reasons. First, because several Member States have exempted certain activities and sectors from the requirement to report in the prior declaration tools. Second, not every posting activity will be reported in the sending or receiving Member State, even when this should be reported. However, compliance may have increased recently. Indeed, some Member States, such as France and Austria, seem to be much stricter in their judgment of having a PD A1 as a condition for being legally posted. They implemented sanctions in case of failure to show a PD A1 and/or are currently carrying out far more inspections on having a PD A1. As there are often high administrative sanctions if no proof can be delivered, it might be an incentive for posting undertakings to ask for a PD A1. Furthermore, the notification of posted workers in the prior declaration tool is a legal obligation in several receiving Member States under penalty of administrative or criminal sanctions. As a result, the discrepancy between the number of posted workers with a PD A1 or the number of workers notified in the

prior declaration tools and the actual number of outgoing and incoming posted workers is likely to have narrowed (slightly) over the past five years. Finally, differences exist in the personal scope between the PD A1 and the prior declaration tools. For instance, self-employed persons or workers who are sent temporarily to work in another Member State, but do not provide services there (this is the case, for example, for workers on business trips, attending conferences and meetings) may have a PD A1 while being exempt from notification in the prior declaration tools.

UNIT OF MEASUREMENT: NUMBER OF POSTINGS VERSUS NUMBER OF POSTED WORKERS

It is important that the correct unit of measurement is selected when measuring the scale of the phenomenon, especially when its size is to be compared with total employment in the sending and receiving Member State. Comparing the number of PDs A1 or the number of declarations with total employment may overestimate the relative importance of posting. Therefore, it is best to look at the number of workers involved. Even then, the relative importance of posting may be overestimated when taking into account the total group of workers posted during the year. After all, posted workers tend to be active in the host Member State for a short period of time. In this respect, it is best to consider the number of posted workers at a given point in time, or the average over the year, or to calculate the number of full-time equivalents (FTEs).

Recently, the French administration for labor market statistics (DARES) has implemented a new methodology to measure the number of posted workers working in France by taking into account the quarterly average of posted workers (Boughazi and Parent 2021). This measure allows capturing posted workers active for each reference period, accounting for potential differences in work duration between posted workers and local employment measured in France.

MEASURING EMPLOYMENT: IGNORING THE REALITY OF THE MOVEMENT OF WORKERS SUPPLYING SERVICES ABROAD

One would assume that the place of employment of the worker has the upper hand in deciding in which country the worker is employed. This is not the case in practice. The place of establishment of the employer is currently decisive in determining which forms of cross-border labor mobility are or are not included in the employment statistics of a given country. Indeed, in the “domestic concept”² of employment as

² There are two employment concepts depending on the geographical coverage: resident persons in employment (i.e., the so-called national concept of employment) and employment in the resident production unit irrespective of the place of residence of the employed person (i.e., domestic concept). The difference between them corresponds mainly to the net number of cross-border workers.

Table 1
The Coverage of Labor Mobility in Employment Statistics

| | | Employer | |
|--------|---------------------|--------------------------------------|---|
| | | <i>Resident</i> | <i>Non-resident</i> |
| Worker | <i>Resident</i> | Local workers EU-movers | Long-term postings (e.g., intra-corporate transfers) |
| | <i>Non-resident</i> | Frontier workers Seasonal workers | Posted workers Other service suppliers, Business travelers |

* Shading: types of labor mobility not taken into account.

Source: Author's elaboration (2022).

defined by the “system of national accounts – SNA 2008”³ and by the “European system of national and regional accounts - ESA 2010,”⁴ the territory of the “resident production unit” (i.e., “the resident employer”) is the criterium for counting employment. Consequently, employment in a country as defined by the “domestic concept” includes (only) those persons who were paid during the reference period by an employer established in that country. As a result, employment provided by (non-)resident workers on behalf of non-resident employer, and thus covering labor mobility by the freedom to provide services, is not taken into account (both from a “receiving” and “sending” perspective) (see Table 1).

ESA 2010 defines “employees” as “persons who, *by agreement*, work for a resident institutional unit and receive remuneration for their labor. In case of posting of workers there is no employer-employee relationship, and thus no employment contract, with the employer established in the host country. As a result, these workers will be counted as employees in the country in which the employer is established. Their activities will be considered as imports of services by the country in which the work is being done, and as exports of services in the country in which the posting undertaking is established. These activities, based on a service contract, fall under *GATS mode 4* and refers to the presence of persons in the territory of another country for the purpose of providing a service.”

From a statistical point of view, the labor market appears to be demarcated by the place of establishment of the employer, thus excluding work (i.e., services) carried out through non-established employers. As stated by Howe and Owens (2016) “When a contract for the delivery of a service by a provider in one country to a consumer in another country also entails the workers of the provider moving into the other country for the period in which they will produce and deliver the service, this might ordinarily be characterized as an example of a temporary migration of the worker who will be participating in the labor market of the

country in which they work.” Yet, this is not how such movements and the labor of these workers tends to be conceptualized in employment statistics. In this respect, the idea that posted workers do not access the labor market of the host Member State is not only a legal fiction (see first article of this issue) but also a statistical fiction. Indeed, this boundary might be too narrow if we want to have a reliable view on the number of persons working in a country (and thus are in the labor market in that country) at any given moment. This could be unrelated to whether or not the employer is established there. Under the current definition, employment in certain (labor-intensive) sectors that are highly dependent on incoming posted workers might be significantly underestimated. In contrast, countries that have a high number of outgoing posted workers may overestimate the actual level of employment in certain (labor-intensive) sectors. Therefore, it can be argued that labor mobility by the provision of cross-border services also needs to be taken into account when calculating the employment of a country (by taking into account the “net balance” of incoming and outgoing posted workers). As early as 10 years ago, the challenge of better reflecting the impact of increasing cross-border labor mobility, including trade in services through the movement of persons, in the employment statistics within national accounts was acknowledged in a report of the United Nations Economic Commission for Europe (UNECE 2011). As a solution, a satellite account⁵ or a labor account was proposed that could be integrated into the national accounts. In this satellite account, foreign employees and the self-employed who are employed by or have a contract with a foreign institutional unit and are providing services should be included. This could be a relevant exercise, as will be shown in the analysis below.

QUANTIFYING THE IMPORTANCE OF POSTED WORKERS IN TOTAL EMPLOYMENT

On average, employment by the posting of workers represents only a fraction of total employment in the

³ The System of National Accounts 2008 (SNA 2008) is a statistical framework that provides a comprehensive, consistent, and flexible set of macroeconomic accounts for policymaking, analysis, and research purposes.

⁴ The European System of National and Regional Accounts (ESA 2010) is the newest internationally compatible EU accounting framework for a systematic and detailed description of an economy.

⁵ Satellite accounts provide a framework linked to the central national accounts, focusing on a certain field or aspect of the national accounts. Satellite accounts can meet specific data needs by providing more detail, by rearranging concepts from the central framework, or by providing supplementary information (definition from EUROSTAT).

EU. It is estimated that posting accounts for about 1 percent of total employment in the EU and even only 0.4 percent of total employment in FTEs. Nonetheless, in several labor-intensive and price-sensitive sectors of activity, intra-EU posting constitutes an important form of employment. Consequently, not taking into account incoming posted workers significantly underestimates the actual volume of employment in these sectors of activity. Some examples are given below, both from a receiving (for Belgium, France, and Austria) and a sending perspective (Slovenia and Luxembourg).

The group of incoming posted workers amounts to approximately 2.8 percent of the total group of workers employed in Belgium. However, posted workers represent about one-fifth of the employment in the Belgian construction sector. It can even be argued that this is probably an underestimation of the actual share of posted workers in the Belgian construction sector.

Posted workers represent 0.4 percent of total employment in France but this percentage masks large heterogeneities among sectors and regions. The group accounts for 2.2 percent of the employment in agriculture and 1.7 percent in construction. Moreover, the share of posted workers in employment is heterogeneously distributed over French regions. The impact of posted workers on employment goes up to 20 percent in agriculture and 8 percent in construction in some regions.

In 2019, the full-time equivalent of workers posted to Austria accounted for 1.7 percent of the full-time equivalent of the Austrian labor force. Moreover, the number of construction workers posted to Austria was equivalent to 5 percent of total employment in the Austrian construction sector.

In 2020, 7 percent of the labor force in Slovenia had been sent to another Member State for at least one day. Even three out of ten workers active in the Slovenian construction had been sent to another Member State for at least one day. Therefore, the actual number of construction workers employed in Slovenia is much lower than what the available employment statistics suggest.

Finally, in December 2019, the number of outgoing workers posted in the total workforce amounted to 3.2 percent for Luxembourg. The number of companies posting at least one worker abroad increased from 3.3 percent in January 2017 to 4.4 percent in December 2019.

CONCLUSION

Steps should be taken regarding the measurement of the number of posted workers in the EU. In this regard, the integration of different kinds of data sources, such as surveys and administrative sources, should be aimed for. New data sources may supplement or even refute existing data collected on the basis of the number of PDs A1 issued and the number of notifications made in the declaration tools. In particular, the collection of data on the export of services involving the presence of persons in the territory of another country for the purpose of providing a service (GATS mode 4) could be an important step forward. In addition, a specific question on posting could be included in the European Labour Force Survey (EU-LFS).

Furthermore, the increasing importance of cross-border temporary labor mobility, including trade in services through the movement of persons, should be better reflected in national employment statistics. In this respect, the development of a satellite account or a labor account that could be integrated into the national accounts, an idea that was proposed by the United Nations Economic Commission for Europe (UNECE), might be a good solution.

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