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Article

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Lynn De Smedt

Posted Workers to Belgium with a Focus on the Construction Sector

This article analyzes the posting of workers in the Belgian construction sector. The choice for this sector is defensible for several reasons. First, most incoming posted workers in Belgium are active in this sector. Consequently, the impact of posted workers in the total workforce in the construction sector is considerable, which illustrates the high dependency on posted workers in this sector. This has even led to job displacement effects in certain subsectors of the construction sector. Second, specific phenomena which are manifesting themselves in the general posting landscape are exposed even more strongly in the construction sector. It concerns, for instance, the high share of posted self-employed persons and the increasing number of posted third-country nationals (TCNs). Third, in the construction sector, the “dark side” of posting can also be illustrated. Overall, the public and political perception of posting is often negative, with reference being made to social dumping practices, bogus self-employment, and letterbox companies, to name a few. It appears that the construction sector is especially vulnerable to these practices.

THE SCALE OF POSTING IN THE BELGIAN CONSTRUCTION SECTOR

In 2021, approximately 255,000 persons (workers and self-employed persons) were posted to Belgium, of which some 225,000 were posted workers and 30,000 were posted self-employed persons (De Wispelaere et al. 2022a). This number increased by 5.5 percent compared to 2020, while from 2019 to 2020, the number of persons reported in LIMOSA¹ decreased by 6.3 percent due to the COVID-19 pandemic.

Posting of workers is an important form of labor mobility in Belgium and a substantial type of employment in various sectors of the Belgian economy.

This is particularly the case in the Belgian construction sector. In 2021, one-third of the persons declared in LIMOSA were temporarily employed in the construction sector. It concerned 87,470 posted persons. However,

¹ Data on the number of incoming postings to Belgium are collected via the LIMOSA declaration. The obligation to file a LIMOSA declaration has been in force since 1 April 2007 for incoming posted workers and self-employed persons.

for various reasons, this may be a (strong) underestimation of the actual number of posted persons active in the Belgian construction sector (for more information see De Wispelaere et al. 2022a). The posted persons active in the Belgian construction sector are mainly coming from the Netherlands and Poland. Indeed, 23 percent of the posting undertakings were located in the Netherlands and 19 percent in Poland.

Another way to estimate the importance of posting is looking at the import and export of services. Both concepts are strongly connected to each other, as providing services in another Member State presupposes the presence of workers in that Member State. In 2020, Belgium imported approximately EUR 1.6 billion construction services, of which 86 percent were from EU-27 Member States and 14 percent were from outside the EU (Eurostat 2022). Most of the construction services were imported from Belgium’s neighboring countries: the Netherlands (27 percent), Germany (14 percent), and France (11 percent), followed by Poland (6 percent) and Portugal (6 percent). It is remarkable to see that while a high share of the incoming posted workers and self-employed persons in the construction sector are coming from Poland, the share of imported services from Poland is rather on the low side. This may demonstrate that the value of the services imported by Poland is lower. In other words, that the services are cheaper.

THE PROFILE OF POSTING IN THE BELGIAN CONSTRUCTION SECTOR

The 87,470 posted persons in the construction sector in 2021 mentioned in the previous paragraph consist of 63,530 posted workers and 23,940 self-employed persons. This implies that more than one out of four persons posted to the Belgian construction sector are self-employed. This is a considerably higher share than the share of 14 percent self-employed posted persons in the general Belgian economy.

Most posted workers to the Belgian construction sector are nationals from the Netherlands (10.8 percent of all incoming posted workers), Portugal (10.3 percent), Poland (9.1 percent), and Romania (8.1 percent). Nevertheless, it is remarkable to see that the number of TCNs, persons with a nationality other than one of the EU-27, has been on the rise in recent years, mostly starting from 2018. For instance, many posted workers in the construction sector have Ukrainian (9.3 percent) or Brazilian (3.5 percent) nationality. These workers are mostly not posted directly



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from the third country, but through a company established in another EU Member State. Two important routes for the construction sector are Ukrainians being posted to Belgium through Poland and Brazilians being posted through Portugal. Posted self-employed persons in this sector, on the other hand, primarily have Polish nationality (51.2 percent of all incoming posted self-employed persons), Dutch (10.1 percent), and Slovak (6.6 percent) nationality to a lesser extent.

The Belgian clients of posted workers are particularly active in the subsectors “Construction of residential and non-residential buildings” (NACE 412) (i.e., activities at large construction sites), “Building completion and finishing” (NACE 433), “Electrical, plumbing and other construction installation activities” (NACE 432) and finally “Other specialised construction activities” (NACE 439). Moreover, in particular, large Belgian (construction) companies seem to rely on the services of posted workers. Of the 100 Belgian largest construction companies, 7 out of 10 relied on posted workers. Smaller Belgian construction companies made much less use of intra-EU posting.

THE IMPACT OF POSTING IN THE BELGIAN CONSTRUCTION SECTOR

When comparing the number of incoming posted workers registered in LIMOSA to the national workforce, the importance of intra-EU posting can be calculated. For the complete Belgian economy, this impact amounted to around 2.8 percent in 2021 (De Wispelaere et al. 2022a). However, in the Belgian construction sector, the share of incoming posted workers in total employment amounted to 13.9 percent in 2020 and the share of incoming posted self-employed persons to 6.2 percent. As a result, this phenomenon represents about one-fifth of total employment in the Belgian construction sector. The share in terms of full-time equivalents (FTE) amounted to “only” 11 percent, as posted workers are usually only posted for a limited period of time. Keeping in mind that the number of posted persons active in the Belgian construction sector calculated on the basis of LIMOSA data is probably a (strong) underestimation of the actual number of posted persons active in this sector, it can be concluded that the Belgian construction sector has become strongly dependent on intra-EU posting.

The question then arises of how it is possible that the Belgian construction sector became so reliant on intra-EU posting. The main suggested reason by scholars, and also in political and public discussions, is the high labor cost in Belgium. The recent exemption from payment of wage withholding tax for shift work in the construction,² together with the so-called “tax shift,”³

undoubtedly represented a sizeable tax break for the Belgian construction sector. The question arises to what extent these measures had an impact on the evolution of the number of incoming posted workers in the construction sector. However, this analysis goes beyond the scope of this article. Other drivers are the flexibility of using posted workers as well as quantitative and qualitative labor shortages in the Belgian construction sector. Professions in the Belgian construction sector are consistently mentioned in the list of “bottleneck professions” (Actiris 2022; Forem 2022; VDAB 2022). It was recently communicated by one of the employers’ organizations for the construction sector (*Confederatie Bouw*) that roughly 20,000 additional construction workers are needed and that about seven out of ten of the (large) Belgian construction companies have one or more vacancies.

Seeing that the impact of posted workers in the construction sector is extensive, the issue of job displacement effects comes up as well. One can wonder whether local “Belgian” workers in this sector have been replaced by posted workers. The answer to this question is a nuanced one. Between 2010 and 2015, during a period of economic growth, local employment in the construction sector decreased, while the number of incoming posted works increased, which indicates possible job displacement effects (De Wispelaere and Pacolet 2017). Furthermore, in recent research Muñoz (2021) found that the employment of “Belgian” workers decreased in Belgian companies that make use of the services of posted workers. Local employment decreased in these companies by 2 percent the year they started subcontracting services to posted workers. However, job displacement effects did not appear for every activity in the construction sector and mainly occur(ed) in the “Construction of buildings; development of building projects” (NACE 41) (i.e., activities at large construction sites) and “Plastering” (NACE 43.31) sub-sectors. Finally, Belgian companies may also experience displacement effects. Belgian small and medium-sized enterprises (SMEs) make less use of the services provided by companies established abroad. Thus, the competition is mainly between (subcontracting) local SMEs and (subcontracting) posting undertakings, and it is the larger local companies which will benefit from this competition.

INFRINGEMENTS TO THE POSTING RULES IN THE BELGIAN CONSTRUCTION SECTOR

When posting persons abroad, different infringements can occur. There can be infringements against the applicable labor law, which is implemented by the Posting of Workers Directive (Directive 96/71/EC – recently amended by Directive (EU) 2018/957). These infringements particularly consist of bogus self-employment and non-compliance with the Belgian wage and labor conditions, which can even lead to labor exploitation. For instance, when a worker is posted to

² The wage withholding tax exemption amounted to 3 percent of taxable remuneration in 2018 and 6 percent of taxable remuneration in 2019. In 2020, the measure was at “full speed” as the exemption amounted to 18 percent of taxable remuneration.

³ This includes a reduction in employers’ social security contributions from 33 to 25 percent.

Belgium, he/she should receive at least the sectoral minimum wage applicable in Belgium. For Bulgarian workers this means at least a fivefold wage compared to the minimum wage in Bulgaria. However, it is not unthinkable that these posted Bulgarian workers will accept a wage lower than the Belgian wage but two or three times higher than the Bulgarian minimum wage. In practice, labor inspectorates notice the increasing use of TCNs, as well as the problematic situations that come with it. For example, there have been cases where an hourly wage between EUR 2 and EUR 3 was paid, far below the Belgian minimum wage in the construction sector of EUR 15.

To uncover infringements in the field of posting, inspections are carried out. However, it is important to keep in mind that they are often “targeted” inspections, based on a risk analysis and carried out in specific risk sectors. Therefore, infringement rates will be rather on the high side, which could give a distorted view of the actual volume of infringements related to intra-EU posting in the receiving Member State (De Wispelaere et al. 2022a).

A high share of the inspections regarding transnational social fraud takes place in the construction sector. In 2019, it concerned 68 percent of all inspections focused on transnational social fraud, and in 2020 it concerned 57 percent. More than four out of ten inspections on transnational social fraud carried out in the construction sector found at least one infringement on the applicable wage and working conditions to posted workers.

CONCLUSION

This article has shown that intra-EU posting in the Belgian construction sector is of high importance and may lead to a labor and import leakage. For several reasons, efforts could be made to increase the proportion of “local” workers and self-employed on Belgian construction sites. First, posting undertakings, posted workers, and posted self-employed persons pay social security contributions in the sending Member State and thus not in Belgium. Second, the total employment rates in Belgium (71.4 percent for third quarter 2021), and especially in the Walloon region (65.8 percent) and the Brussels region (62.6 percent), are (much) lower than the EU average (73.9 percent) and the EU2020 target of 75 percent. Finally, a large share of investments in the recovery and resilience plan that Belgium submitted to the European Commission in the framework of the “Recovery and Resilience Facility” is dedicated to the construction and renovation of buildings and dwellings. The positive impact of the plan on the number of additional jobs would come from the construction sector in particular. However, given the large presence of foreign companies and workers by the posting of workers, the Belgian recovery plan will not only benefit the Belgian economy, but certainly also foreign employment and consumption.

In addition to the employment in the construction sector, the aspect of infringements in this sector and posting in particular is of high importance. About 5 percent of the inspectors employed within the Belgian labor inspectorates focus on the fight against cross-border social fraud and thus on the compliance with the posting rules. Consequently, only 4 percent of the inspections in Belgium, mainly in the construction sector, relate to the cross-border dimension of social fraud. The number of available inspectors and inspections does not match the high infringement rates as well as the attention paid to “social dumping” in the public and political debate. In the Belgian construction sector, the attention is strongly focused on transnational (social) fraud through posting, which has taken away attention from national social fraud in this sector. The National Bank of Belgium estimated that one-fifth of the wealth generated by the construction sector comes from activities in the undeclared economy, a much higher share than in other sectors (De Wispelaere 2020). Thus, it is of high importance that the fight against social fraud in general and in the construction sector specifically continues, with a focus on both transnational and national social fraud.

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