

Secure Mobility: Uncovering Gaps in the Social Protection  
of Posted Workers  
SMUG  
(Agreement No. VS/2020/0483)

Work Package 5: DISSEMINATION

(In)Secure Mobility: Posted workers' acquiescence, social  
insurance, and economic rationality

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# (In)Secure Mobility: Posted workers' acquiescence, social insurance, and economic rationality

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## Executive Summary

Worker posting has been a political hot button issue in the European Union (EU) since the 1990s, largely because of its central role in facilitating social dumping in the construction sector, and to a lesser extent in meat packing and manufacturing. Most research on posting has been done from the perspective of host countries, reflecting the concern that trade unions and other national regulators have about ensuring respect for local collective agreements, labour laws and workplace norms (cf. Lillie, 2012; Wagner, 2015; Arnholtz, 2021). More recently, research has focused on understanding the 'posting' labour market through researching the labour market and mobility strategies of posted workers themselves (cf. Berntsen, 2016; Matyska, 2020). The SMUG<sup>1</sup> project looks at this second strand of research, specifically focusing on the relationship of posted workers with social insurance institutions.

The SMUG research team interviewed 61 posted workers in six EU countries. These workers came from a variety of EU member states and third countries, and had also been posted to a variety of host countries in the EU/EEA and beyond. All had worked on construction sites or renovation projects of various kinds, and a variety of skill levels were represented, from unskilled to trained craftsmen, to managers and professionals. All were men. These workers told us about their careers and migration experiences. From these stories, a number of important points became clear.

1. "Posting" is one form that work contracts including mobility can take amongst others, and most workers have posting contracts at times, but use other forms of mobility at other times. This means their social insurance does not always remain with their country of residence, but rather a worker will tend to be covered by different systems at different moments - assuming he is properly and legally enrolled.
2. Fraud and informal employment are rife within the construction industry and are particularly common when transnational service provision is involved. Employers sometimes take advantage of workers' lack of knowledge and reluctance to engage with authorities in host countries, in order to save on social security payments. This results in coverage gaps, which only become apparent when the social insurance is needed.
3. Related to the issue of fraud and informal employment is the problem of letterbox companies, or firms which have a formal legal existence, but no offices or assets. Letterbox firms are used to allow the employer to access the regulatory regime of a favourable jurisdiction, and also serve as a way to evade obligations or legal sanctions. Since they can be set up in a jurisdiction to which the worker has no access, social insurance contributions sent there are likely to be wasted.
4. Our research participants showed a preoccupation with net earnings at the expense of other important considerations such as social protection and security. For instance, workers seldom expressed worry about whether employers make social contributions on behalf of the worker as required to the relevant institutions, whether old age pension contributions are made, as well as other social security features. While this could simply be short-sightedness, it could also reflect a

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<sup>1</sup> <https://www.jyu.fi/hytk/fi/laitokset/yfi/en/research/projects/research-groups/smug>

lack of faith in social insurance systems. Foreign social insurance funds might or might not deliver what they appear to promise, but cash in hand is real, immediate and certain.

5. While Regulation (EC) No 883/2004 on coordination of social security systems and its implementing Regulation No 987/2009<sup>4</sup> in theory provide a framework for social insurance for posted workers, because of points (1), (2), (3) and (4) above, social insurance for posted workers is haphazard.
6. There is a vast variety and complexity of social insurance situations faced by posted workers, reflecting the fact that there is a single pan-European labour market in construction, but social insurance is arranged through a vast variety of contingent arrangements.

While many of the workers we interviewed recounted stories of exploitation and precarity, others had largely positive experiences, and were able to manage their mobility to gain higher wages and more interesting work. International mobility is sometimes a way out of unemployment, sometimes a way to gain higher wages, and sometimes a rung on the career advancement ladder. The motive behind posting is usually associated with the quality of job the worker has access to, and this affects the social insurance as well. The more labour market power a worker has, the better their social insurance.

Lack of access to social insurance by posted workers is a problem also for preventing social dumping: a worker with no access to unemployment insurance, for example, will accept lower pay rather than lose his job. A common lament about posted workers is that they are reluctant to assert their rights; they tend to accept poor pay and bad treatment rather than pursuing the avenues of complaint and resistance available to them; from the perspective of national industrial relations actors, this makes them dangerous and destabilizing, since they are willing to undermine local wage rates and work norms. Posted workers' own actions often sustain the problematic practices in posting, but these reflect mobile workers' rationality in facing a multi-national labour market. Short-term engagement in multiple EU labour markets under conditions prevalent in the construction industry's transnational labour supply system tends to result in poor access to social insurance systems, which reinforces the workers' weak labour market position. This, in turn, makes them less able to insist that their employment be regularized and that they receive the benefits they are due, turning into a vicious cycle of exclusion and labour market precarity for those on the low end of the labour market.

A single market without a unified and equal welfare system underlies "posted workers" social insecurity. As a plausible remedy, we propose a minimum social security package for all mobile workers in the EU, including TCNs who are posted via one EU member state to another. The logic would be to raise posted workers reservation wages to a general minimum level below which no worker would be incentivised to take work. The minimum social security package we recommend would include individual standards for unemployment benefits, occupational accident insurance, disability benefits, family benefits, and old age pension. Its comprehensiveness does not necessarily mean extensive additional financial costs for individual member states as most countries already have welfare systems in place that guarantee these to non-mobile workers.

# (In)Secure Mobility: Posted workers' acquiescence, social insurance, and economic rationality

## 1. Introduction

The SMUG project looks at the issue of social insurance of hypermobile migrant construction workers in the European Union from the perspective of the workers themselves. Specifically, we selected those workers with 'posting' experiences – with posting in scare quotes because typically, posted workers engage in a variety of forms of mobility as well. More than representing an actual category of worker, posting is a term of art in the EU context for certain kinds of work contracts that, among hypermobile construction workers, are used frequently but not universally. Existing empirical research on intra EU (European Union) worker posting has predominantly been conducted from the point of view of meso and macro level actors, with data typically consisting of expert interviews and focus group discussions with representatives of varied policy making and enforcement authorities, trade unions, employer associations, social insurance and welfare institutions among others (see e.g., Cillo & Perocco, 2020; Danaj et al., 2020; Kall et al., 2020; Danaj & Zólyomi, 2018; Kall & Lillie, 2017). Other analyses have focused on the legal perspective, specifically, and legislation in general, interpreting the functioning of discrete national and EU regulation on posting as well as the impact of their interaction on posting (see Arnholtz & Lillie, 2020; Mussche & Lens, 2019). These studies have probed a wide range of critical issues including subcontracting, agencies and intermediaries in posting, occupational health and safety, regulation and enforcement, and third country national posting, and others.

Past studies give us an understanding of the labour and social rights enforcement challenges inherent to worker posting, attributing these to gaps in enforcement of regulations and collective agreements, and to employer practices that exploit these gaps (Arnholtz & Lillie et al., 2020). A common lament about posted workers is that they are reluctant to assert their rights; they tend to accept poor pay and bad treatment rather than pursuing the avenues of complaint available to them (Lillie, 2016). While seemingly self-destructive, posted workers pursue alternative individual avenues aside from collective resistance, because these are the ones they see as most rational and realistic given the fluid and network-based nature of the labour market in which they find themselves (Berntsen, 2016). This is also consistent with the moral economy of their 'deal' with their employers (Matyska, 2020). Posted workers' own actions often sustain the problematic practices in posting, but these reflect mobile workers' rationality in facing a multi-national labour market. Our interest here is on the social insurance consequences of short-term engagement in multiple EU labour markets under conditions prevalent in the construction industry's transnational labour supply system.

Social insurance under most welfare state regimes tends to consist of unemployment insurance (and/or basic welfare), health insurance, old age pensions, disability pensions, and accident insurance. For residents of EU member states, there are rules which allow mobile workers to access social insurance while in other member states, either by their own country paying or directly from the host state, depending on their situation. There are bilateral rules for dividing responsibility for pension contributions. Although gaps and inequalities are rife, the bigger problem is actually the complexity of the system, and non-compliance with the rules by all actors involved.

For example, for old age pensions, a typical arrangement is that the periods of insurance in each country are summed up and each country then pays its parts according to certain criteria. The pension insurance

institution of the last place of residence (country of employment) is the contact agent for the pension and coordinates information flows between other agents. Nevertheless, workers must file an application and present detailed information on the various employments (such as which country and duration of employment). Coordination between pension insurance institutions is common and handled well within the EU. However, it is up to the beneficiary to secure all evidence to guarantee entitlement, and retrospective application processes are difficult. Mobile construction workers typically have numerous posting and other periods abroad. Employers sometimes do not make correct contributions, and in some cases the firms' place of incorporation may be in third jurisdiction. Other forms of social insurance have their own, different, coordination system, with their own complications.

We conducted biographical interviews of posted workers from around the European union, and also workers who come from third countries, but have been posted from one EU member state to another. We analysed these biographical narratives for themes related to social insurance, finding that practices of posted workers reflect their specific posted worker (economic) rationality. Labour market issues also strongly come to the fore in our data, because social insurance depends in large part on labour market status. While this is the case for immobile workers in national labour markets, it is even more true for hypermobile construction workers. For the workers we interviewed, both their labour market and the social insurance systems they interact with required active agency to navigate. For this reason, rationality as a concept provides a good framing as it makes logics of action into objects of study, in order to understand the reasons why actors such as posted workers respond to opportunities and challenges in the ways they do. Posted workers behaviours and practices are often identified as problematic, as they facilitate employer fraud, undermine enforcement of collective bargaining agreements and minimum wages, and reduce posted workers' access to social insurance.

Therefore, building on the SMUG project's biographical data, we analyse individual posted workers' discussion of their life courses, careers, problems, and the actions they take to ensure their economic security. In other words, we analyse posted workers work histories to identify logics of action, and the rationality behind their behaviour. We look for patterns of behaviour directed towards specific subjective ends (as described by the workers themselves) and deconstruct the workers' rationalization of their actions. From this, we can see that posted workers' (economic) behaviour is shaped primarily by the characteristics of the pan-EU construction labour market. A diverse array of problems with social insurance access and eligibility arise as side effects of the way the labour market functions and the workers reaction to this.

## 2. Context and scope of research

Intra-EU worker posting occurs over the time span of workers careers, moving across national borders, making individual members states partial snapshots at a particular moment, while the EU the supranational analytical and research context. Thick descriptions of the details of labour relations and social insurance system context aid in understanding how such systems function and allow us to compare them; much work on posting takes this track and is very useful to in showing how national actors and labour markets are affected by posting. However, in this report we do not provide a detailed contextual description prior to presenting research findings. Instead, we direct readers to numerous freely available empirical resources that are relevant to our research context, to allow us focus more on what we believe is novel about our research project – individual posted workers perspective: i.e., how they understand

and experience posting over the course of their careers as construction workers. In other words, our research findings present posting as it is *de facto*, as a mobility event in the context of a career, with other types of gigs and forms of mobility as well. This is different from normative description of what it should be, and from host country actor descriptions of posting in their national sectoral labour markets. Nonetheless, we do provide brief relevant context descriptions to situate the SMUG project. But first, we present the rationale behind this contextual deviation.

In the past decade, several studies of intra-EU worker posting, like SMUG, have been conducted, many of which were funded by the European Union's employment and social innovation programme (EaSI)<sup>1</sup> funding instrument and other funding frameworks. Out of these numerous studies, a significant body of literature consisting of reports like this one, policy briefs, and academic publications in journals and other platforms has developed. The importance of the scope of posting flows in the focus of EaSI funding, and the resulting spread of research teams and research institutions involved in these studies across the EU ensures that existing literature covers all member states where posting is a substantial phenomenon. Moreover, at the supranational level, several research teams and institutions conduct dedicated monitoring, research, and reporting on intra-EU mobility, producing widely applicable and credible resources on which other and further research can be based. For instance, European Commission contracted networks of experts such as MoveS<sup>2</sup> and Network Statistics FMSSFE<sup>3</sup> publish expert opinions via thematic and focused publications on variety of issues ranging from a general annual report on posting to specific statistics reports, legal reports etc.

The consortium implementing the SMUG project consists of research institutions in 6 EU member states: Austria, Denmark, Finland, Italy, Poland, and Slovenia. However, our research focuses on posting flows which means following workers across member state borders, which incorporates many other countries as the sending, receiving, and reposting countries in analysis. This expands the scope of contextually relevant countries beyond the consortium six; and due to posting of third country nationals, to also include third countries (see Table 1). The focus on flows is intentional, as this report shows, it underscores the element of mobility, hypermobility, and transiency that characterise posting and which has crucial implications for the social protection and security outcomes of posted workers.

Posted workers move between national systems, which include features of EU-wide systems, such that at the end of a posting period, a single worker may have been affiliated, albeit very briefly on some occasions, to several national systems in different and intersecting ways. In such a context (and in the SMUG project), a crucial feature is the intersectionality and system-interaction that worker mobility sets in motion. This study focuses on system intersections, interlinks, and synergies, rather than on discrete systems, alone or in comparison. For our purposes, an analysis of an individual national system would be misplaced. For instance, the social security needs of Ukrainian interviewees, posted via Estonia to Finland require an understanding of the Estonian and Ukrainian welfare systems in addition to Finland's. When all flows are considered, this would represent an analysis beyond a single project report; instead, we report on the workers' experiences of these intersections.

Table 1<sup>2</sup>: Scope of countries involved in research participants' posting 'careers'

Third Countries of origin	EU Sending Countries	EU Receiving Countries	Third country receiving posted workers from the EU
Bosnia and Herzegovina (BiH) Ghana Macedonia (North) Moldova Ukraine	Austria Bulgaria Croatia Denmark Estonia Finland Italy Poland Portugal Romania Slovakia Slovenia	Austria Belgium Croatia Denmark Finland France Germany Hungary Iceland Luxembourg Netherlands Norway Romania Slovenia Spain Sweden Switzerland United Kingdom (UK)	Algeria Azerbaijan Bosnia and Herzegovina (BiH) Dubai Egypt India Iraq Kazakhstan Kuwait Macedonia (North) Qatar Russia Saudi Arabia Tunisia United Arab Emirates

However, there is a core posting/labour mobility framework central to our analysis, and we briefly explain some of the more important parts of the framework here. Although the European union has a single market, which provides the basis for intra-EU labour mobility frameworks such as worker posting, the EU does not have a single welfare system responsible for intra-EU mobile workers' social rights. Instead, there are rules that coordinate the social insurance and welfare systems of different member states to ensure coverage of the social rights of mobile EU citizens, and foreign residents with rights to free movement within the bloc. However, the rules on social security coordination do not replace national systems with a single European one. One of the four main principles of EU social security coordination is that mobile workers are covered only by one national system at a time – meaning also that they make their social insurance contributions to only one member state at a time. Therefore, individual member states remain responsible for workers social rights, and not the EU. The legislative mechanism in place is Regulation (EC) No 883/2004 on coordination of social security systems (hereinafter the regulation) and its implementing Regulation No 987/2009<sup>4</sup>. Article 12 of the regulation applies to posted workers.

Article 12 of the regulation provides that where a worker who habitually works in the country of establishment of the employer, is sent to another member state by that employer to provide services for a period not exceeding 24 months, at the end of which the worker returns to the posting company and the habitual country of residence, the worker should remain covered by the employer company's country of residence social insurance system. The same applies to self-employed workers' posting. However, our focus on intersections takes off from system intersections necessitated by long (exceeding 24 months), multiple, and fuzzy or bogus postings, which challenge the clean normative social security situations which legislation can cover.

<sup>2</sup> The line drawings in Table 1 are used to illustrate the complexity of posting flows and trajectories. Each line series presenting a different posted worker posting trajectory

In a 30- or 40-year career of multiple different and repeat postings, some exceeding 24 months, workers will become embedded to multiple national social insurance systems. On the other hand, bogus and fuzzy “postings” do the opposite, and dis-embed workers from protective social insurance and welfare institutions through pervasively alienating practices that we discuss in this report. The logics of the coordinating welfare and social insurance systems are vastly different (social democratic, conservative, liberal, and Mediterranean), from one another, with implications on benefits and eligibility. Different types of welfare and social benefits (unemployment, family, disability benefits, and old age pension, among others) can also follow different logics, even in the same country. The system is not seamless and provides unequal and differentiated ‘security for different worker groups (see Bruzelius et al., 2017). Although posting activities do take place in a particular member state at a particular time, a national outlook and approach to managing posting is misplaced. Internal national regulatory and enforcement activities often fail to address persistent posting challenges such as bogus posting, and social dumping because they do not account for the fundamentally trans/supra-national structure of posting.

It follows that a research project focused on multiple and complex posting flows like SMUG calls for a vast and nuanced contextual analysis that goes beyond the mandate of an 18-month empirical study that is already resource demanding. The good news though is that such a dedicated analysis is unnecessary, because, as we have established above, there is already a substantial body of publications covering these issues.

The SMUG project’s unit of analysis therefore is the individual posted worker’s lived experience. This however is augmented by expert opinions of sectoral actors such as trade unionists, labour inspectors, and other representatives of labour regulating, monitoring, and supporting institutions and organisations SMUG consortium countries, as well as other secondary sources. In this report, our aim is to remain loyal to our empirical data, and therefore individual posted workers’ perspective, experience, and understanding of posting and we believe there is a value in doing this. Individual worker narratives present their lived experiences in a way that shows what they understand posting to be, the opportunities, as well as dangers of posting to them. On the other hand, legislative material on posting, and analytic interpretations of experts and sectoral actors in positions more powerful than posted workers (in terms of having the power to shape the ‘institution of posting’) also hold an understanding and perspective of what posting is. This latter category is normative and tends to describe what posting should be.

However, our data which consists of individual workers work histories and narratives of posting present what posting really is, and its nuances from worker to worker, or from location to location. Although statistically narrow, it allows us an alternative view and brings to light the discord between the worlds of posted workers, the world of posting legislation, and the world of posting mediators and regulators. We believe that understanding the various ‘worlds’ or ‘realities’ of posting can help improve the outcomes of posting regulations especially in posting issues that easily fall in regulatory blind spots such as social security.

## Box 1: Key literature and publications

This report draws on a variety of literature to support its empirical data analysis. Firstly, in 2022, the SMUG project published 4 thematic policy briefs: Arnholtz and Lovelady (2022), Bagnardi, sacchetto, and Vianello (2022), Danaj and Kayran (2022), and Toplak, Krilić, and Vah Jevšnik (2022); has three policy briefs in review: Polkowska (2022), Lillie, Ndomo, and Kärkkäinen (2022), and Lillie, Kärkkäinen, and Ndomo (2022); and a thematic report in review: Ndomo et al. (2022). All these publications provide the literature review and basis for this report on all the main contextual themes relevant for our study: posting statistics; member state regulatory framework with a focus on wages, working conditions, occupational health and safety (OSH), and social security; and enforcement and collective organisations activities, including social partners. Other literature was consulted as well.

General posting statistics for the 2020 period, for the entire EU and for individual countries in focus are drawn from De Wispelaere, De Smedt and Pacolet (2021). Supporting country specific posting statistics from alternative member states databases (therefore not extracted from PD A1 forms as the De Wispelaere et al. (2021) report) include Iannuzzi and Sacchetto, (2020) and Dorigati et al. (2022) for Italy, Vah Jevšnik et al., (2022) for Slovenia, and Geyer (2022) for Austria. The following publications discuss specific regulatory issues and conditions in specific member states. For Austria, Kahlert and Danaj (2021) and Danaj & Kahlert (2021) discuss social protection, Danaj et al. (2020) discuss social protection in Slovenia, while Andersen (2014) explores social dumping control in Denmark. Arnholtz and Andersen, (2016), and Arnholtz and Ibsen (2021) explore wage regulation in Denmark while Ruotsalainen, Kall, and Lillie (2018) and Kall and Lillie (2018) discuss posted workers protection in Finland through fair wages, access to rights, and authorities sanctioning powers. Frangi et al. (2021) look into collective agreements and wages, while Ludicone & Virgilio (2021) discuss regulation on remuneration and social protection of posted workers in Italy. On Trade union activities, including wage regulation, Andersen and Hansen (2008); Eldring et al. (2012); Arnholtz (2021); Arnholtz and Refslund (2019) cover Denmark, and Lillie and Sippola (2011) and Danaj and Sippola (2015) cover Finland. On OSH, Danaj and Zólyomi (2018) provide an EU-wide comparative study, while Vah Jevšnik (2018) addresses the Slovenian context, and Danaj, Hollan and Scoppetta (2020), and Zólyomi and Danaj (2019) cover Austria.

This is by no means an exhaustive list of literature or publications on the posting themes we focus on in this report, neither did we aim for a comprehensive literature review. The focus of the SMUG project is understanding the social security status of posted workers and workers with a posting history based on posting as experienced rather than the ideal and normative construct of policy and regulation. Our interaction with literature is only to support understanding of workers experiences, and to explain the links, and discord between posted workers lived realities, regulation, and experts and sectoral authorities' interpretation of posting.

## Box 2: Snapshot of posting in SMUG consortium countries

The SMUG consortium covers six EU member states (Austria, Denmark, Finland, Italy, Poland, Slovenia), however, our research focused on posting flows meaning that the consortium countries are only a single node in a network of countries an individual worker encounters during their posting as country of origin, sending, receiving, or reposting country. A country could also take on different roles at different times for a single worker. For example, a Portuguese worker might be posted to Austria at one time, and at another time posted from Austria to Germany. According to 2020 posting statistics, three of the consortium countries - Austria, Denmark, and Finland - are categorised as receiving countries, while Italy, Poland, and Slovenia are categorised as sending countries. This is also reflected in our fieldwork, and in the postings described by our interviewees. Outward posting numbers for Denmark and Finland are much lower than for example Italy, Poland, and Slovenia outward postings, relative to size of country (De Wispelaere, 2021).

Despite the COVID-19 pandemic, posting of construction workers grew over the decade 2010-2020. It has also been changing in form in the consortium countries. All six countries have recorded growth, to varying degrees, in both incoming and outgoing posting (De Wispelaere et al., 2021). In Denmark for instance, the number of posted workers is relatively low and stable, while the number of regular labour migrants or mobile workers employed in Danish construction companies has been rising markedly. However, underneath these figures is a development where many posting companies have established themselves in Denmark via subsidiaries aided by liberal establishment regulation. Stringent enforcement efforts to regulate posting company strategies have also at times motivated companies to establish in host countries such as Denmark. This implies that a large part of the increase in the number regular labour migrants or mobile workers employed in Danish construction is in fact made up of workers that in practice are treated as posted workers, even if they are employed on local contracts. The fluidity between the categories of posted workers and regular labour migrants is a central finding in the project and we will return to it later.

Regarding the need driving inward posting, Italy and Denmark differ as Denmark is seeing growth of posting for supply of labour (Arnholtz & Lovelady, 2022), while inward posting in Italy is driven by a skill demand. Italy is an established sending country, but also receives many posted workers. It is currently recording more inbound posting than outbound posting in its post-COVID economic rebound (Bagnardi et al., 2022). Migration from outside the EU often feed into posting flows. Bilateral arrangements between Slovenia and Bosnia and Herzegovina, and Serbia for supply of labour, spill into posting. Slovenia serves as an intermediary country for many workers with many through-posting.

TCN posting is most prominent in Slovenia, in the official figures (although official figures cannot be considered reliable for TCNs in many cases). In 2020, almost 60% of the posted workers from Slovenia were third country nationals. Only one out of three workers posted from Slovenia had the Slovenian nationality and 7% had another EU nationality. Compared to previous years, the percentage of posted workers who are Slovenian nationals and EU nationals has been decreasing, while the share of third country nationals has been increasing. Compared to 2019, the number of posted workers who are nationals of Bosnia and Herzegovina has increased by 21.8%, from 18 925 in 2019 to 23 051 in 2020. In comparison, the number of Slovenian posted workers has decreased by 8.3%, from 22 473 in 2019 to 20 616 in 2020 (Vah Jevšnik et al., 2022).

Interview data from Austria, Denmark, and Finland show the presence and impact of third country national posting. TCNs represent 12% of incoming posted workers, mostly Bosnians, Turks, Serbs, and Kosovars in Austria. The percentages of TCNs posted to Denmark through Poland is growing while a similar pattern with TCN posting through Estonia to Finland could be observed in our interviews. See more in SMUG's forthcoming thematic report on TCN posting Ndomo et al. (2022).

### 3. Methods

We present our methods both to put our findings in perspective and allow the reader to evaluate their validity, but also to discuss the challenges and possible solutions for working with difficult to reach groups, and under Covid-19 conditions – and particularly the use of alternatives to face-to-face interviewing for the collection of biographies.

*This report is based on 61 interviews with workers and 6 focus group discussions with experts and stakeholders which took place between May 2021 and March 2022. We conducted interviews of EU citizens and third country national workers who had worked on construction projects as posted workers in EU or EEA member states. We included workers with basic skills as well as trained craftsmen, managers, and educated professionals. Some were in metalworking trades but had worked on construction or renovation projects. Posting experience varied from few years to upwards of ten years for different participants. Interviews were conducted by six (SMUG consortium) research teams based in Austria, Finland, Denmark, Italy, Poland, and Slovenia.*

Worker interviews were intended to be biographical in nature, and often they were, but for reasons discussed below, the interviews sometimes ended up shorter and more informational. The biographical approach implies the collection and analysis of detailed narratives of life histories of the population under study, usually by in-depth interviews (Miller & Brewer 2003). The biographical interview is particularly suited to transnational migration research, offering a way of empirically capturing and reconstructing the diverse, complex, and transformational character of the migration experience (Apitzsch & Siouti 2007). For us, it was also a useful tool to side-step issues of methodological nationalism. Although some of the interviews were less rich, we found nonetheless that we had a very substantial library of worker narratives to analyse.

Fifteen of the biographies were of Third Country Nationals, or TCNs, from Bosnia and Herzegovina, Ghana, Kosovo, Macedonia (North), Moldova, and Ukraine, who had been posted from one EU member state to another. Posted workers from 9 EU member states: Austria, Bulgaria, Croatia, Estonia, Finland, Italy, Lithuania, Poland, and Slovenia were interviewed (*see Table 2*). Many workers had worked in a wide variety of EU and EEA member states, and often also had posting or other migrant work experiences outside the EU/EEA as well.

In addition to worker biographical interviews, the report also draws on insights from 6 Focus group discussions held with social partners in the research countries to discuss posted workers' lived experiences, and a collective analytical transnational workshop with experts in the field from across the EU. The latter helped in identifying scientific and engagement gaps for policy intervention. Our concrete research method can be summed as action research using biographical narrative interviewing, focus group

discussion, and policy dialogue as tools (see. Creswell, 2007; Clandinin & Connelly, 2000; Mrozowicki, 2011; Meryl & West, 2009). These interviews are often quite long – two hours is typical – and involve establishing a rapport with the interviewee as much as possible.

Interviewing mobile construction workers can be difficult under the best of circumstances, and when interviews can be obtained, it is often difficult to get them to expand and reflect on their experiences. This was further complicated by the fact that we were conducting our interviews beginning at the height of the Covid-19 crisis, which meant that we were obliged for much of the time to conduct worker interviews – and in some cases focus groups – remotely.

Not all construction workers are accustomed to using remote meeting software such as Zoom and MS Teams. We used these when we could, but some researchers found it more difficult to establish rapport than would normally be expected. The Slovenian team reported, for example, that it was very difficult to obtain the biographic interviews as the respondents were not talkative and gave only fragments. However, in some cases, despite using video conferencing the biographical part was long, detailed and informative. Still, the interviews conducted face-to-face were easier and more relaxed, and the participants more active, answered all questions, were in a good mood and disclosed the names of employers and elements of their contracts, and discussed existing problems without major reservations. The Slovenian team's experience was consistent with other teams' experiences: some interviewees responded well to video conferencing, while other were more reluctant to give information under those circumstances. Some had to be contacted by phone: for example, the Danish and Finnish teams conducted several phone interviews, and these were very short and sometimes done under poor interviewing conditions.

We can conclude that it is sometimes possible to conduct biographic interviews remotely, and it does add the convenience of not having to travel or providing a perceived 'buffer' or 'distance' from the researcher that can aid sharing of some details otherwise difficult to share in face-to-face encounters. However, there is a higher risk that the interviewee will be reticent and face-to-face interviews should be preferred where-ever possible. Video conferencing is definitely preferable to telephoning, if remote interviews must be done.

In the next section we discuss the findings of the SMUG project which is an empirical analysis posted workers behaviour in response to posting circumstances and regulation, and the impact of their actions on the structural make up of "posting" as it manifests in practice. We flesh out a posted worker economic rationality based on posted workers work histories and link it to the apparent social security status of posted workers, or workers with extensive posting periods in their careers. Out of this discussion we will draw policy recommendations for future management of posting as an integral part of the EU construction labour market, as well as a growing phenomenon affecting the socio-economic status of millions of EU citizens and TCN residents and denizens and potential future citizens.

Table 2: Biographical Interviews by Research Team

SMUG Research Team	Number of Biographical Interviews
European Centre for Social Welfare Policy and Research (Austria)	8
Maria Curie-Skłodowska University (Poland)	8
Research Centre of the Slovenian Academy of Sciences and Arts (Slovenia)	10
University of Copenhagen (Denmark)	12
University of Jyväskylä (Finland)	13
University of Padova (Italy)	10
Total	61

#### 4. Discussion of Findings

Posted workers’ acquiescence, social insurance, and economic rationality

This discussion unpacks the main themes which affect the way posted and hypermobile migrant workers engage with the pan-European construction labour market, and social insurance systems. We first look at how they navigate the job market. Social insurance is closely connected to the quality and location of job, the workers’ country of residence, and employers’ transnational organization, only some of which is under the workers’ direct control but all of which is part of what Arnholtz and Lovelady (2022) dub the worker’s “employment package” (or the terms of their mobility) - and which the worker can choose, or choose not to, actively find out about and consider. The analysis then discusses workers’ construction of the posting employment package, looking at how it is (a) pursued, (b) negotiated, and (c) actualised, mainly from posted workers point of view, albeit with references to the practices of other stakeholders as necessary. Finally, we discuss the ways in which hypermobile migrant construction workers engage with employers and authorities, through resilience, reworking and resistance, largely favouring individual strategies over collective ones, and acquiescence over assertion of rights.

##### 4.1 . Seeking a posting gig

First, it is useful to clarify the meaning of posting this report defers to. Defined according to the lived experiences and reality of work of posted workers interviewed in the SMUG project, posting refers to two forms of mobile labour employment. First, it refers to a form of labour mobility where workers are contracted on a short-term basis (often as one of a series of short-term employment contracts from the same employer, including temporary work agencies), to work in another member state on a particular construction project. At the end of the project, or the end of their particular task in the project, the employment ends. Workers might then be rehired by the same employer for another project, or they might seek employment with another employer, often in another EU member state. This form of posting was the most prevalent among 61 workers we interviewed. The other form is ‘normal’ posting as per the posting of workers directive (PWD) definition, where a worker who habitually works in the country of establishment of the employer, is sent to another member state by that employer to provide services for a limited period of time, after which the worker returns to the posting company and the habitual country

of residence. This category also includes intra-company transfers. Both of these kinds of posting are “official” postings, in the sense that the employer should file an A1 form, and social insurance arrangements should be made in the sending state – which would normally be the workers’ state of residence.

For workers that are posted as part of an established and ongoing work relationship, being posted is often part of upward mobility, and is even sometimes seen as a plum assignment. One worker shared about being posted to Norway,

“At our company, just some time ago or someone asked, just from the management, who wants to go to Norway, and then lists were created, which employees signed on and depending on whether the management would let such a man to go abroad or not. Not everyone can leave, because they do not take such beginners to Norway on a contract. You had to prove your skills in Poland first.” (General labourer, Polish, Polish team - 3)

In the former category of posting, which is the predominant form of posting in our data, posting is both a kind of labour mobility and form of employment, which individual workers pursue in various ways. Informal networks are a crucial resource for individual workers looking for posting gigs abroad. In the construction sector, workers find work through fellow workers who recommend former and current employers to their relatives, friends, and former colleagues. Both traditional employers and temporary employment agencies can be recommended by informal networks. However, whichever is recommended, the passing of information from one posted worker to another shapes the form that posting employment takes, by forming a bounded informational and social space around the worker, which references that worker’s personal networks, and the employing firm, rather than the institutions of the host country.

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One key concern about this is the fact that posted workers often have a limited understanding of labour rights, social rights and entitlements, and other crucial labour related regulations and provisions such as occupational health and safety standards because of unfamiliarity with host country, its laws, and regulations. This is often exacerbated

by language barrier and inaccessible information, among other reasons. As a result, misinformation, blind spots, and ignorance passes down from one worker to another effectively due to trust among members of their network. When a posted worker recommends an employer to another worker, they are unlikely to do their own research about that employer or even the host country of work, taking their colleagues’ word for it. As one worker told us:

“...Actually, I learned that the best jobs I ever had were based on recommendations from people I knew, otherwise, if they offer you a vacancy and you have to pay for it, or even pay for the documents, then I wouldn’t trust that...I would only find and accept work if I know at least something.” (General labourer, Ukrainian, Finnish team - 9)

This can, however, create a situation where experiences, including negative ones are reproduced as one posted worker explained.

“I heard about this company through a friend, I called him, and he said he had a friend who had a good company. You know what it is like in Slovenia. You go through a recommendation. However, my recommendation was very insecure [and led to a lawsuit about withheld wages].” (General labourer, BiH, Slovenian team - 4)

Acting like any other intermediary in the labour recruitment chain, individual posted workers sometimes assume a position of authority. Some workers serve a “job-broker” role, as there are employers who know that these workers can put together a work gang to undertake particular tasks. Other workers in their network often perceive such job-brokers as an authority with knowledge and understanding about the job market, the recommended employers, and the host country. This becomes a position of trust, which is at once useful to posted workers who are in unfamiliar context, but also creates a dependence, and focuses the posted worker away from host country sources of information. Our data shows that workers are likely to trust their network more, because of a perceived solidarity, and also because the information, even if sometimes less *reliable* than information from local authorities and host country institutions, tends to be more directly *relevant and applicable* to their particular situation. Because their work situations are inherently transnational, local authorities, including unions, only perceive and regulate a portion of the workers’ employment and social insurance relationships, which limits these institutions’ ability to offer appropriate assistance.

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*Although not their only limitation, jurisdiction limits local (national) authorities and institutions such as trade union’s ability to regulate all features posting but especially social security for which the current structural framework is transnational.*

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In some focus group discussions by stakeholders and experts, they noted that often, not enough information is made available to posted workers. In other cases, it was felt that there is plenty of information in various languages and presented through multiple media, such as websites, brochures, workplace information sessions, and even personal contacts with union representatives. However, posted workers rarely availed themselves of this information.

The other type of common intermediary in the recruitment of posted workers in the construction sector in the EU is the temporary employment agencies (TWAs). These are especially active at the lower end of the labour market, and in the posting of third country nationals. Useful in sustaining the practice of recruitment for direct posting, these agencies tend to serve only as nominal employer, and have only a weak relationship with the worker. The actual management of the work on site is not handled by the TWA, but some other person or entity on-site, such as the main contractor or a subcontractor farther up the chain, while payroll issues and employment formalities are handled by the TWA. Some TWAs have a substantial presence in sending countries and use professional recruitment and payroll practices. Others are insubstantial or even letterbox or shell companies: firms which have a legal existence, but no offices or assets. Letterbox firms are used to allow the employer to access the regulatory regime of a favourable jurisdiction, which can also mean lower social security payments. They can sometimes protect the real employer from claims such as back wages or fines made when the company fails to pay workers or to

make the necessary social insurance contributions on their behalf, because the shell firm has no assets to seize. Such firms often are the source of problems for workers, whether in terms of not being paid for work done, or problems with social insurance.

The competitive situation for firms in the lower part of the contracting chain is such that these kinds of schemes form a part of the competitive advantage of a construction company. As one worker put it,

“... if you want to run a company and pay all the taxes absolutely legally paying every penny, you need to employ 50-100 workers. If you only have 10-20 workers and you pay all the taxes, you will not have anything for yourself. That’s why everyone needs to use all kind of schemes.” (Scaffolder, Estonian, Finnish team - 2)

In such cases, employer-employee relationships are practically bogus and do not provide any or sufficient social and economic security recourse for workers. However, such agencies position themselves strategically to improve rapport and trust with target “posted workers”. Current and past posted workers form and register their own companies used to post friends, family members, and colleagues abroad, benefiting from their understanding of the “posting employment” regime, and their rapport with fellow mobile workers.

Some TWAs and employers, exploit ethnic, language, and geographical proximity to recruit certain groups of workers for strategic destinations such as an Estonian temporary work agency that uses Russian language to advertise work opportunities through online job market sites in Moldova for work in Finland. The perceived affinity of language placates workers worries, giving them a sense of familiarity and security and a resource as they embark on an otherwise precarious mobility to work for an unknown employer in a new and unfamiliar host country. Such workers are likely to grow very dependent on the agency representative with a shared language throughout the recruitment process and even throughout the employment. In practice, the norm in posting arrangements with long contractual chains is that workers’ contact is limited to entities at the bottom of the contract chain which is often a company or TWA registered in a country other than the one where they work. Additionally, posted workers are often separated from local workers in work sites further alienating them from the host country labour market and its actors and strengthening their reliance on recruiter, or employer contact point. Lack of host country language might worsen the alienation workers experience as one participant explained

“...the Estonian company was our employer [in France]. We didn’t work directly with the French. We had the management, supervisors, main engineer who were giving us instructions, they were in contact with the French not we. ...not even trade unions or the labour inspections, no one asked to see the conditions of our contracts.” (Construction worker, Ukrainian, Finnish team - 10)

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*The varied competitive schemes and business models of posting firms and agencies exacerbate the commodification of individual posted workers through alienation that rids workers of the minimum normative employment relations with colleagues, employer, and industry.*

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Dependency on an employer located in another country, coupled with alienation from the host country where work is done can result in toleration of potentially exploitative employment and contractual practices among other problematic employment conditions as this worker illustrates

“...In France, some of us had Estonian visas, others had some kind of work permits, and these were the only documents based on which we worked. We had no health or insurance, nothing. No one explained anything to us, the management were the so-called Russian Estonians, people who moved to Estonia during soviet times.” (Construction worker, Ukrainian, Finnish team - 10)

In this subsection, we have shown the role that familiarity and similarity especially along ethnicity and nationality lines plays in the search for posting gigs. Individual posted workers are more likely to say yes to a specific employer or company, sometimes with little to no knowledge about the employer or the company when it is recommended by a trusted friend, former colleague, or relative. Similarly, employers, TWAs and recruitment agencies with a linguistic and ethnic affinity also enjoy leverage with workers at the recruitment point.

This makes up only one part of what we call a posted worker economic rationality. This far, it looks like a careless decision on the part of the construction worker, and in this sense, we can lay the responsibility for negative and exploitative practices in posting on these workers. However, it should be noted that the practice is the outcome of the workers' relatively weak power and bargaining position relative to employers, who shape these structures and drive the labour migration norms that have become mainstream employment practices in the pan-EU construction labour market. It follows then that while the workers tend to be trapped in a situation where they must act in ways which reinforce labour market practices that disadvantage them, changing the situation would require structural changes to the labour market, and as is our point here, to the social protection regime for mobile construction workers. Additionally, the involvement of informal networks and temporary employment agencies, that are located in countries other than where the work is done, and often times not formally institutionalised anywhere, insulates employers from intervention by host country institutions such as trade unions and labour organisations. As a result, their recruitment practices develop into models and frameworks that shape the decisions and actions of an entire subsection of the labour market, involving many workers. However, host country institutions reinforce this alienation.

#### 4.2 Negotiating terms and conditions of the employment package

Posting as a form of employment that makes and uses mobile labour creates a unique environment for determining and negotiating the terms and conditions of employment and work. Intermediaries in the recruitment process and the long subcontractor chains typical of posting complicate the usual employer-employee positions in the labour market, and the relationship between the two, which in turn affects the employment package determination and negotiation process. Both posted worker work histories and sectoral expert opinions from our focus groups confirm that in posting, sometimes, it is unclear who is the employer. In the case of letterbox companies, the employer may only be present at specific points of the contractual process and completely unavailable at other points, usually to the detriment of the worker in retrieving their social and economic rights and entitlements. Individual workers might be expected to be able to mitigate risks such as bogus employers, or bogus self-employment traps through due diligence at the contract negotiation and signing period. However, we draw on our data to show why this is not as easily achievable as it seems by looking at two things:

- (1) workers' reasons for turning to or accepting posting employment and work arrangements; and
- (2) informal negotiations as a key issue in the determination of terms and conditions of "posting employment package".

On the first, our data provides insight into some of the reasons why individuals choose posting jobs and we use this to understand what workers prioritise when accepting a job with specific terms of employment and working conditions. Posting as a form of employment, just like migration for labour attracts mobile workers for largely similar reasons most of which are economic. Variations stem from workers differentiated social positions in terms of skills, experience, expertise, nationality, networks, and so on. Therefore, different workers are moved to accept (or even actively seek) posting gigs for different reasons.

For some, posting is less a choice, but a necessity for employment continuity in between projects, while for others it might even come as a result of a lack of job opportunities in the country of origin as the following interviewee explains.

"I think in the last 10 years things have changed. Ten years ago, it was about the money because posted workers could earn twice their Italian salary. With the crisis of the construction sector, with the general crisis in Italy and so on, now the main reason is that workers cannot find jobs in Italy and therefore they move just in order to work. If 10 or 15 years ago they could choose between a double salary [abroad] or working close to the family, now this second option is not there anymore. Thus, you can find many that just want to work, they don't even care what will they do abroad as long as you guarantee a job to them." (Site manager/engineer, Italian, Italian team - 4)

Posting, however, can also mean better working conditions and opportunities unavailable in the country of origin for instance when one moves to a country with higher union density and a stricter enactment of collective wage agreements and labour law enforcement. Intra company posting, prevalent among research participants in management level positions and other high skill or rare expertise positions was described as an opportunity for career advancement, or opportunity to utilise a rare skill, or practice and improve skills. Especially for young white-collar employees, posting can offer a crucial opportunity for professional growth as it allows workers to gain work experience that can be leveraged for better employment terms later on as one of our interviewees explained.

"I worked everywhere. In this job, one has no chance. So, you can't get in all the construction sites everywhere if you don't have any experience. Somehow abroad I had the chance to gain a bit of experience. That's why I had to go abroad. In order to gain a bit of experience." (Crane operator, Austrian, Austrian team – 4)

For others, still, posting is a decision of the company that cannot really be negotiated even when there is a long-term employment relationship with the same company.

"They don't offer it. There is a vacancy there, they look for workers deployed in projects close to be completed and they send you in this new site. So it happened that I was returning from a project in Sardinia, and they sent me to Germany." (General labourer, Italian, Italian team – 10)

Overall, the overarching reason why individuals accept, or seek 'posting jobs' is financial: better wages, net earnings. On wages, our research participants show a preoccupation with net earnings at the

expense of other important considerations such as social protection and security. For instance, workers seldom worry about whether employers make social contributions on behalf of the worker as required to the relevant institutions, whether old age pension contributions are made, as well as other social security features.

A focus on net wages, however, tends to be misleading and results in disappointment and dissatisfaction with work and employment in the long run, and especially when social and economic risks such as job loss occur, or when a worker learns from other posted workers of better employment terms for similar jobs, or of the better contractual terms of non-posted workers. Important to note is how the wage issue intersects with the status of posting. That is, whether a worker is posted as per the criteria outlined in the posting of workers directive or whether they are in legal terms mobile migrant workers who are otherwise treated by employers as *de facto* posted workers.

The posting status has implications for a workers legal and administrative duties and rights in the host country where work is done consistent with the integration-non-integration dichotomy between the two status groups. Posted workers are not to integrate while migrant workers are to integrate, and integration takes many forms from registering residency and right to work with local institutions, paying taxes, social insurance contributions, to learning host country language. For instance, in Finland and Denmark, a migrant worker must register their right to work with tax administrative authorities to regulate their tax contribution percentage among others. We use the case of one interviewee, (Romanian interviewee, Danish team - 7) to exemplify this issue.

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*The many and nuanced legal implications of the migration-posting regime intersection determine the social security possibilities of posted workers and should receive greater attention in posting research and posted worker rights awareness activities of Unions, employers, and others.*

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A Romanian worker posted in Denmark by a 'Polish company' reported in the interview about earning roughly 55% less the agreed wage at contract signing. The worker understood this discrepancy as the result of a cheating employer. However, posting experts in the Danish Focus group had other ways of explaining the discrepancy based on understanding of host country labour and migration and residency laws and regulations that a posted worker is highly unlikely to have. The employer representative said that the discrepancy between the promised and paid wage was likely a tax issues, explaining that wages are often agreed in post-tax terms in some sending countries, whereas they are always stated in pre-tax terms in Denmark. It is a big problem because it is unclear what the actual post-tax wage will be, and employees will often become dissatisfied, and it is difficult to handle the taxes as an employer. Trade unionists in the group agreed that the difference between the two ways of agreeing on wages causes problems, but also argued that the differences described in the case were too large to be only a tax issue, as tax rates typically fall below 40 %. Instead, they attributed it to undeclared work.

Another issue was whether the worker was a posted worker according to the legal definition of the term. If perhaps the employer was a company established in Denmark by a Polish employer rather than a Polish company, (which is how the worker described it, but this was unclear from the interview material), then the worker would not have the proper registration (as a worker in a Danish established firm, because they

believe they are posted), and tax authorities would be forced to apply a default tax rate of 55 %, which fits the difference between the promised and real wage rates.

Also closely linked to the wage difference issue is bogus self-employment in its varied forms. Sectoral experts participating in the focus group in Finland explained that bogus self-employment in the form of “light entrepreneurship”, is proliferating in Finnish construction. This is a low cost, low administrative burden, and easy to establish nominally independent contractor type of company. Such companies are being set up for construction workers coming from abroad, who then become subcontractors to a construction company. These terms that effectively shift responsibility for social security contributions to the worker. Unaware of the intricate implications of the legal status through which they enter the labour market, workers are lured by the seemingly higher net earnings potential to conclude contracts that they later find out are less lucrative than direct employment, once social security contributions are paid.

As ostensible entrepreneurs, the workers should cover these extra costs on their own, but often they are not aware of it. In the experience of some sectoral experts, failure to regulate these payments can lead to debts. This reveals the difficulty with assuming that workers should navigate international social security rules on their own. Workers cannot be expected to know the implications of all the different forms of work and self-employment contracts in the various countries where they work, especially given that many workers will work under a variety of types of contracts in several different countries over the course of a career. A trade union representative explained that

“the employee does not understand it, if they are [normally] getting 12€ per hour, and then [suddenly] they get 14.5€ per hour, then this sounds good, but then when they get the salary, the salary is smaller than [agreed] previously. The workers were forced to sign the contract [...] and then holidays, sick leave, OSH, they do not get.” [Finnish Focus Group]

On the second part, negotiating the terms of a ‘posting employment’ or contract, our data shows that informal negotiations are prevalent, and that this can be detrimental for workers. The informality means that negotiations overlook or subordinate relevant structures that should ideally mediate the formal process of wage setting such as sectoral, industrial, or universally applicable collective agreements, and minimum wages to informal deals and agreements between individual workers and employers or contractors. Once again, owing to their limited understanding of labour laws and regulations of the host country where they take up work, as well as a poor understanding of their labour and social rights and entitlements, posted workers are in an inherently weak and vulnerable position in such negotiations. As a result, they tend to end up with unfavourable employment contracts and agreements. There are many employer contractual manoeuvre tactics employed at this stage.

For instance, our data includes a case where an employee's wage is split between a formally paid amount, and an under-the-table amount to make overtime work that exceeds regulatory minimums possible. To conclude such deals, employers use their understanding of host country labour laws against uninformed workers. For example, workers can be convinced that their earning potential is limited by law, and that they can reach a better deal informally. This lures workers into cooperating in exploitative employment arrangement, although the worker is unaware of the exploitation. Interviews with workers show that the only thing that individual workers perceive as a challenge is inability to recover under-the-table earnings when companies default or are dissolved, and workers seek assistance from host country institutions to recover lost wages consistent with the following narrative of a posted worker in Austria.

“So, the employer, the Viennese, he was like the devil, he knew a lot about this work, how it works [...] He could just quit this company. New company name, opens up a new company again. [...]so about 3-4000 I had to get from him, he did not pay me, simply said, I was dismissed, there is no company anymore. [...] I went to the Chamber of Labour. Then I got my money from the Chamber of Labour. ... I got about 3000 EUR or so, maybe 1000 EUR or so, I didn't get. Because the... I would say... So, the employer shook my hand and told me that he makes me 13 EUR on contract and then pays the rest in cash.” (Crane operator, Austrian, Austrian team – 4)

Depending on whichever of the reasons above drives a worker to posting, most workers do not have any real room to influence terms of their employment. Even those in management positions who usually have some power to leverage are forced to depend on their own abilities to negotiate in the absence of unions or any collective institution's assistance.

“When you get an offer to be posted in a foreign site there are no unions involved [for us]. It is all about an individual negotiation between HR and you. They give you a proposal, you can respond with a counterproposal...but to be honest the salaries are more or less the same, [you can get] 100 euro more, or 100 euro less. This is the negotiation space you have, and unions are out of this.” (Site manager/engineer, Italian, Italian team – 5)

“Well, they offer one thing, we ask for another, and sometimes we meet in the middle, as we would say. But they never paid us the same amount they took there in Germany, as we once had a chance to see a contract from the Germans, to see, how much do they take per worker. We would get a different amount.” (Electrician, assemblage, BiH, Slovenian team – 5)

Though workers may engage actively in negotiating wages, they often neglect other features of the employment package. In many cases, workers agree to the posting themselves without asking for, seeing, or verifying the appropriate documentation such as PD A1 forms. Moreover, the relevant documentation varies from country to country depending on existing transnational and bilateral arrangements. Workers tend to consider only net wages when agreeing to employment and are unaware that they must be included in social security schemes. They let the employer do most of the work in arranging their employment without doing own follow up. While this would only pose limited risks in case of standard posting as a part of an ongoing employment relationship, it is worse when the posting is itself a form of employment as this tends to throw into doubt the division of responsibilities between the employer and the employee as well as the institutions in the host country and the country of posting, or country of origin.

Legally, “posting employees” (those moving for work but falling outside the PWD definition), might need to register as workers in the host country in order to ensure eligibility to social and welfare benefits in the host country as they are likely to be excluded from the host country welfare systems that are contribution based. They may also need to pay tax and ensure that social contributions are made on their behalf to the correct institutions. Generally, “posted employees” do not have a set of regulation to fall back on and may need to watch their backs by themselves. However, the opposite happens as our interviewees explained that time constraints, poor understanding, lack of interest, and failure to grasp the importance of social insurance in the moment led them to neglect due diligence, instead leaving the employer to determine terms of employment and residency unilaterally.

Apart from wages, workers do not usually investigate side benefits, and they especially leave social security considerations unchecked, until these are direly needed e.g., after an accident or closer to retirement age. For instance, participants' work histories did not touch on the portable document A1 (PD A1), unless the interviewer asked directly. The PD A1 is the most secure way of confirming that their social insurance coverage remains active during posting, in the sending country. When directly asked about it, most workers did not know what that was, and instead referred to alternative documents in their possession such as pay slips to confirm payment of tax and social insurance contributions although this does not really provide that guarantee.

The short-term nature of construction projects also means that "posting jobs" incentivise poor planning, as the illusion of temporality obscures the future and eliminates all incentive to plan ahead. Many workers wait to plan and negotiate better employment terms on a stable long-term job. Bad employment terms and experiences can be tolerated for short periods of time. The only problem is that, before a stable long-term employment that enables future planning is possible, the future arrives. This is because workers posting work histories, though consisting, for example, of several 3-month gigs, spanned decades for some, several years for others and are still ongoing. Posting is viewed by interviewees as a short-term arrangement and not considered something a person would do for a long period (especially for family

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*Several structural design features of EU construction projects that use posted workers, some of which we have presented here, combine with unique individual worker characteristics to emphasise the present time while obscuring the future where social security tend to be 'located' in normative bounded rationality*

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reasons). Health issues are rarely considered. As we found from our respondents, they generally do not think much about retirement or old age - their motivation is to make more money. Experts in the focus groups in Austria, Finland, and Slovenia discussed the lack of workers' awareness of the importance of social security contributions and their fixation on the net payments.

While this discussion does not cover all issues interviewed workers raised, we have attempted to show the circumstances and the rationality behind workers neglect of due diligence at the employment package negotiation stage. The decision for posting plays a central role, sometimes ensuring that the worker does not have a choice beyond accepting a source of income, no matter the terms. Engaging in informal negotiations with employers while in a clearly disadvantaged position in terms of knowledge and understanding of host country labour laws, or their own labour rights, is another constraining factor. However, this cannot be squarely attributed to the worker, as employers play the dominate role in instituting informality in posting. Lastly, workers attribute their focus on wages and neglect of other employment package elements, to time constraints. Focus groups discussions suggest that language barriers, and limited understanding of host country social insurance systems, also contribute to this neglect.

#### 4.3 Working: Resilience, reworking, and resistance

For migrant workers, what constitutes appropriate working conditions, and what kind of social insurance is needed and appropriate, is always a subject of negotiation. The risks they take, which should be insured, and the social needs they have, are similar to those at home, or in some ways greater, but their rights are unclear to them, and often hard to access.

Additionally, host country institutions commonly show little interest in clarifying for foreign workers their benefit eligibility. As one worker told us:

“I interacted with Kela [Finnish social insurance agency] recently. I became sick so I had to interrupt my contract for some time, because I wasn’t physically able to work. I found that the attitude with which I was met was not particularly friendly, it seemed that they are not particularly interested in helping me in any way. They were more interested in finding out about my plans, if I’m planning to leave the country, if I’m maybe more interested in some vacancies abroad. It was really obvious to me from that discussion that they are not interested in helping people stay and offering them support.” (Equipment installation worker, Russian speaking Lithuanian, Finnish team - 7)

Host country institutions, strong ones in terms of local influence, also lack the relevant capacities to ensure fair outcomes for mobile workers, as focus group participants often noted. For example, in the Austrian group, when discussing the Austrian regulatory framework for rights and working conditions of posted workers, the focus group member assessed the legislation as quite strong. However, when it comes to the implementation and the effects of such national and EU-legislation, the focus group participants reported that they do not prevent fraudulent practices, and posted workers are not protected to the extent they should be. Other focus groups had similar complaints.

More often than not, employers and local actors take advantage of this, as one worker observed

“We can’t communicate properly and what’s worse, we can’t always understand our rights. They always manage to explain our responsibilities very well, but there’s never the same effort put into explaining our rights, I guess that’s not as profitable.” (Equipment installation worker, Russian speaking Lithuanian, Finnish team - 7)

Operating from a position of low power and leverage, and limited information, workers use strategies of resilience, reworking and resistance to navigate the posting labour market (Berntsen, 2016). This is also how they cope with the social risks involved in labour migration, because these two things are connected: problems in social insurance reflect precarity and informality on the labour market.

Based on our data (and past studies), we have established that many postings in EU construction take the form of stand-alone employment; several short, fixed term contracts that can involve repeat assignments performed by the same worker for the same employer in one, and often more member states over periods as long as multiple decades, such that many workers can be described as having ‘posting careers’.

After seeking out an employer or being recruited by one, workers participate to varying degrees in determining an employment package with most of their effort focused on net earnings at the expense of other crucial elements such as social security. After these two steps, work begins in the host country. Here, prior agreements and expectations of the worker are tested. Our research participants’ work histories highlight discrepancies between the posting employment package that manifests in practice and the employment package agreed at the contract agreement stage, or workers pre-contract expectations. Discrepancies affected especially wages and working conditions but also affect other features of employment. Wage related discrepancies were common across EU countries where workers worked, while other discrepancies e.g., honouring of occupational, health and safety standards varied greatly among member states.

The most reported wage related challenge was withheld wages where an employer refuses to pay a worker for completed work in full or withholds a portion of the wages. This takes on varied forms. For some workers, employers failed to make social insurance contributions to the sending country, or to deliver tax contributions even when these were deducted from workers' wages. Many workers we interviewed did not know how to confirm that these contributions are being paid accordingly to the relevant authorities. Another reason is that workers paid little or no attention to such issues at the beginning of their employment, perceiving posting jobs as temporary and not the time to engage in certain 'real' employment issues, which might be pursued later.

The other way wages were withheld or manipulated such that workers received less money than they were entitled to involved tinkering with allowances for e.g., food, accommodation, and transportation, and working time and pay scale regulations. Workers gave examples of situations when employers employed informal work techniques such as combining legal contractual pay agreements and under-the-table arrangements to handle allowances that in the ends reduced their earnings. Employers also manipulated working hour registers to ensure that overtime work continued even though workers were not paid the appropriate hourly rates for overtime which were instead recorded as allowances and other expenses. Whichever manoeuvre employers applied, posted workers bore the brunt in terms of lower wages than expected, and entitled.

"In the first period I had only the Sunday off, I earned the usual 2400 euro. Last 3-4 months we worked 7 days per week, we could return home only when he let us...and I earned still 2400 per month. [... [the payroll] was the Italian one. He recorded 8 working hours plus one extra working hour [per day]. The rest was recorded as unforeseen expenses. He paid 2 euro per hours. So, in Italy the minimum is 9 euro per hour. There I earned barely 5 euro per hour." (Mechanic/Excavating machine operator, Italian, Italian team – 3)

Workers' responses to these challenges show a greater reliance on individual and personal capacity and strength, tactics and strategies, over collective actions involving collective of workers, as well as those involving collective institutions such trade unions which require membership. However, where institutional bureaucracies exist, and have a demonstrated record of efficacy in handling specific issues such as the Chamber of Labour in Austria in handling wage disputes, workers occasionally used such services. At the individual response level, workers apply different logics and rationales to deliver specific end goals. As per Berntsen (2016), we classify their responses using both Katz (2004) and Emirbayer and Mische's (1998) disaggregated agentic social action categories of resilience, reworking, and resistance.

Resilience tactics help workers accept and deal with unfavourable work situations that they perceive as unchangeable, or that they are not willing to change for some reason. Workers generally accept employer non-compliance practices and exploitative practices such as the wage withholding discussed above because they consider posting as a take-it-or-leave-it situation. This is often the result of poor social and economic opportunities e.g., as in the case of Italian construction workers still feeling the effects of a 10-year sectoral stagnation, or Ukrainians and Bosnians whose country

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*Sole of predominant reliance on individual capacity and ability to 'survive' or 'take' difficult, exploitative employment is often a direct result of poor social insurance entitlement or a low reservation wage more specifically, and results in further social insecurity*

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of origin political and economic condition perpetuates a large unemployed, economically precarious workforce. Socially, this epitomises the dangers of a weak reservation wage among workers. The result are workers willing to take on any work, subordinating all other labour and social rights and needs to 'employment'.

Back to posting, workers do not always know all the specificities of the posting regulations, and in some cases, they lack specific information about their 'posting' and legal/migration' status, obligations, and rights. However, they usually seem to be aware of the ways employers exploit and take advantage of them and their situation. Nonetheless, their responses are usually based on adaptation and coping mechanisms rather than on organizing or resistance. We identify a few specific characteristics unique to posting of workers in EU construction that intersect with individual worker biographies to push workers into accepting posting gigs under vulnerable and precarious conditions.

One such issue we underscore is the temporality inherent in posting. Workers see short posting gigs as passing moments that do not warrant too much effort to change. Additionally, in the initial years of posting, workers tend to see themselves as passing through to a different employment arrangement, often a different country from the one where they work momentarily, and to better terms and conditions. This reduces the significance of the vulnerability and precarity of posting jobs. Workers remove themselves from posting, treating themselves as outsiders who only have to deal with posting as a means to an end. This links to and perhaps explains the neglectful attitude we saw workers adopt while negotiating the terms and conditions of their employment where they overemphasise net earnings over long term employment features of social security and social protection, as well as yielding most decision-making responsibility to the employer during employment terms negotiation.

Posting is an inevitability for many workers as we have shown in the previous section. These include, but are not limited to, workers who turn to posting for urgent income to sustain a family, and who may not be able to find employment in the sending country due to circumstances such as an economic slump, as some workers from Italy and Bosnia and Herzegovina highlighted. For them, a posting job is accepted and is endured no matter the prevailing working conditions or terms of employment as long as their socio-economic condition, and that of their sending countries remain unchanged. Additionally, the way a worker gets a posting job can also reinforce their tendency for resilience. When informal networks assist in securing a posting job, our data shows that informal networks persist with workers through their employment and sometimes performs a disciplining role that keeps workers in employment relationships and arrangements that may be exploitative and detrimental as illustrated below.

"In Italy if you refuse [to complete a task because you see it is not safe] ...you won't find a job anymore. Some colleagues of mine had this kind of experience. And once you are out of the network, you are done, you can't get in anymore. It is like a closed club. Also, because the same workers and the same engineers do these kinds of projects, maybe they warn each other: look this person is ok, this is not. [...]. Thus, you have always to obey. And this is bad. Let's say, for example, there is a workup at 7 metres [on the scaffolding] and I don't have all the safety equipment, if I complain that I have no safety belt, they will simply tell you: alright, I put you in a blacklist. Thus, willy-nilly you do the work even without safety belt. [...]. And if you reach out to a trade union, you are done with this job." (Welder/Excavating machine operator, Italian, Italian team – 1)

This is possible only because of the prominent position and role of informal networks in recruitment in posting, that involves both employers and workers. Workers afraid of the consequences of a powerful network may choose to endure a bad employment instead of confronting, eliminating reworking. However, such workers can resist when they are in a position of having nothing to lose as the following worker explains.

“This job gives no stability, no security. That is why when one works in a project, accepts [everything]...you work and accept the conditions they offer because otherwise you risk not having even those conditions. Also, workers in this trade are always the same and if you get a bad reputation, they leave you at home [...]. You always try to look good, to be ready.” (Driver/Excavating machine operator/ Carpenter, Italian, Italian team - 2)

Workers also applied resilience tactics to cope with occupational health and safety challenges. Our data shows good occupational health and safety standards across the member states research participants were posted in. However, whenever accidents occurred at the worksites, or when participant developed

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*An attitude of resilience though generally helpful, can also be detrimental, for example when resilience means neglecting or subordinating occupational health and safety to productivity and efficiency.*

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health complications while in the host country, workers were reluctant to stop or interfere with work to seek medical attention and care. Occasionally participants continued to work with injuries or conditions considered ‘small’ even when those could and did develop into bigger health problems. In many

cases, workers waited to undergo treatment while in the sending country for reasons such as access to family support and using holidays for rehabilitation periods. The logic of needing to keep on working, minimising interference with work, and opting for care support from family members, and using holidays to cover rehabilitation and treatment days are all consistent with efforts to be an ideal worker for employers which can help a work to stay on the job for long.

“We have medical insurance, we always had it with EU contracts, but did not use it much. I needed rehabilitation, which I never did, there was no time for such thing and also, I would not know where to go for such services. I used the green card for small things, along the years, but for the big things I am not able to use it.” [...] I have back pain for a while now, it is all from heavily lifting, from this harsh work. I let it get complicated, and then I had to have a surgery. There was a hernia issue, I had to go home to get it, I have insurance here and I went to a doctor but here was nobody to help me after the surgery, my wife could not come, now I have more problems to solve because I did it there. It is hard when you cannot understand the language, all is complicated. I used my vacation days for this.” (Installation worker, Portuguese, Austrian team – 2)

However, since practical access to social insurance is uncertain, some workers often have private insurance, which they obtain themselves, or which their employers allege to have obtained. This does not always work out, however. For example, when workplace accidents occur, employers often conceal or alter the facts of the accident, which complicates workers’ access to healthcare and to injury compensation.

One respondent who had a very serious accident while working as a posted worker stayed in a German hospital for 7 months, and then a Polish hospital for 3 months. Private insurance paid for the hospital stay,

but he remains disabled, and he believes his problems with obtaining disability compensation is related to false information provided by his employers. He relates:

"I was asleep for 3 weeks, probably, or how many, I guess I was in a coma, then it took them 3 weeks to wake me up, from this coma.... from 4 meters they wrote that I fell. And it turned out, a German manager came, and he even told my colleague who works in Germany, he said that I fell from 7 meters, not four, and they wrote that I fell down from four.... because the company should pay me money now, and they are refusing it, they do not want to pay me money. We have lawyers hired.... There will be a case, there is a case already in court, but this is against the Polish Social Insurance and the Insurance Company, because nobody wants to pay anything." (Ventilation worker, Polish, Polish team - 7)

On other occasions, workers responded differently to problematic posting employment situations, opting to manoeuvre bad practices and patterns rather than accepting and enduring them through reworking strategies. At this level, individual workers take steps to change problematic situations affecting them with the view to improving their own experience, without attempting to change the problematic practice or norm for the sake of other workers, the profession, or the sector. Reworking strategies seek to improve the situation of the individual by reducing the negative impacts borne without changing the actual problematic issue. The decision to rework rather than resilient endurance was in some cases arrived at gradually following and building on a period of resilience as participant one from Italy alludes

"It is normal that you work a lot to show yourself to that person [i.e., a gate keeper/recruiter/site manager/surveyor] ...You do overtime, do the shittiest jobs that exist to not lose the job, because you know that person counts. You always try to catch the attention of that person, are always ready for that. [...]. But you cannot always be under this much pressure. It is not life. You already have no social life [when you work], at work you have this person breathing down your neck, you have to work overtime, to do this, to do that...." (Welder/ Excavating machine operator, Italian, Italian team – 1)

One way research participants manoeuvred wage related exploitation and vulnerability was by utilising institutional power and resources at their disposal in the host country. This also means that workers who could apply these reworking strategies had to have achieved a certain level of integration in the host country labour market, which came with an understanding of applicable wage regulations such as collective agreements and minimum wage requirements, and relevant institutions. This kind of understanding is possible for some foreign workers. Typically, it favours foreigners from labour systems that are similar or culturally close to the host country, those who have host country language skills already or can easily learn, those with large established ethnic communities in the host country or those who manage to engage supporting collective institutions such as trade unions and NGOs. Some posted workers also learnt about the host country labour market from local colleagues, often through interactions at the workplace.

For instance, an Estonian worker in Finland had to know about the social insurance institution of Finland (KELA's) mandate including its salary protection mandate for all workers including foreign workers such as posted workers to use such services. KELA's salary protection

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*Generally, reworking can be effective in reducing exploitative postings, however, the level of consciousness necessary or reworking requires integration in the host country which the structural design of posting precludes.*

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includes helping employees recover wages lost due to employer non-payment e.g., when an employer declares bankruptcy, or when companies withheld wages for various reasons. Another Estonian posted worker, unaware of this resource, did not use it when facing the same challenge. Similarly, a posted worker in Austria has to be aware of the mandate of the Austrian Chamber of Labour in order to use its services to pursue lost wages after a company closes before completing payments.

“...After hearing that I will not return, my boss decided that he will not pay my last salary which I had already earned. I turned to “Palkkaturva<sup>3</sup>” [salary protection] and received my 4000 [Euros] without any problem. You let the officials process the things, it takes some time, maybe a month or three. If you have all your pay slips and documents kept it's very easy.” (Welder, Estonian, Finnish team - 3)

The element of reworking lies in both the endeavour to understand resources available for posted workers in the host country, and actual use of these resources at a time of need. Our interview data shows that posted workers rarely use host country institutional resources and support structures to address challenges even when they are entitled to these.

Another way workers manoeuvred problematic employment situations was by leaving and changing employers who subject them to exploitative practices. Our data shows that a posted worker's strongest individual capacity to improve a bad posting situation is to leave a bad employer for a better one, or at least threaten to leave. This practice falls under the reworking category due to its focus on improving a single worker's situation without attempting to change the source of the problem. When workers chose not to confront an exploitative employer or report them to authorities in the host country or across borders, that employers can continue to operate, and subject other posted workers to the same exploitative practices, ensuring that the same problematic practices are reproduced as long as there are new labour entrants in the posting labour market. However, for individual workers, especially well networked and experienced workers, this is an effective agentic resource.

“When it came the time to renew my contract, he proposed me another 4-month contract [to keep working as posted]. I told him: no, I want to go home to get cured because I was getting sick, I had some kind of heart murmur, I felt bad, and I even spent 3 days in bed. Therefore, I told him: I don't want to be here [posted] and I left. He was really pissed. Then he called me back again and I told him no to work abroad. So, he sent me to work in a project near Padua....” (Site manager/Engineer, Italian, Italian team - 4)

However, we note that the number of posted workers that manage to integrate in the host country labour market is small. Posting, *de facto* and *de jure* is designed to limit and prevent worker integration in the host country. Workers are instead supposed to remain integrated in the sending country labour market.

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<sup>3</sup> For more information: <https://www.palkkaturva.fi/>

Even though the case of unclear posting arrangements such as the 'posting employment' cases we focus on in this study call for integration, this remains limited. Very few workers manage to employ reworking strategies, when these are contingent upon host country institutional support.

Acts of resistance aim to transform problematic situations, by, for example, shifting power relations. Therefore, resistance in the context of problematic 'posting employment' practices and norms would not only aim to improve the situation of an individual worker, or help the worker avoid dealing with a single exploitative employer that withholds wages, but would attempt systemic change, even if this is limited to the systems within a particular firm. Resistance strategies were the least employed among the workers we interviewed for the SMUG project. Past research of differentiated agency corroborates the weak development and use of resistance as an agentic response especially at an individual level (See e.g., Ndomo & Lillie, 2022; Berntsen, 2016; Data et al., 2007). Industrial relations research show that transformational strength lies in solidarity and collective power and the same applies to the case of posted workers seeking to transform problematic employment conditions, relations, and practices.

Trade unions are well established across the EU and provide a solid institution around which workers can rally to consolidate their strength as a unified socio-political unit – a working class. Unions have not been very effective at organising foreign workers generally, and among foreign workers, posted workers are a worst-case scenario. The non-integration assumptions embedded in the legislative and juridical design of intra-EU worker posting ensures that posted workers engagement with host country labour institutions such as trade unions remains at a minimum. In practice the short nature of posting 'gigs' worsen the likelihood of posted workers joining trade unions in the host country. Membership in unions at both the sending and host country are made necessary by the transnational nature of the posting labour market, and the cross-border coordination it calls for. Membership is often a requirement for trade unions to legally intervene in cases of wage exploitation and wage regulatory arbitrage – one that posted workers don't meet.

Further, at an individual agentic level, individual workers we interviewed were ambivalent about the role, capacity, and potential of trade unions to really improve their weak areas e.g., social and economic security in posting. Workers mostly report to not having had contacts with local trade unionists while posted and they rarely actively try to reach out to local unions. The main exceptions were the Finnish workers, who were usually covered by their Finnish collective agreement, and would sometimes join local unions when working on local job contracts. Many of the workers interviewed in Denmark had some level of contact with the union, because of the ongoing organizing operations. In one case of posting from Italy,

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*Transformative industrial or sectoral resistance tends to stem from collective power leveraged by unions of organised labour, which posted workers are seldom join.*

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the local branch of the hosting country's union had an official who could speak Italian and that tried to establish contacts with Italian workers. Even then, however, workers did not feel that unions' support would concretely change their conditions. Other biographical issues such as language barrier and bad past experiences or lack of experience with trade unions in the country of origin, among others

mediate workers stance towards trade unions and authorities in general in the host country. Generally, posted workers likelihood of engaging in resistance is very limited.

For resistance some research participants shared plans for mass resignation where a large group of workers collectively leave an employer/company with the objective of disabling that companies' operations in a bid to force a change. This plan is based on the awareness of the weak leverage a single resignation holds, as well as the inconsequentiality of individual transfer from one employer to another. However, in both the Austrian and Finnish cases where mass resignation was discussed, it was a hypothetical, a plan that had not yet materialised. Whether worker would be able to implement it at a necessary time or not remains to be seen.

"The problem was that they were getting wages, but they did not get their contributions alongside with wages and they realized that also taxes were not paid, as I understood. They found out that, so nobody told them that. They found it out when one colleague realized he does not have healthcare when he went to the doctor. And then they collectively started to rebel. And then he left Slovenia and went home. So, it is better to lay home for nothing than to work for nothing. And so, for three months he didn't get money." (Mechanical engineer/ Geodesist, Croatian, Austrian team - 6)

Based on our data, we are not able to determine why some workers, choose to rework while others apply resilience tactics to similar challenges, or why other choose resistance. However, we identify some influencing factors. First is experience, in terms of the number of years a worker has spent in 'posting employment' which translates into a mobility capital; in other words, knowledge of transnational labour market norms and practices, embeddedness in establish mobile worker communities across borders, links with posting employers and companies across borders among other things. The second is skill level, profession, and position in a company. Our data shows significant differences in the posting experiences of blue collar and highly skilled workers or workers with rare skills. For instance, for managers, posting is a natural step in an upward career mobility in a company, while posting also follows the PWD definition of normal posting and intrafirm posting. On the other hand, blue collar workers' upward career mobility is more likely to be impeded by posting than reinforced. Blue collar workers are also commonly posted outside the PWD framework and instead through 'posting employment' schemes. Third is the nationality of the posted workers. This has to do with discrepancies between nations welfare and social security capacities and provisions. Workers who enjoy reasonable security based on their nationality interact differently with posting compared to workers whose citizenship welfare rights are insecure. These among other reasons intersect to shape individual posted workers agentic response to challenging posting situations.

## 5. Concluding remarks and policy recommendation

A posted worker's lived experience, and the perspective and understanding of intra-EU worker posting in the construction sector perpetuated by that experience makes clear that what posting is and what it should be run on parallel 'reality' tracks. The mobile construction workers we interviewed had experience with both worlds of posting: Some were posted workers 'proper' meaning that they held an employment relationship with an employer that habitually operates in an EU member state other than the one they were sent to work on temporarily, before returning to the employer and the country of habitual work and residence. Others and the most in our sample, were "posting employees" in "posting employment" with fragmented but long "posting careers" that span several member states. This is not posting proper. It is a form of bogus posting that is more holistic than the forms of bogus employment that have received attention in past posting research such as bogus self-employment and shell company operated posting.

This “posting” is a form of employment that uses ordinary labour mobility according to posting terms and conditions. In other words, these “posted workers” are ‘migrant workers’ that are recruited for time-limited projects across the EU but are treated not as ‘free moving people with necessary and standard social and labour rights in the host country’, but as ‘parts’ of service providing companies with rights under the free movement of services principle – in other words as posted workers.

Posted workers are spatially dis-embedded and alienated, with significant consequences for their social protection and security. Actual posting trajectories show how workers become systematically removed and detached from labour, industrial, and national institutions, such as social insurance systems in the multiple countries involved in posting – country of origin, sending and receiving country. Although there are a plethora of stakeholders in principle seek to regulate posting and other transnationally mobile labour, most workers believe, think, and behave as if they are on their own, relying mostly on their personal network of fellow posted workers and co-national and co-ethnic migrant networks across the member states of posting and work. Employers continue to treat their responsibility to workers social security as negotiable, ensuring that compliance with social insurance rules haphazard.

Social protection challenges are worse for workers with uncertain posting status. Sectoral experts explain that many workers fall in the cracks between national social insurance schemes. Worker unwillingness or inability to check up on their status, and to navigate these complicated system interactions is limited. Organisational and institutional help, especially via trade unions often fails to reach workers. Dis-embeddedness and temporality in posting keeps workers away from host country institutions.

As a result, posted workers may have to take matters in their own hands. This usually takes the form of acts of resilience, reworking, and (rarely), resistance. Resilient acts, aimed at survival often take the form of acquiescence with prevailing circumstances, and thus do not help to alleviate vulnerability or exploitability. Reworking strategies hold some promise as their objective is to manoeuvre the oppressive and exploitative system and improve an individual worker’s condition except in their realm of social security. Reworking is dependent on local host country institutions whose authority is limited to the country’s borders while transnational social insurance requires coordination and enforcement across national borders. Additionally, changing a bad employer for a better one may improve social security outcomes in the ‘future’ but depends on the time the decision to leave and stop working with bad employers is made. Moreover, it does not retrospectively fix the past, while social security benefits are cumulative. Resistance by individual workers or non-union mediated worker collectives such as mass resignation, were mentioned, but not enacted and so cannot be evaluated further here. Unions, though an established industrial institution in the construction sectors in Denmark, Finland, Austria and Slovenia, did not engage in transformative actions on behalf of posted workers. While this might be regarded as a wasted opportunity, it is difficult to see what kind of transformative action could have succeeded given the structural design of posting.

When individual workers social protection and security efforts of resilience, reworking, and resistance fail, including failure or inability to make use of institutional assistance, the only remaining line of protection is the social insurance and welfare system of the country of origin granted on the basis of citizenship. Here inequality between countries social and economic statuses differentiate different workers’ access to social insurance. A worker with citizenship or residency in a country such as Finland or Denmark has access to much better social insurance than one from Poland or Bulgaria. Workers with poor access to social insurance must rely on the labour market to survive, but this reliance also makes them weaker when

navigating the labour market. Thus, the poor social insurance access for posted workers, whether it is because of gaps in EU rules, poor information, or weak welfare systems, results in downward wage competition, and weak negotiating power of workers vis-a-vis employers. On the other hand, this weak negotiating power contributes to poor social welfare access. Thus, posted workers are caught in a vicious cycle.

A single market without an equal welfare system underlies “posted workers” social insecurity. Many interventions have been implemented such as the equal pay for equal work in the revised PWD, or establishment of the European Labour Authority (ELA). But all these have fallen short as they fail to alter the structure of posting. Understanding this, the SMUG project proposes a policy intervention to alleviate the socio-economic vulnerability and insecurity that posting, in its varied forms, impose on workers while working around the member state and regional inequality question.

We propose a minimum social security package for all mobile workers in the EU, including TCNs who are posted via one EU member state to another. The logic would be to raise posted workers reservation wages to a general minimum level below which no worker would be incentivised to take work. The minimum social security package we recommend would include individual standards for unemployment benefits, occupational accident insurance, disability benefits, family benefits, and old age pension. Its comprehensiveness does not necessarily mean extensive additional financial costs for individual member states as most countries already have welfare systems in place that guarantee these to non-mobile workers.

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