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INŠTITUT ZA SLOVENSKO IZSELJENSTVO IN MIGRACIJE ZRC SAZU
p. p. 306, SI-1001 Ljubljana, Slovenija
Tel.: +386 (0)1 4706 485; Fax +386 (0)1 4257 802
E-naslov / E-mail: dd-th@zrc-sazu.si
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UNRAVELING THE PROFILE OF POSTING COMPANIES: A CASE STUDY FOR SLOVENIA

Frederic De Wispelaere,¹ Lynn De Smedt^{II}

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ABSTRACT

Unraveling the Profile of Posting Companies: A Case Study for Slovenia

Despite being central to intra-EU posting, the service provider (“the posting company”) remains understudied by scholars. Aiming to close this gap, this study examines posting companies (incl. the self-employed) in Slovenia. By linking them to the Orbis database, an analysis of Slovenian companies that received one or more Portable Documents A1 in 2022 shows that 8% of construction and 4% of manufacturing companies provided services abroad, compared to less than 2% of all Slovenian companies. For these companies, posting employees abroad has become a “business model”, with an average of 61% of employees posted abroad and 93.5% of turnover earned from exporting goods or providing services abroad.

KEYWORDS: Slovenia, freedom to provide services, posting companies, characteristics, business model

IZVLEČEK

Analiza profila podjetij za napotitve delavcev: Študija primera za Slovenijo

Kljub temu, da so ponudniki storitev (tj. »podjetja za napotitve«) osrednjega pomena za napotitve delavcev znotraj EU, so v raziskovalni sferi še vedno premalo raziskana. Namen te študije je zapolniti to vrzel s preučitvijo podjetij za napotitve (vključno s samozaposlenimi) v Sloveniji. Avtorja sta analizirala slovenska podjetja, ki so leta 2022 prejela enega ali več prenosnih dokumentov A1, tako da sta jih povezala z zbirko podatkov Orbis. Analiza kaže, da je storitve v tujini opravljalo 8 % gradbenih podjetij in 4 % podjetij na področju predelovalnih dejavnosti, v primerjavi z manj kot 2-odstotnim deležem na ravni vseh slovenskih podjetij. Za ta podjetja so napotitve zaposlenih v tujino postale »poslovni model«, saj v tujino napotijo povprečno 61 % zaposlenih ter tam z izvozom blaga ali opravljanjem storitev ustvarijo povprečno 93,5 % prometa.

KLJUČNE BESEDE: Slovenija, svobodno opravljanje storitev, podjetja za napotitve, značilnosti, poslovni model

^I Advanced MSc in social law; HIVA-KU Leuven; frederic.dewispelaere@kuleuven.be

^{II} MSc in business economics; HIVA-KU Leuven; lynn.desmedt@kuleuven.be; ORCID <https://orcid.org/0000-0002-6398-5412>

INTRODUCTION

Over the past decade, scholars have increasingly studied the phenomenon of employers sending workers to another Member State to carry out services on a temporary basis (i.e., posting of workers). By applying a qualitative research approach (primarily based on interviews) (see, for instance, LasekMarkey, 2023; Wagner, 2018) and/or a quantitative research approach (primarily based on administrative data) (see, for example, De Wispelaere et al., 2024), this research has resulted in a better understanding of the extent, characteristics, and impact of intra-EU posting. Moreover, it allowed us to confirm, nuance, or even refute certain perceptions and identify new phenomena (such as the increasing number of posted third-country nationals (TCNs)). However, this research mainly focuses on the posted worker, while many other economic actors are involved and affected when workers are posted to another Member State.¹ Indeed, the posting company is equally, or even particularly, important. After all, the posting of workers concerns an employer-driven form of intra-EU labor mobility whereby, through the export of services and facilitated in the EU by the freedom to provide services, companies provide services in another Member State by sending out their workers.

RESEARCH QUESTIONS

Despite being at the heart of intra-EU posting, the posting company is an economic actor, which is still understudied by scholars.² The INFO-POW project has addressed this research gap by identifying the challenges and needs of posting companies active in the construction sector regarding their access to and use of relevant information sources about the process of posting workers to another Member State.^{3,4} In line with the INFO-POW project, which was the first to target posting companies,

1 However, this statement should be nuanced. Indeed, most of the research focused on the (in) ability of trade unions to represent these workers, the effect of posting on industrial relations, the role and difficulties of enforcers (again trade unions, labor inspectorates, etc.), and only a limited number of studies really focus on “the posted worker” (i.e., a worker-centered perspective). Furthermore, Theunissen et al. (2023) focus on the three main economic actors (posted workers, the posting company, and the client) and their mutual relations.

2 With a few exceptions, see, for instance, Sedmak et al. (2021) who identify the challenges faced by companies established in Slovenia when posting their workers to other Member States. This economic actor was also discussed in the context of the POSTING.STAT project (De Wispelaere et al., 2022). Indicative for the lack of knowledge about posting companies is that statistics are available at the EU level on the number of postings and posted workers but not on the number of companies involved.

3 See <https://www.euro.centre.org/projects/detail/4442> for the project website.

4 For instance, the policy brief of the Slovenian INFO-POW project partners indicated that the characteristics of companies are important in terms of access and use of information on the posting of workers (Vah Jevšnik & Toplak, 2023b). Therefore, it is of interest to have a closer look at the characteristics of posting companies in Slovenia, as attempted in this contribution.

this contribution zooms in on posting companies by mapping their characteristics. However, the focus here is only on posting companies established in Slovenia. The following three research questions are put forward: 1) What is the general profile of posting companies established in Slovenia? 2) Do differences occur in their profiles depending on the sector in which Slovenian posting companies operate? 3) Do differences occur in the profiles of posting companies compared to the general profiles of companies established in Slovenia, with a focus on the construction sector?

Choosing the group of posting companies established in Slovenia as a reference group is interesting for several reasons. First, from the observation that Slovenia is considered one of the main sending Member States of posted workers in the EU (De Wispelaere et al., 2024). This reality is reflected in the high percentage of workers in Slovenia who perform services in another Member State for a certain period. Outgoing posted workers from Slovenia amount to roughly 7% of total employment in Slovenia and even 30% of total employment in the Slovenian construction sector (Vah Jevšnik et al., 2022). Second, as already pointed out, the importance of posted TCNs is increasing, not least those sent from Slovenia to another Member State (Danaj et al., 2023; Vah Jevšnik et al., 2022). For instance, in 2021, six out of ten workers posted by Slovenian undertakings were TCNs, mainly from Bosnia and Herzegovina. Finally, it allows us to examine whether the posting of workers is truly a “business model” for a group of companies. After all, this is an often-heard claim in academic debates.⁵

The choice of a case study also has its limitations. In particular, the profile of the posting companies established in Slovenia cannot be generalized across the entire group of posting companies. After all, there can and will be significant differences between Member States (as was observed in previous research on the characteristics of posted workers). In that regard, a similar analysis could be done in the future for other key sending Member States, such as Poland and Germany, for example. Moreover, it would be useful to analyze the profiles of incoming posting companies in the key receiving Member States of posted workers, such as Germany, France, Austria, and Belgium.

RESEARCH METHODOLOGY

In theory, information about the characteristics of posting companies (incl. the self-employed) can be collected using surveys or administrative data. To the best of our knowledge, there is no survey at the European or national level that collects

5 For instance, for Arnholtz and Lillie (2020), posting concerns a business model based on cheap labor that allows companies to escape the regulatory constraints of the countries where they operate at the expense of workers' rights.

such information.⁶ Nor are such administrative data available. However, posting companies do have administrative obligations in the Member State of establishment (requesting a Portable Document A1⁷ – PD A1) and the host Member State (making a prior declaration⁸) when sending out posted workers. This administrative data, particularly data on companies established in Slovenia that have received a PD A1 from the Health Insurance Institute of Slovenia,⁹ is the starting point of the analysis.¹⁰ At the request of the authors, the Ministry of Labour, Family, Social Affairs, and Equal Opportunities of the Republic of Slovenia provided a list of posting companies established in Slovenia that had received one or more PDs A1 in 2022. This list contained 3,203 companies (incl. the self-employed) which received 98,435 PDs A1 and covered 32,534 posted persons (workers and self-employed persons).¹¹ Subsequently, the list of posting companies was linked to the Orbis database based on two variables: the company's name and the company's address.¹² Orbis is a database from Bureau van Dijk that contains (non-)financial information from private companies worldwide, currently more than 462 million companies. Data are collected from over 170 providers and their own sources which are then treated, appended, and standardized to ensure comparability. Academics studying multinational enterprises and tax analyses increasingly use this extensive database, among others, as it is considered the “most comprehensive commercially available company-level

6 In this regard, the survey conducted in the frame of the INFO-POW project was a first to specifically look at the company's perspective in the context of posting (De Smedt et al., 2023).

7 A posting undertaking which posts a worker to another Member State, or in the case of a self-employed person the person him/herself, must contact the competent authority in the sending Member State. Whenever possible, this should be done in advance of the posting. Subsequently, after verification of several “posting conditions,” a Portable Document A1 (PD A1) must be provided by the competent authorities. This certificate declares that the social security legislation of the issuing Member State applies and confirms that this person has no obligations to pay social security contributions in another Member State.

8 Member States may impose an obligation for a service provider established in another Member State to make a simple declaration to the responsible national competent authorities. All 27 EU Member States used this possibility to implement a prior declaration tool for incoming posting undertakings and the workers concerned.

9 Limited to PDs A1 issued according to Article 12 of Regulation 883/2004. PDs A1 issued according to Article 13 and granted to persons active in two or more Member States (usually in road freight transport) are thus not included.

10 This case study looks at the sending perspective, notably posting companies established in Slovenia. A profile analysis could also be made of the posting companies providing services in the receiving Member State. For example, the information available in the prior declaration tools of the host Member State about the incoming posting companies could be linked to the Orbis database.

11 These figures differ slightly from those reported by the Slovenian delegation in the Administrative Commission and included in De Wispelaere et al. (2024): 98,441 PDs A1 according to Article 12 issued and 30,614 persons with a PD A1 according to Article 12.

12 The names of the companies were searched in Orbis, and the results were checked manually to see whether the name and address were an exact match with the information of the list provided by the Ministry of Labour, Family, Social Affairs and Equal Opportunities of the Republic of Slovenia.

global database at present” (Nakamoto et al., 2019, p. 4). By linking the list of posting companies to the information available in the Orbis database, the following information could be obtained for the posting companies: size classification,¹³ legal status, sector of activity (NACE-code), number of employees, operating revenue (i.e., turnover), and export revenue.¹⁴ Unfortunately, the nationality of a company’s manager cannot be extracted from the Orbis database. This information would also have been interesting, knowing that many posted workers are TCNs. The check could then have been made whether a high percentage of managers of the posting companies are TCNs.

For 1,797 posting companies (56% of all companies on the list), the name and address were not included on the list itself. Of the 1,406 companies on the Slovenian list suitable for further analysis, from the Orbis database we were able to retrieve 926 companies that had an exact match based on the name and the address (Annex I). Although these 926 companies only represent 29% of the total number of posting companies that received a PD A1 in 2022, they represent 65% of all PDs A1 and 61% of all posted persons. This raises the question of whether this is still a representative sample on which the analyses will be made. From the perspective of the group of posted persons covered by this sample, namely, more than 60% of all workers posted from Slovenia, the answer is most likely yes. Nevertheless, the ratio of covered posting companies (29%) versus covered posted persons (61%) seems to indicate that small businesses (including the self-employed) are underrepresented in the sample.¹⁵ Finally, it cannot be ruled out that there is a discrepancy between the profiles of the companies that applied for/received a PD A1 in 2022 versus the total group of posting companies established in Slovenia. After all, not every posting company will apply for a PD A1.

MAIN CHARACTERISTICS OF POSTING COMPANIES ESTABLISHED IN SLOVENIA

About 3,200 companies received a PD A1 in 2022. This amounts to less than 2% of Slovenia’s total number of companies.¹⁶

13 Based on the operating revenue, total assets, and number of employees, among others, companies are classified in Orbis as belonging to one of the following categories: very large, large, medium-sized, and small.

14 This variable may also include the export of goods and is therefore not limited to the export of services only.

15 This is discussed in more detail in the section about differences in the profiles of posting companies compared to the general profiles of Slovenian companies with a focus on the construction sector

16 In 2022, there were about 185,800 companies established in Slovenia (based on business statistics published by Eurostat [sbs_sc_ovw]).

A breakdown by legal status shows that most posting companies established in Slovenia are private limited companies (87.0%). Furthermore, 8.9% of the posting companies are sole traders and proprietorships, and 2.6% are public limited companies. Most Slovenian posting companies are labeled as medium-sized (54.3%) or small (35.2%). Only 10.5% are large or very large companies. On average, posting companies employ 71 workers. However, the median is only 16 workers, indicating that a limited number of posting companies employ a very high number of workers. Moreover, 18% of the posting companies do not have employees,¹⁷ and 9% employ only one worker. Finally, the average annual turnover of the posting companies amounts to € 16.5 million, but the median amounts to € 1.2 million, suggesting a somewhat skewed distribution of the turnover.

More than half (54.2%) of the posting companies established in Slovenia are active in the construction sector (NACE F). In comparison, almost one in four (24.7%) is active in manufacturing (NACE C). Furthermore, 5.7% are active in the sector providing “professional, scientific, and technical activities” (NACE M), and 4.9% in the sector providing “administrative and support service activities” (NACE N). This means that the two main sectors of activity— construction and manufacturing—represent almost eight in ten posting companies established in Slovenia. Moreover, these two sectors represent 85% of all PDs A1 issued (39.8% in manufacturing and 45.2% in construction)¹⁸ and 82.4% of all posted persons (36.1% in manufacturing and 46.2% in construction). This also means construction and manufacturing are heavily over-represented relative to their overall importance in the Slovenian economy. After all, “only” 12% of the companies established in Slovenia are active in construction and about 11% in manufacturing (based on Eurostat data). This overrepresentation is also reflected in the percentage of companies located in Slovenia that received a PD A1 in 2022. Around 8% of the companies active in construction and 4% of the companies active in manufacturing provided services abroad in 2022,¹⁹ compared to less than 2% of all companies established in Slovenia.

One of the advantages of the Orbis database is that the sector of activity in which the posting company operates can be determined at a very detailed level (i.e., four-digit NACEcode). Almost 14% of all posting companies established in Slovenia are active in the subsector “construction of residential and non-residential buildings” (NACE 4120), accounting for 10% of all PDs A1 issued and 12.9% of all posted persons. Furthermore, 9.7% of all posting companies established in Slovenia

17 Which is a very high percentage, also knowing that “only” 9% of the posting companies are sole traders.

18 These percentages differ slightly from those reported in De Wispelaere et al. (2024). Information by sector is available for 73,185 out of 98,441 PDs A1 issued according to Article 12. Of the PDs A1, 57% were issued to persons active in the construction sector and 42% issued to persons active in the industry (excluding construction).

19 This is an estimate. *For construction*: 54.2% of the 3,204 companies with a PD A1 divided by 22,758 Slovenian companies active in construction. *For manufacturing*: 24.7% of the 3,204 companies with a PD A1 divided by 20,929 Slovenian companies active in manufacturing.

are active in the subsector “other building completion and finishing” (NACE 4339) and 9.2% in the subsector “electrical installation” (NACE 4321). Another substantial subsector is “machining” (NACE 2562) covering 7.2% of all posting companies. The last leading subsector concerns the “installation of industrial machinery and equipment” (NACE 3320). Although this subsector “only” represents 6.6% of all posting companies established in Slovenia, it covers 21.8% of all PDs A1 issued and 18.3% of all posted persons. The latter shows that the number of posted persons may differ strongly among posting companies and the sectors in which these companies operate (see also the subsection on differences depending on the sector).

THE PROVISION OF SERVICES ABROAD AS A “BUSINESS MODEL”

One of the main questions is to what extent the provision of services abroad is a “business model” for the posting companies established in Slovenia. Two indicators can check this: 1) What is the percentage of employees posted to another Member State to provide services there? and 2) What is the percentage of turnover generated abroad by providing services?

Considering the 926 Slovenian companies analyzed, on average, 21 persons were posted to another Member State in the companies that received a PD A1 in 2022 (the median is 9 persons). It is possible to compare the number of posted persons to the total number of employees active in the company.²⁰ On average, the posting companies posted 61% of their employees to provide services abroad. Around 42% of the posting companies posted between 0% and 50% of their employees abroad, and 21% of the posting companies posted between 51% and 98% of their employees abroad. Moreover, almost four in ten posting companies (36%) posted virtually all their employees abroad (99% or more).²¹

The second indicator that can be analyzed is the turnover generated abroad by the posting companies.²² On average, 93.5% of the turnover was created abroad. Remarkably, the large majority of the posting companies, namely 75% of all Slovenian posting companies, earned almost all turnover from providing services abroad (99–100%) (Figure 1). Only 6% of the posting companies had a share between 0% and 50%, and 19% of the posting companies had an export revenue between 51% and 98%.

20 For 10 out of the 926 companies, the number of employees was not available in Orbis, while 7 companies reported having 0 employees. Therefore, these 17 companies could not be included in the analysis. Furthermore, for 298 companies, the number of posted employees (taken from the Slovenian list) was higher than the number of total employees (reported in Orbis). Therefore, the share for these companies was set at 100%, based on the assumption that all the employees were posted abroad, and since it is not possible for the share to be higher than 100%.

21 These companies cover 12,796 of the 19,843 posted persons reported in the data (or 65%).

22 This variable was available for 886 of the 926 companies (95.7%).

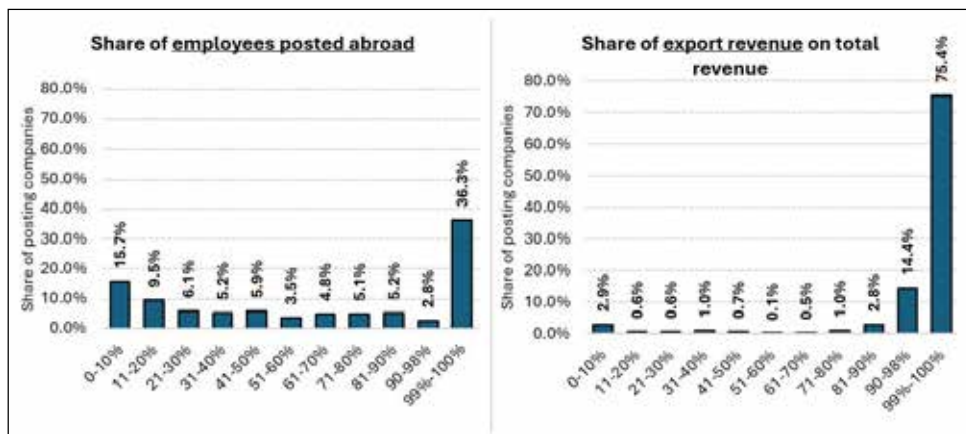


Figure 1: Share of employees posted abroad (left) and share of export revenue in total revenue (right) by Slovenian posting companies (source: own calculations based on data from the Ministry of Labour, Family, Social Affairs and Equal Opportunities of the Republic of Slovenia, and Orbis).

Seeing that both indicators show that the shares are on the high side for a large group of companies, it becomes clear that the provision of services abroad can be seen as a business model for a high percentage of posting companies established in Slovenia. For these companies, posting of workers is their core business, as they post the majority of their workers abroad, and most of their turnover is generated abroad by providing services.

DO DIFFERENCES OCCUR IN THEIR PROFILES DEPENDING ON THE SECTOR IN WHICH POSTING COMPANIES ESTABLISHED IN SLOVENIA OPERATE?

As found in the previous section on the general profile of Slovenian posting companies, two main sectors of activity were identified for posting companies established in Slovenia. Almost eight in ten posting companies are active in construction (54.2% of all posting companies) or manufacturing (24.7% of all posting companies). Seeing that the other sectors of activity contain less than 60 companies each, only these two sectors are looked at in more detail.

To start, it is already interesting to point out that even though posting companies active in construction account for 54.2% of all posting companies, they “only” account for 45.2% of all PDs A1 issued and 46.2% of all posted persons. On the contrary, posting companies active in manufacturing account for 24.7% of all posting companies, but 39.8% of all PDs A1 issued and 36.1% of all posted persons. This indicates that posting companies active in manufacturing are relatively bigger and

more involved in posting than those active in the construction sector. Indeed, in the construction sector, an average of 57 PDs A1 were received per posting company, and 18 persons were sent abroad in 2022, as opposed to an average of 111 PDs A1 per posting company and 31 posted persons in manufacturing. Moreover, in manufacturing, a posted person received 3.0 PDs A1 on average compared to 2.6 PDs A1 in the construction sector.

In both sectors, most posting companies are private limited companies (87.5% are active in construction, and 87.8% are active in manufacturing). Around one in ten posting companies in these sectors is a sole trader/proprietorship.

The size classification in both sectors is slightly different. In manufacturing, 29.7% are small, 52.8% medium-sized, 12.2% large, and 5.2% very large, as opposed to the construction sector where 41.2% are small, 54.2% medium-sized, 3.8% large, and 0.8% very large. As a result, it is shown that posting companies active in manufacturing are indeed on the larger side than in the construction sector.

This finding can also be confirmed by looking at the number of employees specifically. While it ranges from 0 to 549 employees for posting companies active in the construction sector, it goes from 1 to 11,598 employees for posting companies active in manufacturing. Therefore, the difference in average number of employees is not surprising, namely 27 employees in construction and 158 employees in manufacturing. Nevertheless, the median number of employees lies closer together in both sectors (15 employees in construction and 18 employees in manufacturing).

The indicator of turnover in both sectors also shows considerable differences between posting companies active in construction and manufacturing. The average turnover created by posting companies active in the construction sector is € 3.3 million with a median of € 878,149, compared to an average of € 39.3 million and a median of € 1.6 million for posting companies active in manufacturing.

Finally, the impact of posting activities in both sectors can be investigated by two indicators. First, the share of employees posted abroad in total employees is on the high side in both sectors. The average for posting companies active in the construction sector is 68.3%, while the median is 81.3%. The average for posting companies active in manufacturing is 60.6%, whereas the median is 72.7%. The higher shares in the construction sector are most likely a consequence of the relatively smaller companies in this sector as opposed to the larger companies in manufacturing. Second, in both sectors, the average turnover generated abroad by exporting goods or providing services abroad is a remarkable 95%. Furthermore, of all posting companies active in the construction sector, 97.4% made more than 90% of turnover through their export, and the same goes for 94.3% of posting companies in manufacturing. Both indicators clearly show that posting is highly important in both sectors.

To sum up, there are certainly differences in the profiles of posting companies active in the construction sector compared to those active in manufacturing. Those

active in manufacturing seem to be bigger, as they have a higher average number of employees, turnover, number of posted persons, and number of PDs A1 received.

The comparison between both sectors and the emerging differences demonstrate two relevant conclusions. First, although attempted in the section on the general profile of Slovenian posting companies, it is quite difficult to depict a profile of “the posting company” in general, in light of the differences already found in these two sectors alone. Second, it is also possible that the discrepancy between both sectors is not only applicable to posting companies but to all companies in these sectors in general. Therefore, to see whether there is indeed a difference between a posting company in a sector and a company in general in that sector is explored in the next section.

DO DIFFERENCES OCCUR IN THE PROFILES OF POSTING COMPANIES COMPARED TO THE GENERAL PROFILES OF COMPANIES ESTABLISHED IN SLOVENIA, WITH A FOCUS ON THE CONSTRUCTION SECTOR?

The section about differences in profiles depending on the sector indicated that posting companies’ profiles may differ between sectors of activity. Because most posting companies in Slovenia are active in the construction sector (54.2% of all posting companies, 45.2% of all PDs A1 issued, and 46.2% of all posted persons), this research question was considered specifically for companies active in the construction sector. In total, 2,702 Slovenian companies active in the construction sector were found in Orbis. Their profiles are compared to the 502 Slovenian posting companies analyzed in previous sections. However, it can first be interesting to compare the general profiles of Slovenian construction companies found in Orbis with the profile provided by Eurostat.^{23,24} Of the Slovenian companies active in the construction sector (NACE F), 28,702 were found in Orbis, while 20,164 were found in Eurostat. However, the latter concerns data from 2020, while the former concerns data from October 2023. Nevertheless, the distribution between subsectors is similar for both. Most companies are active in one of three subsectors: “other building completion and finishing” (NACE 4339) (18.0% Orbis vs. 13.8% Eurostat); “construction of residential and non-residential buildings” (NACE 4120) (11.5% Orbis vs. 11.9% Eurostat); and “electrical installation” (NACE 4321) (10.6% Orbis vs. 12.0% Eurostat). The total number of employees is 65,837 in Orbis compared to 73,585 total persons employed in Eurostat (consisting of 60,325 employees and 13,260 unpaid persons employed). The average number of employees in Orbis is 3.2 per company, and the

23 Structural Business Statistics Eurostat [sbs_na_con_r2] data 2020.

24 Other administrative data sources are available as well. For instance, the SiStat Database: <https://pxweb.stat.si/SiStat/en> as used by Vah Jevšnik and Toplak (2023a) for a description of the Slovenian construction sector.

average number of persons employed in Eurostat is 3.6.²⁵ Finally, the total turnover reported is € 8.9 million in Orbis and € 6.2 million in Eurostat. When dividing the total turnover by the total number of companies, the average turnover per company amounts to € 308,542 in Orbis and € 309,710 in Eurostat. Thus, the Orbis profile of Slovenian construction companies appears comparable to the one in Eurostat. Because more variables are available in the Orbis database and both groups (all Slovenian construction companies and Slovenian posting construction companies) can be analyzed specifically in Orbis, we further compared both groups using the Orbis database.

In this section, we want to find out whether there is a difference in the profiles of posting companies compared to the general profiles of companies established in Slovenia, specifically in the construction sector. To do so, we compared the 28,702 Slovenian companies active in the construction sector found in Orbis to the 502 Slovenian posting companies analyzed in the previous paragraphs. However, we should repeat a limitation mentioned in the research methodology. Notably, it is expected that small businesses (including the self-employed) are underrepresented in the sample of Slovenian posting companies analyzed in this paper. Thus, the analysis below compares the profiles of the overall group of Slovenian companies active in the construction sector to the profiles of posting Slovenian construction companies in our sample.

The first indicator that differs markedly between both groups is the legal form. Over half of the Slovenian construction companies are sole traders/proprietorships (62.9%), followed by private limited companies (35.6%). This is the opposite for Slovenian posting companies active in the construction sector, where the majority is a private limited company (87.5%) and only 10.8% a sole trader/proprietorship.

Second, the size classification indicates that whereas most Slovenian construction companies are small companies (96.6%), posting companies are mainly medium-sized (54.2%) or small (41.2%). This ties in with the previous finding of the high share of sole traders in the general construction sector as opposed to those posting workers abroad.

The third indicator, the number of employees, leads to the same conclusion. On average, Slovenian construction companies have 3 employees with a median of 1 employee. This differs from Slovenian posting companies active in the construction sector, with an average of 27 employees and a median of 15 employees.

25 Based on data from the SiStat database, it is found that over 99% of all construction enterprises in Slovenia have less than 50 employees (Vah Jevšnik & Toplak, 2023a).

Fourth, the turnover created by the companies can be analyzed as well. The average turnover of Slovenian construction companies is € 416,096²⁶ compared to € 3.3 million for Slovenian posting companies active in this sector. The median is € 61,433 for the entire group of construction companies and € 878,149 for the group of posting companies.

Thus, these first four indicators clearly show that in the Slovenian construction sector, the profiles of posting companies differ markedly from general companies. More specifically, companies that post workers abroad in this sector are less self-employed and, on average, are larger, as they employ a higher number of employees and earn a higher turnover. As already stated, this difference may result from our sample selection.

Next, the different subsectors in the construction sector are analyzed. In general, the top three subsectors in which Slovenian construction companies are active are “other building completion and finishing” (NACE 4339) (18.0%), “construction of residential and non-residential buildings” (NACE 4120) (11.5%), and “electrical installation” (NACE 4321) (10.6%). These top three are identical for posting companies active in the construction sector, albeit in a different order. More than a quarter of the posting companies are active in the “construction of residential and non-residential buildings” (NACE 4120) (25.7%), indicating that this subsector is relatively more important for posting companies. Next, 17.9% of posting companies are active in “other building completion and finishing” (NACE 4339), and 16.9% take on activities in “electrical installation” (NACE 4321). Additionally, there are several subsectors for which the share of companies differs markedly between companies in general and posting companies. More specifically, around 9% of companies are active in “joinery installation” (NACE 4332) (8.8%) and “floor and wall covering” (NACE 4333) (9.1%), which represents 1.8% and 2.8% of the posting companies, respectively. This shows that these subsectors are relatively less significant for posting companies active in the construction sector.

A final indicator that can be looked at is the percentage of turnover generated abroad by exporting goods or providing services abroad. The average share amounts to 96.7%, which is even slightly higher than the share of 95.4% for posting companies. Moreover, of all construction companies, 94.3% had a share of over 90% of export turnover, compared to 97.4% of posting companies. Thus, it should be noted that both in general and for posting companies specifically, myriad companies in the construction sector generate a very high share of their turnover abroad.

To summarize, in the construction sector, primarily the larger companies post workers abroad. Furthermore, posting seems slightly more common in the

26 This differs from the average turnover per company mentioned earlier of € 308,542 because of a different calculation method. For the € 308,542, the total amount of turnover reported was divided by the total number of companies, in order to use the same calculation method used for the Eurostat data. While for the € 416,096 the average turnover was calculated by only taking into account the companies which were able to report the turnover.

construction of residential and non-residential buildings. Nevertheless, there is almost no difference in the share of turnover created abroad as this share is remarkably high for both groups.

CONCLUSIONS AND RECOMMENDATIONS

Three research questions were posed in this contribution. First, a general analysis of the profile of posting companies established in Slovenia shows that they are mainly private limited companies active in construction or manufacturing. Both sectors are heavily overrepresented relative to their overall importance in the Slovenian economy. Furthermore, on average, posting companies posted 61% of their employees abroad to provide services and earned 93.5% of their turnover from exporting goods or providing services abroad.

Second, it was found that there is indeed a difference between the profiles of Slovenian posting companies depending on the sector in which the company is active. When comparing posting companies active in construction and manufacturing, it is found that those in the latter are typically bigger, as they have a higher average number of employees, turnover, number of posted persons, and number of PDs A1. Hence, it is quite difficult to put forward one profile of the posting company, as attempted in answering the first research question. However, the different profiles of posting companies in these sectors might also stem from differences between these sectors in general.

Therefore, the third research question aimed to examine whether the profiles of Slovenian posting companies in the construction sector differed markedly from the profiles of Slovenian construction companies in general. Indeed, it turns out that construction companies that post workers abroad are generally larger, as they employ a higher number of employees and earn a higher turnover. Furthermore, they are relatively more active in the construction of residential and non-residential buildings. Still, it would be valuable to conduct research that further explores (in detail) how the revenues of posting companies are generated compared to similar non-posting companies in Slovenia.

Overall, it can be concluded that there is a distinct profile of a posting company active in Slovenia.²⁷ Furthermore, when Slovenian posting companies actively post workers abroad, this becomes an essential activity, seeing that a high share of employees are posted abroad, and a significant share of turnover is created from exporting goods or providing services abroad. This practice suggests that the provision of services abroad has truly become a *business model* for a high number of posting companies. One question arises as to whether this business model of

²⁷ This highlights once more the importance of not overlooking the economic actor of the company in the posting activity, a gap which INFO-POW has focused on.

posting workers abroad impacts the applicable labor and social security rules. After all, the EU legislator introduced several “corrections” in case posting companies do not have a sufficiently close link with the Member State of establishment. For instance, corrections in the field of social security might be applied (i.e., the Member State where services are provided becomes the competent Member State), inter alia, if no *substantial activities* are carried out in the Member State of establishment.²⁸ The existence of substantial activities in the Member State of establishment can be checked via a series of objective factors. One of these objective factors is the turnover achieved by the posting company in the receiving and sending Member State during an appropriate typical period. For instance, a turnover of approximately 25% of total turnover in the sending Member State could be a sufficient indicator, but cases where the turnover is under 25% would warrant greater scrutiny (as defined by the Practical guide on the applicable legislation in the EU; European Commission, 2013, p. 9).²⁹ Furthermore, to check whether a worker qualifies as a posted worker under the Posting of Workers Directive, Member States must make an overall assessment, taking into account all factual elements. For example, to determine whether an undertaking genuinely performs “substantial activities” in the Member State of establishment, according to Article 4(2) of Directive 2014/67/EU, Member States may take into account, in particular, the place where the undertaking has its registered office and administration, uses office space, pays taxes and social security contributions, etc.; the place where posted workers are recruited and from which they are posted; the place where the undertaking performs its substantial business activity and where it employs administrative staff; the number of contracts performed and/or the size of the turnover realized in the Member State of establishment, taking into account the specific situation of, inter alia, newly established undertakings and SMEs. The fact that some posting companies based in Slovenia generate their turnover almost exclusively by providing services abroad and sending all their workers to another Member State to temporarily provide services there can be considered as two *red flags*. However, it is up to the competent public authority to determine whether the workers in these companies are posted workers and to which social security system they belong.

Recent figures from the competent administration in Slovenia (i.e., the Health Insurance Institute) indicate this is happening. For example, in 2023, 7,389 out of

28 There are several conditions, to be fulfilled cumulatively, for the proper use of posting under the Coordination Regulations: 1) the employer must “normally carry” out its activities in the Member State of establishment; 2) there is a direct relationship between the posting employer and the posted worker; 3) the posting is of a temporary nature; 4) the posted worker is not being replaced.

29 However, there are doubts about the legal value of the 25% criterion. See, for instance, Jorens (2022, p. 307): “It is clear that this quantification in absolute numbers does not stem from Decision No A2 of the Administrative Commission but, moreover, it is certainly not referred to in any more detail in the recitals of the Court of Justice. Therefore, the legal value of these numbers is non-existing.”

108,018 applications for a PD A1 (or 7%) were rejected, mainly because the posting conditions were not met.³⁰

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30 Information received from Dr. Mojca Vah Jevšnik (ZRC SAZU) in the frame of the POSTING.STAT 2.0 research project.

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POVZETEK

ANALIZA PROFILA PODJETIJ ZA NAPOTITVE DELAVCEV: ŠTUDIJA PRIMERA ZA SLOVENIJO

Frederic De Wispelaere, Lynn De Smedt

Kljub temu, da napotitve delavcev znotraj EU temeljijo na t. i. »podjetjih za napotitve« (vključno s samozaposlenimi), so slednja v raziskovalni sferi še vedno premalo raziskana. Namen tega prispevka je zapolniti to raziskovalno vrzel s podrobnejšo analizo značilnosti tovrstnih podjetij s sedežem v Sloveniji. Leta 2020 je storitve v tujini opravljalo 8 % slovenskih gradbenih podjetij ter 4 % slovenskih podjetij na področju predelovalnih dejavnosti, v primerjavi z manj kot 2-odstotnim deležem na ravni vseh podjetij s sedežem v Sloveniji. Avtorja sta v raziskavi obravnavala naslednja tri raziskovalna vprašanja: 1) Kakšen je splošni profil podjetij za napotitve, ustanovljenih v Sloveniji? 2) Ali se v njihovih profilih pojavljajo razlike glede na sektor, v katerem delujejo tovrstna podjetja? 3) Ali se profili podjetij za napotitve razlikujejo od splošnih profilov podjetij, ustanovljenih v Sloveniji, s poudarkom na gradbenem sektorju? Splošna analiza profilov podjetij za napotitve s sedežem v Sloveniji kaže, da gre večinoma za družbe z omejeno odgovornostjo, ki delujejo bodisi v gradbeništvu bodisi v predelovalnih dejavnostih. Delež podjetij za napotitve v obeh navedenih sektorjih je močno nadpovprečen glede na splošni pomen teh sektorjev v slovenskem gospodarstvu. Poleg tega so podjetja za napotitve v tujino napotila povprečno 61 % svojih zaposlenih ter ustvarila povprečno 93,5 % svojega prometa z izvozom blaga ali opravljanjem storitev v tujini. Tri od štirih slovenskih podjetij za napotitve so skoraj ves promet (99–100 %) ustvarila z opravljanjem storitev v tujini. To kaže na to, da je opravljanje storitev v tujini za veliko število tovrstnih slovenskih podjetij resnično postalo »poslovni model«.

Poleg tega sta avtorja med profili slovenskih podjetij za napotitve dejansko ugotovila razlika glede na sektor, v katerem podjetja delujejo. Če primerjamo tovrstna podjetja na področjih gradbeništvu in predelovalnih dejavnosti, so podjetja v slednjih običajno večja: v povprečju imajo večje število zaposlenih, večji promet ter višje število napotenih oseb in prenosnih dokumentov A1. Zato je precej težko predstaviti enoten profil podjetja za napotitve, kar je bil namen avtorjev pri odgovoru na prvo raziskovalno vprašanje. Različni profili tovrstnih podjetij v obravnavanih sektorjih pa lahko izhajajo tudi iz splošnih razlik med temi sektorji. Zato je bil cilj tretjega raziskovalnega vprašanja preučiti, ali se profili slovenskih podjetij za napotitve v gradbenem sektorju izrazito razlikujejo od splošnih profilov slovenskih gradbenih podjetij. Dejansko je raziskava pokazala, da so gradbena podjetja, ki napotujejo delavce v tujino, na splošno večja, saj zaposlujejo večje število delavcev in dosegajo večji promet. Avtorja poleg tega ugotavljata, da bi bila koristna dodatna raziskava, s katero bi podrobneje raziskali, kako podjetja za napotitve ustvarjajo svoje prihodke v primerjavi z drugimi podobnimi podjetji v Sloveniji, ki ne napotujejo delavcev.

ANNEX I

The number of companies on the Slovenian list and found in Orbis which posted persons abroad in 2022

| | Number of companies | Number of PDs A1 issued | Number of posted persons |
|---|---------------------|-------------------------|--------------------------|
| Companies on the Slovenian list | 3,203 | 98,435 | 32,534 |
| of which name and address are unknown | 1,797 | 11,859 | 4,912 |
| of which name and address are known | 1,406 | 86,576 | 27,622 |
| of which are not found in the Orbis database (wrong name and/or address) | 480 | 22,790 | 7,779 |
| of which are found in the Orbis database (exact match between name and address) | 926 | 63,786 | 19,843 |
| Column shares | | | |
| Companies on the Slovenian list | 100% | 100% | 100% |
| of which name and address are unknown | 56% | 12% | 15% |
| of which name and address are known | 44% | 88% | 85% |
| of which are not found in the Orbis database (wrong name and/or address) | 15% | 23% | 24% |
| of which are found in the Orbis database (exact match between name and address) | 29% | 65% | 61% |

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Sonila Danaj

Introduction: Posting of Workers – Company Profiles, Access to Information, and Rule Compliance

Frederic De Wispelaere, Lynn De Smedt

Unraveling the Profile of Posting Companies: A Case Study for Slovenia

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