

Digital tools for cooperation in the framework of posting of workers are becoming increasingly popular

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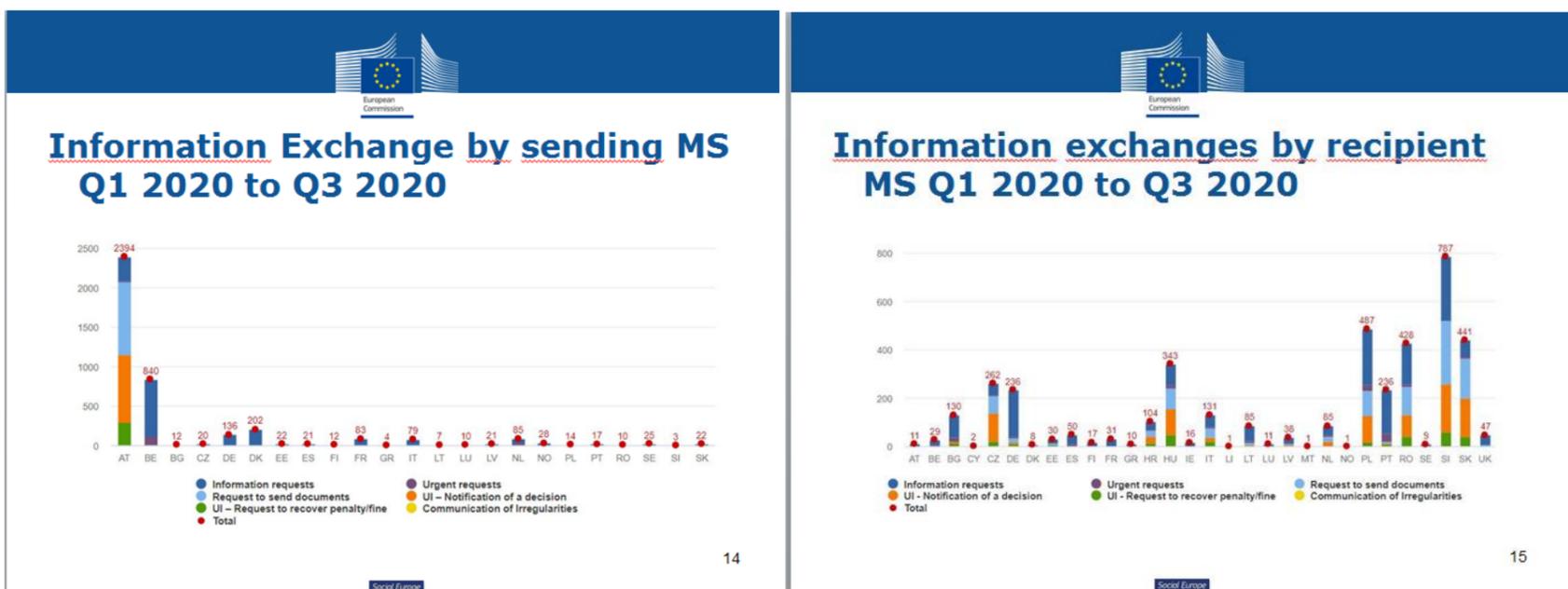
The digital tools for international and institutional cooperation in the framework of posting of workers, such as online certificates, connection between databases and online submission of documents and applications, are increasingly used by competent authorities and private companies. This became clear during the second international virtual webinar on the theme “Administrative cooperation in the framework of posting of workers: current practices and future scenarios”, part of project ISA – Information Sharing Agreements. Building EU Agreements for the Posting of Workers in the Construction Sector”. The Bulgarian Construction Chamber (BCC) was represented by the International Relations and Project Management Team – Djani Antova and Mariya Zheleva. The event was attended by representatives of the European Commission, as well as labour inspectorates, social ministries, paritarian funds, trade unions and employers' organizations from Bulgaria, Italy, Poland, Romania and Germany.



One of the most important European digital instruments for international administrative cooperation is the Internal Market Information System (IMI), jointly developed by the European Commission and the EU Member States' administrations. The platform, which was officially launched in 2014, connects the competent EU authorities when they need to exchange information and documents related to the implementation of the European single market policies in the field of free movement of people, goods and services. IMI is divided into five modules for processing different types of requests for information and one of them concerns posted workers. The latter consists of predefined questions, translated into the official European languages, arranged in several categories such as workers, companies, working conditions, social security, etc. “This means that labour inspectors, who are usually the competent authorities, can read the questions in their mother tongue, which eliminates the language barrier,” said Carita Rammus - a representative of the EC's Directorate General for Employment, Social Affairs and Inclusion. From 2017 until 2020, the total number of processed information requests almost doubled, reaching 1,414 in

the third quarter of 2020. Regarding the information requests concerning posted workers, employers and working conditions, their number decreased from just over 800 during the third quarter of 2019 to about 600 in the same quarter of 2020. Urgent requests, which in most cases concern the registration of a company in another Member State, remain almost unchanged for the same period - around 70. In 2020, the highest number of information requests was sent by Austria and Belgium - 2,394 and 840, respectively. Most information requests for the same period were sent to Slovenia - 787, Poland - 487 and Slovakia - 441, whereas Bulgaria is taking the 10th place on this indicator, having received 130 requests (Fig. 1).

Fig. 1. Number of information requests through the IMI system



Source: EC, Directorate-General for Employment, Social Affairs and Inclusion

Robert Jaworski, a representative from the National Labour Inspectorate of Poland (PIP), demonstrated the practical experience, advantages and disadvantages of the IMI system. The Agreements concluded between the Polish Inspectorate and similar European national institutions cover topics such as working conditions, hiring conditions of the employment agencies, health and safety at work, workers' rights protection, appropriateness of the employment relations, etc. Until 2014, the information requests were sent by post in order to comply with the data confidentiality requirements. However, as soon as the IMI system was launched, the Polish inspectors switched entirely to digital information exchange. **The user-friendly system interface, divided into specific modules, facilitates the submission of requests**, especially with regard to urgent requests for assistance, which are processed within 5 working days. The deadline for responding to simple information requests received or sent to partners is 4 weeks.

Examples of typical inquiries submitted to Polish inspectors through the platform are as follows: legal status of the posting company; type of registration; information on completed training on occupational health and safety at work; working conditions according to the contract of the

posted worker; availability of documents proving occupational status, etc. Another practical module is the so-called unified instrument that allows for employers to be notified when a financial penalty or administrative fine is imposed on them. “The advantages of the IMI system definitely outweigh its disadvantages. The platform is extremely intuitive, and you can hardly make a mistake unless you have not filled in the required information in all fields. When exchanging information, all conditions for confidentiality and security of digital data are observed. The automatic translation mechanism is extremely useful because most countries send requests in their mother tongue. The only drawback, in my opinion, is that it sets a limit for the words that are used in the fields; however, this can be managed by the file attachment function”, explained Jaworski.

Over the last three years, the number of information requests on posted workers has increased. Most inquiries were received from Belgium and Austria, and the latter is using the platform to send documents to posting construction companies or to inform them about financial penalties and/or imposed administrative fines. “Due to the frequent abuses of the so-called “letterbox companies”, the typical inquiries recently are whether the company in question has an actual office and actually hires workers in Poland, whether it pays the social security contributions to its employees correctly and what the actual employment of the posted workers is”, added Jaworski. Depending on the type of information request, PIP works with different national institutions and/or carries out company inspections. For example, questions about the turnover or social contributions of a Polish construction company are referred to the Revenue Agency or the Social Security Institute. If the request concerns a list of posted workers however, the declared period of their posting and their employment relationship with the employer, the regional Inspectorates carry out company inspections.



An interesting example of cooperation between public authorities and private construction companies in Italy was demonstrated by Giacomo Virgilio, a representative of the Joint National Committee for Building Workers' Welfare Funds (CNCE), set up by the social partners - parties to the Collective Labour Agreement for the Construction sector. The Committee monitors and controls the activities of the regional social security funds for construction - Cassa Edile, which supplement the social security payments and remuneration of workers according to the social compensation

schemes set out in the collective labour agreement. Some of the services of the fund include payment of Christmas and holiday bonuses, additional remuneration for duration of work experience, illness or occupational accident. In 2006, the Italian Social Security Fund introduced the so-called **Unified Document for Regularity of Social Payments - DURC, which certifies the construction companies who are paying their social security contributions regularly and accurately.** DURC presents the results of the parallel inspections of the companies carried out by the National Social Security Institute, the National Institute for Insurance against Accidents at Work and the Social Security Fund. Should one of these three parties discover irregular social security contributions, the certificate of the company in question is revoked. This document has been digital since 2015; however, an effective system for communication between the databases of the three organizations has been created to facilitate the successful transition from paper to online format. “It is extremely important for the Italian construction companies to have such a certificate - a guarantee for the corporate social responsibility of the employer, because without DURC they cannot participate in public procurement tenders and receive payments, loans and compensations from the public authorities,” concluded Virgilio.

Another example of effective national institutional cooperation was illustrated by Dana Schäfer, a representative of the Social Security Fund of the Construction Industry (SOKA-BAU) in Germany, which combines the German Holiday and Wage Compensation Fund of the Construction Industry (ULAK) and the Supplementary Pension Fund of the Construction Industry (ZVK). **SOKA-BAU provides services to the construction industry such as holiday schemes, supplementary pensions and vocational training funding.** The European department of SOKA-BAU is responsible for all posted workers in Germany, through international and national cooperation with various organizations. Since the fund is private, it cannot be included in IMI, but it uses other forms of electronic information exchange.

On a national level, one of the main partners of SOKA-BAU is the customs authorities (Zoll), which are monitoring and carrying out inspections on the construction sites. Zoll is the first institution to receive information on the posted workers in Germany, because each posting company must be registered in the electronic portal of the customs authorities and submit information about its employees under the Minimum Wage Act or the Posting of Workers Act. The electronic form contains information about the employer’s name, address, type of construction activity, place and duration of construction and posting, administratively responsible person, name and date of birth of the posted worker. The Zoll also conducts inspections on the construction site, where it collects information and prepares detailed on-the-site reports about the workers, including working conditions, wages and real working hours. These reports are sent to SOKA-BAU, which compares the information with the one submitted by the respective employer on their database. Discrepancies are often found with regard to the declared gross salary, the leave used and/or the length of the working day, for which SOKA-BAU notifies the customs authorities. In addition, the latter has an access into the accounting database of the social security fund for additional detailed check-ups.

The second institution that SOKA-BAU works with is the Federal Employment Agency. Employers from some of the European countries outside of the EU - Serbia, Turkey, North Macedonia, etc., who intend to post workers to Germany, are required to notify the agency. The latter is then asking SOKA-BAU whether these companies have paid their contributions to the social security fund, which is a mandatory condition for concluding a contract and for obtaining a posting permit.

The third national partner organization of SOKA-BAU is the German Pension Insurance, which reviews the A1 forms and determines which employees are subject to social security in Germany. By collaborating with them SOKA-BAU understands whether the workers are employed or self-employed, what type of activities are they performing and what is the status of the social security contributions. For a successful cooperation in this field however, the well-functioning bilateral partnerships with sending countries are a must. Dana Schäfer explained more about this during an online interview for newspaper Stroitel.

Bulgaria ranks third in the field of posting of workers in the construction sector in Germany



Dana Schäfer is a lawyer and the head of the International coordination dept. at SOKA-BAU. She is responsible for all issues concerning posted workers in the construction sector in Germany.

After Poland, Romania is the second country by number of workers posted to Germany in the construction sector. How do you cooperate with Romania on institutional level in the field of social security?

Currently, we do not have such a well-established system for institutional cooperation with Romania, but we are participating in a similar work program between the German and the Romanian Ministries of Social Affairs. Our cooperation is in the field of direct transfer of part of the social security contributions. We have started negotiations with other responsible institutions to ensure full transfer of these contributions in the future. At this stage, during several online conferences, the two governments revealed their intentions to expand the scope of these work programs, and their next meeting will take place in early 2021. As a comparison, we carry out a full direct transfer of social security contributions for posted workers from Poland through bilateral partnership with the Polish Social Insurance Institute (ZUS). Our collaboration with them started in June 2018, and our main cooperation concerns exchange of data, required to identify an

employer and its posted workers in Germany, whether they are entitled for social security and what the amount of the respective contribution is. The other issues for which we collaborate are whether the posted workers have taken their leave during their employment in Germany and whether they are entitled to compensation under the Social Security Code, which can be transferred and paid only under existing interinstitutional agreement.

Do you use any digital systems for transfer and exchange of information with the institutions you cooperate with?

No, we do not have any special data transfer platform. We use a system for secure data transfer by e-mail, which for us is the easiest and most convenient way to work.

What are the usual frauds and irregularities you encounter in terms of social security payments for the posted workers? In case of irregularities are you taking any measures? Are there other institutions you work with to reduce the risks and the negative consequences for the social security systems of the respective countries?

Sometimes the transfer of social security contributions to the relevant institutions is not carried out correctly or is incomplete, but we are not authorized to prove this discrepancy. Customs authorities are authorized to take up some actions. Of course, when necessary, we contact the workers.

During the second webinar of ISA project you said that the German Ministry of Labour and Social Policy intends to expand the intergovernmental work program for social security contributions to include Bulgaria. Could you tell us a little more about these plans?

The Federal Ministry of Labour and Social Policy has opened a new unit focusing on international labour relations. They launched the work program with Romania and are now expanding its scope to Bulgaria. SOKA-BAU agreed to cooperate because Bulgaria ranks third in terms of posted workers in construction field, after Romania. However, this initiative is still under discussion to clarify which aspects of social security will be included in the program and which Bulgarian ministries will be part of the negotiations.

In general, what are the typical irregularities that are observed in the implementation of construction projects with posted workers from Bulgaria ?

I would not say that we observe irregularities specifically with posted workers from Bulgaria, but rather typical irregularities when working with posted workers in general, which are reported to us by the Customs authorities. For example, some workers do not receive the minimum wage for the sector. Sometimes their working day is longer than the declared eight hours, for which they do not receive overtime pay, and this practically means that their actual salary becomes lower than the minimum. I think this is one of the most popular ways to circumvent the German law. We also observe declaration of payments that have not been made or reporting of unused leave that has actually been used.

In your opinion, how did the international cooperation agreements affect the process of posting of workers? Did they improve the working conditions? Did they have a positive impact on the professional life of the posted workers?

In general, higher social security contributions to social security systems lead to higher social benefits for posted workers, such as supplements to pensions, sick leaves, unemployment benefits, etc. However, this has no effect on the actual process of posting workers, but rather on the well-being of workers abroad. Companies are still subject to registration. They may be somewhat facilitated in terms of social security payments in the year, when the posting period ends, because these contributions are borne by SOKA-BAU and the relevant partner institution abroad. In my opinion, the more interesting effect of these agreements is that the social security institutions changed their perceptions on the self-employed workers. According to the Social Security Regulation, a person may fall into the category of "self-employed", but according to the labour law, the same person is categorized as a "worker". This creates contradictions in determining social security contributions, due social benefits, annual leaves, etc.

What is the impact of the COVID-19 crisis on the construction industry in Germany? What is the effect of this trend on the posting of workers in the construction sector?

During the crisis, construction sites in Germany did not cease operations. We expected a significant reduction in posted workers due to the closure of the borders from March to May, but the decrease was not so big, and we registered an increase in foreign contractors again in September. In general, this indicator is relatively stable. However, the construction industry follows the trends in the other sectors. The lower the number of institutional investors investing in housing, buildings and infrastructure, the stronger the impact on the construction sector in the medium- to long term. Definitely the public procurement tenders and the new projects are less, but we still do not know for sure what the effect on our sector is.