

Project “ISA: Cooperation Agreements on Posted Workers” is an example for successful collaboration between European institutions

BCC conducted a survey on the challenges encountered by Bulgarian companies when posting workers and executing Construction projects in the EU

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The role of social partners and the transnational partnerships among them are crucial for the realization of the people and service mobility-related issues within the modern globalized economy. Such international partnerships have the potential to find solution for various cross-border challenges by analyzing them from all stakeholders’ perspective, and to give impetus to changes and improvements of international practices and legal regulations. It is exactly in emergency situations, like the COVID-19 pandemics the whole world is exposed to, that the intervention of the European social partners, the effective dialogue among them and the joint initiatives become more and more necessary. The project “ISA: Agreements for Posting of Workers”, with the involvement of the Bulgarian Construction Chamber (BCC), is **one of the examples for successful cooperation between European organisations**, which highlighted the benefits of the international administrative cooperation in this area, gave suggestions for extending the scope of existing cross-border partnerships and established long-term relationships among the involved parties. The project final conference, which was held at the end of March 2021, gathered together more than 70 representatives of the European Commission, labour inspectorates, social ministries, paritarian funds, trade unions and employer organisations from Belgium, Bulgaria, Germany, Italy, Poland, Portugal, Romania, Hungary and Spain. During the event, Feliciano Ludicone from the Italian foundation FGB made a retrospective review of the outcomes of three interrelated EU projects – PostLab, EU PostLab and ISA, dedicated to international cooperation and sharing data



and information about posted workers. The conclusions from these projects show that the mechanisms for data sharing among workers and institutions should be made simpler, the access to information for all stakeholders at national and international level should be improved, and the national and international databases should be better integrated. The cooperation agreement between the labour inspectorates of Bulgaria and France was presented as a good example of comprehensive and active partnership in this area, comprising timely exchange of information about national legislation, posting companies, irregularities and occupational accidents during the posting, joint trainings and inspections, dissemination of information about the rights of employers and workers, and exchange of goods practices.

During the second panel discussion on The Role of Social Partners in International Cooperation Activities, the BCC executive director, Valentin Nikolov, underlined that the current crisis has distinguished and aggravated major issues not only of economic and financial nature, but of social nature as well. “One of these issues is in the area of posted workers. It intensified and came to the foreground in many European countries, both in the construction and in other industries that are crucial for the economy. The chronic deficiency of construction workers and specialists, actually, in all EU member states, is a factor for process distortion, abuse and violations of various nature”, Nikolov said. To his words, this negative trend accelerates and if not put well in hand, it could **become a source of even sharper issues and conflicts among companies, construction industries and different countries**. A new issue is emerging with regard to the unscrupulous use of the lack of information, experience and legal culture, overexposure of errors and omissions of the weaker and dependent by the possessor of information, resources and position for the purposes of injuring the posted worker – either a natural person, or a company. Such trend is especially dangerous with view of undermining the moral principles of the European Union and impeding its further development, Nikolov firmly states.

Challenges related to people mobility, unequal remuneration and implementation of construction projects by Bulgarian companies abroad are not new. They have been accumulating during the years, however, the pandemic situation resulted in new difficulties. This gave a serious impetus and motivation to the Bulgarian Construction Chamber to undertake measures for solving the issue with the help of the experience of other European countries, Nikolov highlighted. He said that during the analysis of the outcomes of the two EU projects – EU Post Lab and ISA, BCC has found that in contrast to other European countries, Bulgaria has not established a monitoring system for various aspects of posting of workers in the sector. “The feedback system, or what happens in the course of the respective posting, is crucial for decreasing the share of informal economy, minimizing the discrimination cases and trouble-free implementation of construction projects abroad. After we considered a few systems for monitoring of posted workers presented within these two projects, we decided **to implement and adapt the Portuguese monitoring and supervision scheme**. This is due to two reasons. On one hand, just like Bulgaria, Portugal ranks among the leaders in terms of workers posted within the EU”, Nikolov says. On the other hand, the analysis shows that the practice of Portuguese institutions with regard to information collection about posted workers is extremely successful in terms of cooperation at interinstitutional and international level, he adds.

Thanks to its involvement in the ISA project, BCC has established successful contacts with the Portuguese labour inspection authority ACT and has put the foundations of fruitful international cooperation for exchange of good practices. The second virtual meeting will be held in April 2021 and will bring together representatives of Bulgarian and Portuguese organisations involved in the process of posting of workers – labour

inspectors, social security institutes, branch organisations and trade unions. “As far as the issues of posted workers and the operations of the companies are an extremely important area for every country and all countries in general, solving such issues requires the attention and efforts of the whole society – of the Bulgarian and the European society as a family facing to the future. This is why what we have achieved by now would not be possible without the support of our international partners and their motivation and endeavours to share their best practices with us”, Nikolov underlined at the end of his speech.

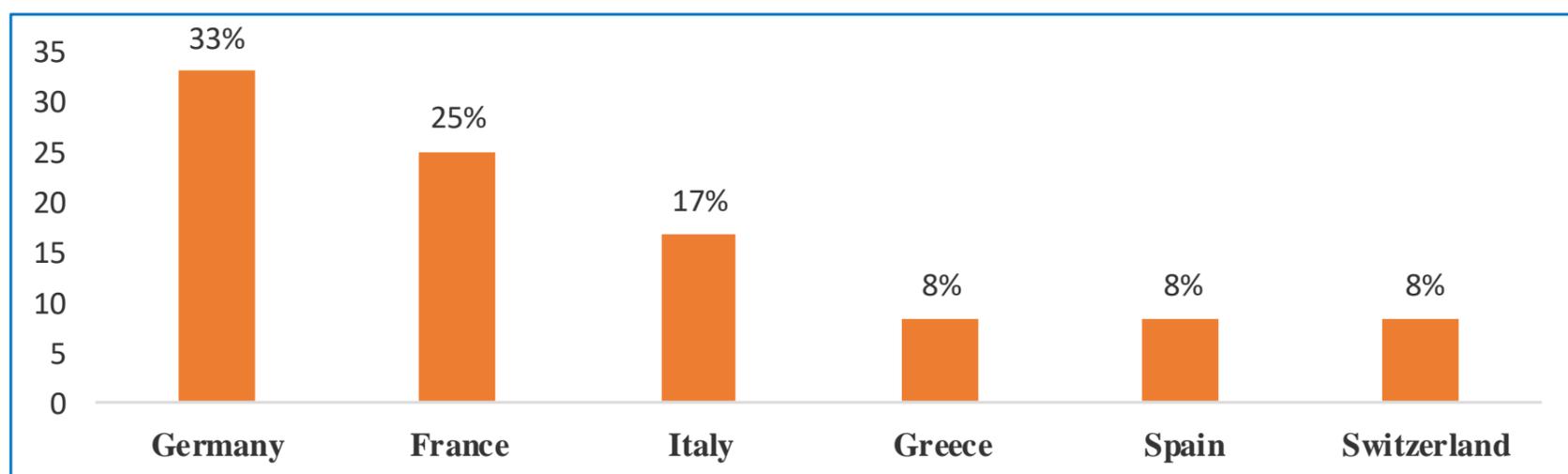


In order to be able to assist for the improvement of the entire cycle of projects implemented by the Bulgarian companies in the EU, including for the enhancement of the processes of posting of construction workers, BCC joined its efforts with the National Revenue Agency (NRA), which is responsible for the issue of A1 forms in Bulgaria. With its assistance, the Chamber carried out a survey among Bulgarian construction companies about the terms and conditions and the issues associated with the implementation of construction projects and EU and the administrative obstacles in the process of worker posting. **Stroitel Newspaper presents a summary of the results of such survey.**

For the purposes of the survey, BCC carried out 18 online questionnaires and 7 detailed interviews with representatives of Bulgarian construction companies that perform construction works in the EU, which have received A1 form during the period 2014 – 2019. Most of the respondents, or 33%, have implemented projects and have posted workers to Germany. It is followed by France with 25% and Italy with 17% ranking second and third, respectively. The other European countries where workers have been posted comprise Greece, Spain and Switzerland, each of them with a share of 8%

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Figure 1: EU countries to which respondents have posted workers



In terms of the type of construction, companies that have performed dry construction represent the highest share among the respondents – 30%. The companies that have performed rough construction come second – 20%. The other builders answer that they have performed the following works: power supply, façade reconstruction and fitting out, telecommunications, assembly and dismantling of facilities. Most of the respondents, or 67% of them, share that they have been subcontractors under the contracts, and 33% of the companies – main contractor. The survey reveals a few key challenges faced by the posting companies, which are due to administrative barriers, the specificities of national legislations and the behaviour of the main contractors and/or partners to the Bulgarian companies abroad.

Issues related to A1 form and social contributions of workers posted into EU member states

Proving at least 25% realised turnover in Bulgaria during the previous year as from the date of application for A1 is among the major difficulties for the Bulgarian construction companies in terms of posting of workers, since companies’ turnovers differ in different months of the year. On one hand, such mismatch is due to the seasonality and long-term nature of contracts resulting in variable cash flow, and on the other hand, to the current financial and economic uncertainty at global level. The other case that occurs upon proving the companies’ experience, is the provision of proper documents, which however do not correspond to the reality. For the time being, there is no established system for verification of the authenticity of submitted information in other databases, for example, invoice payment flows and verification of construction and assembly work contracts. This results in unfair competition and puts proper companies into unequal position.

The requirement for filing the A1 form on hardcopy in person is another challenge faced by the companies because some of the accompanying documents, which do not change in time, are the same for all employees of the company and for the individual natural person (when applying in different periods during the year). To the opinion of most of the respondents, filing and storing documents on hardcopy is not only unnecessary but results in material time (for preparation, printing, description and review) and resource (paper, information search and storage) losses for both parties. It would be more easily and convenient if application, approval and storage of documents could be done online by creating a file of every company that contains the required information to be periodically updated.

The time period for issuing A1 form is at least three weeks for relatively big companies with significant foreign experience, and for the smaller companies with less experience, the issue of this document takes even more time. Most of the respondents believe that this period is quite long,

which has negative impact on the planning of their activities, especially upon occurrence of unexpected circumstances. Furthermore, the procedure is not flexible and does not allow summary procedure for issue of A1 form in case of change of contractual circumstances (for example, extension of its term of validity), or in case of unplanned leave/ long sick leave of the worker.

Last but not least, the issue of social security and decent remuneration of posted workers is the most serious one and has aggravated after the accession of the poorest member states, such as Bulgaria and Romania, where social payments and minimum salaries are the lowest. On one hand, the transfer of social security contributions to the social security system in Bulgaria is a hard and burdensome administrative process, which is not only due to the procedure in our country but to the rules of the host country as well. Quite often, the expenses for legal advice on such cases exceed the benefits for the workers, and therefore they do not seek remedies for exercising their social rights. The other aspect of this issue is the abuse with the actual remuneration of workers. Unofficial information sources show that many companies fail to actually reflect the extra time in the worksheets or pay less than the net remuneration agreed in the supplementary agreement for posting. This has impact on the share of informal economy and on the welfare of workers, however, they agree with this condition, having in mind that the salary they receive for implementation of projects abroad is relatively high.

Administrative and legal requirements in the EU



The issues of Bulgarian construction companies associated with the implementation of construction projects in the EU are not so much related to the amount, complexity and types of administrative requirements with regard to taxes, social security, etc., but rather to the lack of administrative capacity, knowledge and experience in the process management by the Bulgarian companies. Most of the respondents who have enough foreign experience and who work with qualified employees and/or with reliable partners abroad, do not have difficulties to observe the local tax and labour legislation. “The EU legal base, regulations and rules are clear – they may not be different and specific for different construction companies. They are as they are for everyone who works in Germany, for example, and for their workers. The question of the additional administrative burden rather has another

important aspect. Bulgarian construction companies have problems as far as they are not familiar with and do not know the local legal framework well and as far as they suffer deficit of qualified staff who is able to administer such process. This refers to language skills, legislation and administrative requirements understanding, etc.,” one of the respondents summarizes.

In terms of employees’ qualification, in most cases companies do not face any difficulties. Irrespective of the diplomas and certificates they hold, the skills of builders or the lack of such skills can be readily identified in the course of work, as in most cases the work is supervised by a resident person, and the low quality of performed construction works is not tolerated at all. “The qualification of workers should be perfect. After the completion of the works under a project in Germany, every worker is subject to compulsory training. This is aimed at continuous improvement of qualification, skills and knowledge of all workers in the construction industry, thus contributing to the competitive power of the German construction sector and to the fair competition within the sector”, one of the companies shares.

Discrimination and improper attitude of the main contractor

About half of the respondents share that they have witnessed to a great extent discrimination and/or improper attitude of the main contractor. Anyway, this could not be considered a trend in any EU member state or a typical attitude to Bulgarian companies. Discrimination practices are, to a greater or smaller extent, witnessed everywhere, and depend on the place one works at, on those one works with, and on which of the two parties may benefit from its stronger position. The disregard of the skills and abilities of the Bulgarian employees is a common phenomenon that, however, is overcome quite quickly as a result of gaining experience and proving the company abroad. Another important aspect is the establishment of stable and long-term relationships with the same main contractors and partners, thus building trust to the quality of provided services, predictability of professional relationships and working methods, and even friendship. Last but not least, the effective communication significantly reduces discrimination practices. Therefore, it is crucial for any Bulgarian company to have at least one employee who speaks the local language in order to freely communicate with the teams, the local stakeholders and the inspectors, and to ensure adequate logistics with regard to transport, material supply and everything necessary for the working process.

Although discrimination practices and improper attitude to Bulgarian contractors are still witnessed, the analysis shows that their intensity has decreased after the accession of Bulgaria to the EU. On one hand, this is due to the integration, harmonization of the legislation and the EU convergence policies, which results in the introduction and application of foreign experience, validation of workers’ skills and facilitation of the working process in the EU member states. On the other hand, during the last decades, Bulgarian and Eastern European construction companies managed to prove that they are able to perform their work diligently and with due quality and are even preferred to the local workers as they are inclined to fulfil their official duties outside working hours – a feature that is typical not only for the construction industry. Discrimination decrease is also due to the aggravating image of the construction industry in Western Europe in general and to the serious deficit of local workers; therefore, most of the companies recruit and train young people and/or appoint subcontractors from Central and Eastern Europe. The negative aspect of this trend is that it develops a dependency on foreign subcontractors and workers, which in its turn, results in deficit of workers in the home countries.

Some of the cases of improper attitude and discrimination described by the respondents are as follows:

- Some main contractors trade on the lack of knowledge of Bulgarians and make use of these circumstances in order to harm the Bulgarian subcontractor. An example of such speculation is the use of contractual terms and conditions that are not detailed enough, which

increases the invested labour and time for completion of the project. Many companies refuse to work abroad after being harmed as a result of such attitude.

- It is a common practice that main contractors bring claims with regard to the time periods for completion of the project, the organization and realization of the production process, the provision of construction machinery and suppliers, which in most cases are not by fault of the subcontractor. “In practice, almost every company receives counter bills for damages to the shuttering, which are predominantly invented, excessive and in conflict with the real situation”, one of the respondents shares.
- There are cases where the main contractor fails to pay the last tranche of the agreed amount. This is aimed at exerting pressure for entering into the contract for the next project at the lowest possible price. However, if the Bulgarian construction company refuses to enter into a new contract, the amount is not paid. In most cases, subcontractors do not seek remedy in court due to the high price and the associated psychological factors in the course of such actions.
- Another aspect of discrimination to Bulgarian companies resulting in improper attitude, is the belief that they could become competitors and replace the local companies by “taking away” a share of the public procurements.

Respondents’ recommendations with regard to the improvement of the process of posting of workers mainly refer to the work of the Bulgarian authorities and make suggestions to expand the services of social partners, in particular BCC. They firmly express the opinion that applications for A1 form should be filed online. This would save a lot of time and efforts both of the applicants and the employees of NRA. Every company could have a file opened in the NRA system, which keeps the required documents for the company. This would facilitate the information search, would improve document recording and storage and would shorten the time for review of filed information and the time for issue of A1 form.



The literal transposition of the Directive concerning the posting of workers and the commitment to reduce the share of abuses when applying for A1, to a certain extent

impede the correct companies as well. The focus on the existence, punctuality and accuracy of documents shifts the attention away from the nature, reality and specificity of an economic sector, which is especially valid for the construction industry characterised with seasonality and long-term contracts. In this sense, the recommendation to the NRA is to be more flexible when using quantitative indicators for the assessment of companies’ applications, depending on the respective economic sector.

The level of preparedness of Bulgarian companies in terms of legislation and business environment in the European countries has material impact on the smooth implementation of the projects. Therefore, companies that have faced administrative issues would better direct their efforts and means to improve the qualification of their employees in terms of language skills, technologies, legislation, administrative requirements, etc. The actual professional skills and competences of construction specialists are equally important. The continuous improvement of specialists’ practical experience, the increase of their motivation by means of various incentives, in particular financial incentives, would enhance the competitive power of both individual companies and of the Bulgarian construction sector in general.

In terms of discrimination, it exists irrespective of the place of registration of the company – in Bulgaria or abroad, and depends on multiple factors, including subjective factors that can be hardly influenced. Its negative impact, however, could be mitigated if Bulgarian companies smartly and carefully select main contractors they work with – serious companies with proven experience, which realise that proper attitude to subcontractors in terms of negotiations, fixing of time periods and fair payment under contracts, is beneficial for both parties. There is another important aspect – Bulgarian companies should be continuously committed to higher quality, improvement of their skills and adaptation to the economic reality in the respective country. Thus they would be able to establish good and professional relationships with the main contractor in the course of time.

BCC could also support construction companies operating abroad by expanding its services for the members. Some of the respondents’ suggestions are as follows:

- It would be useful to make guidelines for individual European countries covering the requirements, time periods, types of construction, definition of movable and immovable construction site, terms and conditions for entry in the cadaster, level of average salary and/or minimum amount of remunerations in the sector, etc.
- Consultations with law firms and accounting firms that are familiar with the process of European labour and tax legislation are extremely useful and decrease the risk of improper attitude, failure to observe the local legislation and violations due to the lack of detailed specific and specialised skills among construction companies. However, they are quite expensive. This is why, BCC could provide its members with such general information in the form of questions and answers or specialised articles.
- The registration in the Central Professional Construction Register of BCC could be a guarantee that the company applying for A1 form is competent and has proven skills for the respective category of construction. A closer cooperation between NRA and BCC in this regard has the potential to relieve the administrative burden for the registered companies, to shorten the time for document processing and issue of A1 form, and to increase the added value of BCC’s services.
- In some countries, such as France, in order to participate in public procurements, the construction companies need to have their activity certified by specific accrediting companies. BCC – as an organization certifying the activity of Bulgarian builders, could study the opportunity to become a member of one of these organizations, which would ensure many new opportunities for the registered companies operating in the EU.

The study on the terms and conditions for completion of construction sites and posting of workers to EU gives reason to make a few general conclusions. Firstly, from the EU perspective, the regulation of the process of posted workers is extremely important as a whole, and despite it is comprehensive, fair and reliable, it needs continuous monitoring, analysis, adjustment and improvement. Secondly, during the last seven years our country, and in particular, our authorities, gained enough experience and move to a new phase of transition from mastering to active monitoring, management and development. Here, we should mention the active assistance of NRA without which this survey would not be complete and objective. It is crucial that NRA gave BCC a hand in the height of the pandemic, and afterwards their representatives took part in the discussions with the Portuguese colleagues. Thirdly, in almost all European countries, especially when we speak for the periphery to the center and the poorer to richer countries, to a great extent, this market segment corresponds to or overlaps with the informal sector in construction. This is not acceptable for Bulgaria as a member of the European family and for the European family as a whole. Fourthly, the mechanisms for monitoring, analysis, development and improvement of the process are clearly defined; furthermore, we have the experience of other countries that have passed this way years before us and have found solution corresponding to the European moral and ethical principles, legislation, traditions and practices in different societies. Fifthly, the COVID-19 pandemic sharpened, accelerated and revealed the general issues with regard to posted workers for a wider circle of the society, both in our country and in the Union as a whole. It further showed another important thing – **the issues would increase and multiply without the joint, coordinated and targeted efforts among stakeholders:**

- At national level, these are NRA, the Employment Agency (EA), the National Social Security Institute (NSSI), trade unions and BCC.
- At bilateral level, these are the tax and social security institutions, the employment offices, trade unions, branch organisations, the respective ministries and governments.
- At European level – the European Commission, the European Parliament, the European Construction Industry Federation (FIEC) and the European Federation of Building and Woodworkers (EFBWW).

DISCLAIMER: The official language of the Final conference of ISA project was English. The article was drafted and published in Bulgarian language and then translated into English. Therefore, the wording of the quotes might deviate from the ones used by the speakers during the event.