

ACCESS TO INFORMATION ON THE POSTING OF WORKERS

Construction Companies' Practices and Challenges



Sonila Danaj, Kristina Toplak, and Mojca Vah Jevšnik (eds.)

ACCESS TO INFORMATION ON THE POSTING OF WORKERS: CONSTRUCTION COMPANIES' PRACTICES AND CHALLENGES

Edited by Sonila Danaj, Kristina Toplak, Mojca Vah Jevšnik

Expert Reviewers

Marina Lukšič Hacin, Sanja Cukut Krilić

Language Editor

Jana Wilcoxon

Design

Deja Gliha

Issued by

ZRC SAZU Slovenian Migration Institute

Represented by

Marina Lukšič-Hacin

Published by

Založba ZRC

Represented by

Oto Luthar

Založba ZRC Editor-in-Chief

Aleš Pogačnik

Ljubljana 2024

Cover photo by gpointstudio on Freepik

Except otherwise noted, the reuse of this **e-book** is authorised under a Creative Commons Attribution 4.0 International (CC-BY 4.0) licence (<https://creativecommons.org/licenses/by/4.0/>).

This means that reuse is allowed provided appropriate credit is given and any changes are indicated. For any use or reproduction of elements that are not owned by the authors, permission must be sought directly from the copyright holders.

<https://doi.org/10.3986/9789610508366>

Kataložni zapis o publikaciji (CIP) pripravili v Narodni in univerzitetni knjižnici v Ljubljani

[COBISS.SI](https://coibiss.si)-ID [186021123](https://coibiss.si)

ISBN 978-961-05-0836-6 (PDF)

General contact: Sonila Danaj [danaj@euro.centre.org]

For more information on the publication:

Kristina Toplak kristina.toplak@zrc-sazu.si and Mojca Vah Jevšnik mvah@zrc-sazu.si

Please refer to this publication as follows:

Danaj, S., Toplak, K. & Vah Jevšnik, M. (eds.) (2024). Access to Information on the Posting of Workers. Construction Companies' Practices and Challenges. Ljubljana: Založba ZRC. <https://doi.org/10.3986/9789610508366>

Information may be quoted provided the source is stated accurately and clearly.



Co-funded by
the European Union

This publication is part of the INFO-POW project. This project has received funding by the European Commission, DG Employment, European Social Fund+ (ESF+) Social Prerogatives and Specific Competencies Lines (SocPL), Call ESF-2021-POW.

Views and opinions expressed are, however, those of the author(s) only and do not necessarily reflect those of the European Union or European Commission, DG Employment, ESF+ and SocPL. Neither the European Union nor the granting authority can be held responsible for them.

INTRODUCTION

Sonila Danaj

CC-BY, https://doi.org/10.3986/9789610508366_01

This book presents the issue of access to information in the posting of workers. The authors identify and assess the practices and challenges of construction companies involved in the posting of workers, either as posting companies sending their workers to provide a service from one European Union (EU) country to another or as a user company that receives the services provided by posting companies and their posted workers. The chapters in this book contribute to the debates on the posting of workers by filling a gap in understanding how transnational posting companies and user or receiving companies find and use information in their interaction with national institutions and how that affects their overall performance in terms of the correct application of the posting rules and the protection of labour and social standards. The studies focus on the specific case of the construction sector as one of the main sectors where posting occurs (De Wispelaere et al., 2020) and where both larger companies and SMEs as well as self-employed are active. Consequently, this sector covers a great diversity of “companies”, allowing for a stratified understanding of posting and receiving companies’ challenges.¹ The book consolidates the findings of the transnational research project titled “Assessment of the channels of information and their use in the posting of workers” (INFO-POW), co-funded by the European Commission and implemented in Austria, Belgium, Italy, Slovakia, and Slovenia during 2022–2024.

The provision of services through posting has become one of the most important cross-border labour mobility forms. In 2021, there were around 1.7 million cross-border workers in the EU and EFTA (European Free Trade Association), while 3.6 million postings were distributed among an estimated

1 In this book, the authors in the different chapters use the terms “undertaking” and “company” interchangeably. Likewise, they refer to the undertakings/companies in the receiving countries who make use of the services of posted workers either as *user* undertakings/companies or *receiving* undertakings/companies interchangeably.

2.6 million individuals (Hassan et al., 2023). The literature on the posting of workers has underlined the complexity of the regulatory posting regime and its implications for the companies and workers involved (Arnholtz & Lillie, 2020; Bottero, 2020; Danaj et al., 2021; Houwerzijl & Berntsen, 2020). Of particular concern have been matters of “regime shopping”, rule avoidance and circumvention, and the vulnerability of posted workers exposed to unequal and often precarious terms and conditions (Arnholtz & Lillie, 2023; Cremers, 2020; Houwerzijl, 2014; Berntsen & Lillie, 2015; Lillie & Wagner, 2015). In these studies, it is argued that posting companies intentionally choose the national regulatory regime that is more convenient for them and circumvent other regulations that might be costlier or otherwise inconvenient. However, the authors also recognise that many posting companies are often just confused about the rules by which they must abide (see Berntsen & Lillie, 2015; Houwerzijl & Berntsen, 2020).

Access to information has been identified as one of the key aspects relating to rule compliance in the posting of workers. The main challenges reported by the existing academic and grey literature include accessing the information on applicable terms and conditions of employment, the administrative requirements for service providers and receiving companies, the quality of the information provided, and the capacities of posting and receiving companies to find and make sense of the information on posting to abide by the applicable regulations (Cillo, 2021; Čaněk et al., 2018; Cukut Krilić et al., 2020; Danaj et al., 2021; De Wispelaere et al., 2021; European Commission, 2019; Eurofound, 2020; Kováčová et al., 2021; Zólyomi & Danaj 2019).

In fact, access to information is explicitly referred to in the EU posting regulations. The regulatory framework of posting underlines the importance of access to information for posting companies and for workers, not only in terms of rights but also in the function of regulatory compliance. The Posting of Workers Directive (Directive 96/71/EC) established minimum standards for posted workers, such as working conditions, wages, and social protection. In addition, Directive 2014/67/EU on the Enforcement of Directive 96/71/EC concerning the posting of workers stipulates the establishment of coordination mechanisms among Member States and the provision of tools for better control and inspection of employers’ compliance with posting

rules. Paragraph 18 of the Recital of the Enforcement Directive connects compliance to access to information by stating:

Difficulties in accessing information on terms and conditions of employment are very often the reason why existing rules are not applied by service providers. Member States should therefore ensure that such information is made generally available, free of charge and that effective access to it is provided, not only to service providers from other Member States, but also to the posted workers concerned.

Article 5 (§§ a–d) of the Enforcement Directive stipulates the Member States' obligations in improving access to information. These points require EU Member States to provide information on the posting of workers *free of charge in a user-friendly format and accessible languages*. Article 5 further requires the establishment of national platforms on a single website for the posting of workers and *linking* information available through various channels to facilitate navigation. Article 5 also requires Member States to indicate *a contact person at the liaison office in charge* of dealing with requests for information (§§ e).

In 2020, Directive 2018/957/EU amending Directive 96/71/EC came into force, aiming to further strengthen the protection of posted workers by improving their working conditions and ensuring equal pay. The amended Directive 2018/957/EU mentions remuneration specifically (Article 3) and states that lack of access to up-to-date information should be considered when enforcement agencies inspect and aim to issue fines and penalties to posting and/or user undertakings. In other words, the new Directive reinforces the connection between access to information and posting rule compliance in reference to the repercussions companies face in instances of non-compliance:

[...] the determination of the penalty should take into account, in particular, whether the information on the single official national website on the terms and conditions of employment was provided in accordance with Article 5 of Directive 2014/67/EU (Paragraph 21 of the Recital).

Therefore, Member States have a direct interest in ensuring the quality and completeness of the information provided since, with the entering into force of the amended Directive 2018/957/EU, national authorities now hold an obligation to “take into account” the absence or incompleteness of the information provided by said websites when determining the proportionality of penalties in case of infringement of the posting rules.

EU institutions have also underlined the importance of access to information in the posting of workers. The European Court of Justice has shown a clear willingness to assess the proportionality of sanctions introduced by Member States against posting companies (Rocca, 2020). Likewise, the European Labour Authority (ELA) has established a Working Group on Information, whose role is to review and provide recommendations and guidelines to improve the single official national websites on posting.

The legal obligations have led to the setup of various channels of information provided by state and non-state actors. Assessments of these channels in the academic and grey literature have looked at the regulatory framework, the content, and the way the information is presented (Cillo, 2021; Čaněk et al., 2018; Cukut Krilić et al., 2020; Danaj & Zólyomi, 2018; Danaj et al., 2021; De Wispelaere et al., 2021; European Commission, 2019; Eurofound, 2020; Jorens & De Wispelaere 2019; Kováčová et al., 2021; Zólyomi & Danaj 2019). They find that although single official national posting websites have been established throughout the EU, considerable gaps exist in the legislation in many Member States on the criteria for the information these websites should contain. Another finding is that the format in which information is presented is too diverse in too many critical aspects to attain the legally defined objectives of the Directive. The information on national websites varies from mere extracts of national and EU legislation to more interactive or accessible content. Most information is provided in the Member States’ national language(s), and although most websites might also have an English version, others provide information in more languages. However, the criteria for the selection of languages are not transparent and often lack justification. As a result, these studies have concluded that the information provided on the posting of workers is insufficient and/or difficult to access by the stakeholders for whom it should be provided;

therefore, there remains considerable room for improvement regarding the channels of information provided and awareness.

The abovementioned assessments and research reveal that it remains unclear to what degree existing channels of information are used by posting and receiving companies and in what way(s), thus indicating a gap in the perspectives of posting and receiving companies. The few available studies suggest that posting companies often remain unaware of all the posting rules and that the available channels of information do not necessarily meet the needs they might have. A recent qualitative study by Danaj et al. (2021), focusing on employer practices in the construction sector, found that even though the amount of information available to posting companies is increasing, this does not necessarily translate to better access to this information. Companies have difficulties accessing the information on posting either because it is not sufficiently available, not available in a language they speak, or because of several difficulties in navigating and processing the available information in a practical and useful manner. These challenges are exacerbated in cases of the posting of third-country nationals, where posting and migration rules overlap (Cukut Krilić et al., 2020). In addition, De Wispelaere et al. (2021) found that employers in the live performance sector were also largely unaware of the (revised) posting rules and informed themselves on these rules mainly through the “client” or other colleagues. Overall, these results reveal that the target audiences underuse the official sources of information. The use of private legal and accounting firms and other consultancies by various posting companies also suggests the need for support in accessing and processing information on the side of the companies (Arnholtz & Andersen, 2018; Danaj et al., 2021).

Company profile, in particular size, placement in the subcontracting chain, and country of establishment also play a role in their practices (Afonso, 2012; Arnholtz, 2019). Larger companies at the top of the subcontracting chain are more inclined to comply with regulations than others further down the subcontracting chain (Arnholtz, 2019; James et al., 2015). Medium-sized companies in the middle of the chain feel double pressure. On the one hand, the pressure of compliance transferred by the main contractors and, on the other hand, the need for more flexibility to make a profit. Finally, in line with the arguments from this field, the smaller companies at the end of

the chain are described as the least likely to comply with the rules (Arnholtz, 2019; see also Wills, 2009). Likewise, the country of establishment also plays a role regarding which companies are more likely to comply with the rules. For instance, companies established in the host country and EU companies frequently active in the host country are more inclined to comply than other foreign companies (Arnholtz, 2019). Linking company size with financial capacities and rule enactment, Danaj et al. (2021) find that the larger companies can navigate the complexity of the posting regulatory framework with the support of specialised services companies, such as consultancies, lawyers, and accountants (see also Arnholtz & Andersen 2018), while the smaller companies often cannot afford such services. Therefore, companies with fewer resources must find, access, and process information on their own but may not always have the necessary human resources and skills to follow through.

Past research clearly indicates significant challenges in accessing and processing information on the posting of workers. However, based on these studies, it has been unclear what specific challenges posting companies experience. Taking stock of the existing literature, the case studies in this book provide the first comprehensive analysis of the channels of information in the posting of workers available to posting and receiving companies and assess the practices, needs, and challenges of these companies related to information on posting. They also provide examples of good practices and recommendations in the five studied country contexts.

The book is structured as follows. After the introduction, the mixed methodology applied in all five case countries is explained in detail. Next, each country case, focusing on Austria, Belgium, Italy, Slovakia, and Slovenia, is presented individually. Each country chapter first provides the channels of information and company practices, then the posting and receiving companies' challenges and needs, followed by information providers' challenges and efforts to improve access to information. The book's final chapter provides conclusions and recommendations drawn from the participants in the research activities in all five countries and the reflections of the researchers involved.

References

- Afonso, Alexandre (2012). Employer Strategies, Cross-Class Coalitions and the Free Movement of Labour in the Enlarged European Union. *Socio-Economic Review*, 10(4), 705–30. <https://doi.org/10.1093/ser/mws008>.
- Arnholtz, Jens (2019). Posted Work, Enforcement Capacity and Firm Variation: Evidence from the Danish Construction Sector. *Economic and Industrial Democracy*, 143831. <https://doi.org/10.1177/0143831X19853022>.
- Arnholtz, Jens, Andersen, Søren Kaj (2018). Extra-Institutional Changes Under Pressure From Posting. *British Journal of Industrial Relations*, 56(2), 395–417. <https://doi.org/10.1111/bjir.12287>.
- Arnholtz, Jens, Lillie, Nathan, eds. (2020). *European integration and the reconfiguration of national industrial relations: posted work as a driver of institutional change*. London: Routledge.
- Arnholtz, Jens, Lillie, Nathan (2023). Posted Work as an Extreme Case of Hierarchised Mobility. *Journal of Ethnic and Migration Studies*, 49, 1–18. <https://doi.org/10.1080/1369183X.2023.2207341>.
- Berntsen, Lisa, Lillie, Nathan (2015). Breaking the Law? Social Dumping in a Pan-European Labour Market. *Market Expansion and Social Dumping in Europe* (ed. Magdalena Bernaciak). London: Routledge.
- Bottero, Matteo (2020). *Posting of Workers in EU Law: Challenges of Equality, Solidarity and Fair Competition*. AH Alphen aan den Rijn, NL: Kluwer Law International BV.
- Čaněk, Marek, Kall, Kairit, Lillie, Nathan, Wallace, Amelia, Haidinger, Bettina (2018). *Transnational Cooperation among Labour Regulation Enforcement Agencies in Europe: Challenges and Opportunities Related to the Posting of Workers*. Brussels: Solidar. <http://dx.doi.org/10.13140/RG.2.2.25125.19687>.
- Cillo, Rossana (2021). *Bridging the Gap Between Legislation and Practice in the Posting of Workers. Italy Country Report*. Venice: Ca' Foscari University of Venice.
- Cremers, Jan (2020). Market Integration, Cross-Border Recruitment, and Enforcement of Labour Standards – A Dutch Case. *European Integration and the Reconfiguration of National Industrial Relations: Posted Work as a Driver of Institutional Change*. (eds. Jens Arnholtz, Nathan Lillie). London: Routledge. <http://dx.doi.org/10.4324/9780429031021-7>.
- Cukut Kričić, Sanja, Toplak, Kristina, Vah Jevšnik, Mojca (2020). *Posting of Third Country Nationals: A Comparative Study*. Ljubljana: ZRC SAZU, <https://www.euro.centre.org/publications/detail/3929>.

- Danaj, Sonila, Zólyomi, Eszter (2018). *Occupational Health and Safety of Posted Workers in the EU: A Comparative Report*. POOSH – Occupational Safety and Health of Posted Workers: Depicting the existing and future challenges in assuring decent working conditions and wellbeing of workers in hazardous sectors. Vienna: European Centre for Social Welfare Policy and Research, <https://www.euro.centre.org/publications/detail/3354>.
- Danaj, Sonila, Kahlert, Rahel, Zólyomi, Eszter, Prinz, Nicolas, Sandu, Veronica (2021). *The Gap Between Legal Procedures and Practices in Posting Rule Enactment: A Comparative Working Paper*. Vienna: European Centre, <https://www.euro.centre.org/publications/detail/4215>.
- De Wispelaere, Frederic, De Smedt, Lynn, Pacolet, Jozef (2020). *Posting of Workers: Report on A1 Portable Documents Issued in 2019*. Luxembourg: Publication Office of the European Union.
- De Wispelaere, Frederic, Schepers, Wouter, Jorens, Yves, Nerinckx, Evert, Rocca, Marco, Duchateau, Leila (2021). *Cross-border Employment in the Live Performance Sector: Exploring the Social Security and Employment Status of Highly Mobile Workers*. Leuven: KU Leuven, <https://hiva.kuleuven.be/nl/nieuws/docs/zkd8143-rapport-eind-web.pdf>.
- Eurofound (2020). *Improving the Monitoring of Posted Workers In The EU*. Dublin: Eurofound.
- European Commission (2019). Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the application and implementation of Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) 1024/2012 on administrative co-operation through the Internal Market Information System ('the IMI Regulation').
- Hassan, Emanuel, Siöland, Linus, Akbaba, Berkay, Cinova, Daniela, Gasperini, Michela, Geraci, Matthew (2023). *Annual Report on Intra-EU Labour Mobility 2022*. Luxembourg: Publications Office of the European Union.
- Houwerzijl, Mijke, Berntsen, Lisa (2020). *Posting of Workers: From a Blurred Notion Associated with 'Cheap Labour' to a Tool for 'Fair Labour Mobility'? European Integration and the Reconfiguration of National Industrial Relations: Posted Work as a Driver of Institutional Change* (eds. Jens Arnholtz, Nathan Lillie). London: Routledge.
- Houwerzijl, Mijke (2014). *Regime Shopping Across (Blurring) Boundaries. Regulating Transnational Labour in Europe: The Quandaries of Multilevel Governance* (ed. Stein Evju), 95–130.

- James, Philip, Walters, David, Sampson, Helen, Wadsworth, Emma (2015). Protecting Workers Through Supply Chains: Lessons from Two Construction Case Studies. *Economic and Industrial Democracy*, 36(4), 727–747. <http://dx.doi.org/10.1177/0143831X14532296>.
- Jorens, Yves, De Wispelaere, Frederic (2019). Intra-EU Posting: Looking for Solutions: A Herculean or a Sisyphean Task? *BTSZ/RBSS*, 61/ 1, 113–138.
- Kováčová, Lucia, Studená, Ivana, Kureková, Lucia Mýtina (2021). *Bridging the Gap between Legislation and Practice in the Posting of Workers. Slovakia Country Report*. Bratislava: Slovak Academy of Sciences.
- Lillie, Nathan, Wagner, Ines (2015). Subcontracting, Insecurity and Posted Work: Evidence from Construction, Meat Processing and Ship Building. *The Outsourcing Challenge: Organizing Workers Across Fragmented Production Networks* (ed. Jan Drahoukoupil). Brussels: ETUI, 157–174.
- Rocca, Marco (2020). Stepping Stones Over Troubled Waters. Recent Legal Evolutions and the Reform of the Posting of Workers Directive. *European integration and the reconfiguration of national industrial relations: posted work as a driver of institutional change* (eds. Jens Arnholtz, Nathan Lillie). London: Routledge.
- Zólyomi, Eszter, Danaj, Sonila (2019). Language Barriers and the Occupational Safety and Health of Posted Workers, Policy Brief 2019/4. Vienna: European Centre, <https://www.euro.centre.org/publications/detail/3474>.