

# 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**

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# ACCESS TO INFORMATION ON THE POSTING OF WORKERS: COMPANY PRACTICES AND CHALLENGES IN THE CASE OF SLOVENIA

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## Introduction

In the European Union (EU), Slovenia has been one of the main sending Member States of posted workers, mainly towards Germany and Austria. The upward trend of the posting of workers to other EU Member States has been persistent for years and even continued in 2020 despite the COVID-19 pandemic. Outgoing posted workers from Slovenia amount to about 7% of total employment in Slovenia and even to some 30% of total employment in the Slovenian construction sector. The latter is the highest percentage share of postings in the construction sector among all Member States (De Wispelaere et al., 2021). Most PDs A1 from Slovenia are issued in the construction sector, followed by installation/assembly and servicing, industry and international freight transport<sup>30</sup> (Vah Jevšnik & Toplak, 2023).

The Slovenian construction sector has been expanding in recent years. The number of construction companies registered in Slovenia in 2022 was 22,758, or 11.8% of all registered companies. According to Eurostat,

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30 The figures on posting by sector of activity are not available for the persons posted, but only for the number of Portable Documents A1 (PD A1) issued. PD A1 is a certificate that proves that the social security legislation of the issuing Member State applies and confirms that the person concerned has no obligations to pay social security contributions in another Member State. PD A1 is issued according to Article 12 of Regulation (EC) No 883/2004 on the coordination of social security systems for every posting assignment. Consequently, individual workers can be posted abroad several times and the number of issued PDs A1 does, therefore, not correspond with the number of actual persons posted.

Slovenia also marked the highest annual increase in construction output in the EU in January 2023, at 26.7%. In monthly terms, Slovenia recorded the highest increase in construction production among the EU Member States in Southeast Europe (SEE), for which data is available, and the second largest in the EU, at 9.8% (Miteva, 2023). The percentage of employed and self-employed persons in the construction sector in 2022 was nearly 11% of all persons in employment. This amount is an increase of around 13% from 2019. Most notable is the increase in the employment of third-country nationals (TCNs) – around 30% compared to 2019. The trend of employing and posting TCNs in the construction sector has been an especially notable characteristic of the Slovenian labour market. In 2021, 62% of the workers posted by Slovenian undertakings were TCNs. The share of all employed TCNs in total employment was 10.3%, which shows that TCNs are significantly overrepresented in the group of outgoing posted workers from Slovenia. The share of employed TCNs posted was 43.6%. Only one out of three workers posted from Slovenia had Slovenian nationality. The percentage of employed Slovenian nationals posted was less than 3%. Compared to 2018, the percentage of posted workers who are Slovenian nationals and EU nationals in 2021 has decreased by nearly 10%, while the share of third-country nationals increased by over 70%. TCNs posted from Slovenia are almost exclusively the citizens of former Yugoslavian republics, i.e., Bosnia and Herzegovina (BiH), Serbia, Kosovo, North Macedonia, and Montenegro. Among them, the highest number and share of TCNs posted from Slovenia have continuously been BiH nationals (62.9%).

Posting to Slovenia has been less notable, although the number of workers posted to Slovenia and, subsequently, the number of notifications in the prior declaration tool increased significantly from 2020 to 2021. In the construction sector, in particular, there was a notable rise in the number of notifications (47%) and workers posted to Slovenia (32%).

The challenges and needs of the posting companies in accessing and using relevant information regarding the posting of workers, including those who are third-country nationals and may be subject to additional conditions, are manifold. Namely, all workers who are posted to temporarily provide services in different EU Member States are subject to employment and social security regulations that are in place in the receiving countries. The

regulations vary significantly across the EU and are accompanied by country-specific administrative procedures employers must comply with when posting or receiving them. However, finding reliable and comprehensive country-specific and sector-specific information on the posting rules, either when posting or receiving workers, can be very challenging and time-consuming for companies, as such information may not be easily accessible and readily available.<sup>31</sup> Since access to comprehensive, relevant, trusted, and updated information on the applicable laws is paramount to ensure companies' compliance with relevant national legislation, efforts must be made to guarantee effective information sharing that reaches all stakeholders involved in the posting process.

This chapter gives an overview of the information channels that provide information regarding the posting of workers from and to Slovenia, the challenges of the companies in terms of their access and use of information on the posting of workers, and the challenges of providers of information on the posting of workers in Slovenia. The specific focus is on the posting *from* Slovenia in the construction sector, which is the sector that has been continuously and persistently posting workers to various EU Member States.<sup>32</sup> The discussion is based on three types of empirical data collected as part of the Slovenian fieldwork of the INFO-POW project. The first set is the analysis of 36 channels of information on the posting identified in the mapping exercise for Slovenia, comprised primarily of national and regional online information sources.<sup>33</sup> Our sampling of the information channels aimed to cover relevant units of channels that are discoverable through desk research. It should be noted, however, that the list is not exhaustive and merely indicates the type and quality of information provided by the selected (public or private) providers. The second set of empirical data is drawn from six qualitative

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31 European Labour Authority (ELA), for instance, notes in its report concerning information provision, enforcement, social security coordination and cooperation between Member States in relation to the posting of workers in the EU construction sector that there are major deficiencies in the communication tools and methods when it comes to posting workers abroad, "Leading to confusion and difficulty in accessing relevant information, for instance use of complex legal language, lack of translations, and scattered sources of information" (ELA, 2023).

32 The overall findings are provided in the INFO-POW country report for Slovenia (Vah Jevšnik & Toplak, 2023).

33 The mapping was conducted from January 15 to February 23, 2023.

interviews<sup>34</sup> conducted with the representatives of public authorities, social partners, and private consultants involved in providing information about posting and/or user undertakings in Slovenia. The interviews had a two-fold objective: to validate the results of the mapping exercise and to generate new empirical data on aspects that cannot be captured by the other methods used during the fieldwork, such as stakeholders' reflections on the quality of the available information on posting in terms of accuracy, accessibility, and use/application of information. The third set of empirical data is drawn from an online survey on the information-related needs and challenges of the posting and user undertakings in the construction sector in Slovenia.<sup>35</sup> Despite the significant effort in disseminating the questionnaire, only 29 companies completed the survey. Due to this low response rate, the results are indicative and, therefore, not representative of all companies involved in the posting of workers in the construction sector.

## Access to Information: Channels and Practices

Slovenia has transposed all Directives on the posting of workers (Directive 96/71/EC, Directive 2014/67/EU, Directive 2018/957/EU, **Directive (EU) 2020/1057**), which all aim to strengthen the protection of posted workers and ensure their rights are protected when posted abroad to provide services. The Enforcement Directive (Directive 2014/67/EU), in particular, notes the paramount importance of information sharing on terms and conditions of employment in different Member States to achieve these goals. The Directive states that Member States should “ensure that such information is generally made 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” (Paragraph 18). It stipulates that Member States should establish a single official national website in the most relevant languages, providing up-to-date information on the posting of workers in a transparent and accessible manner. The amended Directive 2018/957/

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34 The interviews were conducted in March and April 2023.

35 The web survey was launched on April 20, 2023 and closed on August 15, 2023.

EU further stresses the importance of information sharing and explicitly emphasises the connection between access to information and compliance with the regulations. Furthermore, the Directive requires Member States to include all mandatory elements constituting pay and the additional terms and obligations of employment related to postings on the single official national website, ensuring that the information provided is accurate and up to date.

The findings from the desk research show that several public and private channels of information in Slovenia, such as public authorities, employers' associations, trade unions, NGOs, consultants, etc., offer some information on the posting of workers. Our sample included websites (55%), online trainings/webinars (17%), online manuals and guidelines (14%), and other online forms of information, such as videos, online leaflets/brochures for print-out, and written educational material that can be purchased and accessed for a certain period. Eleven pre-determined categories were selected as a measure of the content and scope coverage of our sample: working time/work hours; occupational safety and health; minimum wage/collective agreements; registration for social insurance/contribution; work permits; overtime and other additional supplements including bonuses and wage supplements such as night and weekend shifts; leave and holiday; facilitating information targeted to companies; sanctions and enforcement; redress and appeal; and taxation. All categories were coded according to whether they addressed posting *to* Slovenia or posting *from* Slovenia. Unsurprisingly, topics covering posting *from* Slovenia are significantly more widely covered than posting *to* Slovenia.

We found that most information channels in our sample provide the definition of posting, information on the rules and regulations concerning the issuing of PDs A1, and generic information on the regulations of the posting of workers as stipulated in the Posting Directive 2014/67/EU. Finding specific information relevant to individual sectors and applicable to different national contexts is much more difficult. Among the eleven categories analysed, most online channels address issues such as minimum wage/collective agreements, working time/hours, overtime and additional supplements, facilitation of information targeted to companies and taxation, but in a generic manner and without any detailed information.



Even less attention is given to occupational safety and health and enforcing rules, regulations, sanctions, and appeals. In fact, redress and appeal are not covered by any of the sources in our dataset.

The single official national website on the posting of workers in Slovenia<sup>36</sup> is functional and provides basic information, including links to external websites. However, our findings show that users frequently consult other available information channels. This can be problematic, as De Wispelaere and De Smedt (2023) note, because the official website guarantees the accuracy of the information. In contrast, some other information sources might not provide accurate and updated information. This “increases the likelihood of (unintentional) noncompliance with the applicable terms and conditions of employment” (2023: 1). We find that there is a notable necessity to use different information channels in order to obtain comprehensive information, and this fragmentation of information is a significant limitation. In most cases, users must combine content from several sources, such as websites, handbooks, educational seminars, and contact persons at competent authorities, to obtain complete information.

According to the survey, the most sought-after topic is the information on the notification in the prior declaration tool of the receiving Member State, followed by the information on wages and additional allowances (such as overtime rates, allowance for working at night, allowance for working on Sundays, or on public holidays), and payment of personal income tax. The respondents report having less need for additional information on PDS A1 and the occupational safety and health of posted workers. The latter is likely not due to insufficient comprehensive information because the mapping shows that information on OSH is very scarce. It might be that employers overlook the aspect of OSH as less important and, therefore, do not specifically look for such information.

When asked about the preferred information channels, the respondents note that websites are useful because they are readily available. However, a more efficient way of obtaining information is through a phone call with a contact person at stakeholder organisations because there is a better chance that the information obtained will be more detailed. One respondent notes:

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36 Napotitev delavcev na delo v tujino: <https://www.gov.si/teme/napotitev-delavcev-na-delo-v-tujino/>.

Certain Slovenian websites are good. The problem is, however, that they provide few concrete examples from practice. There is a lot of general information (for example, we all know that we need to notify the foreign authorities) but very little specific information (e.g., about Freistellung<sup>37</sup>). Information should be precise, structured, and available in one place (not fragmented across different information channels).

Most respondents in the survey (72%) note that the most useful information is received from business partners/contacts. One respondent notes, “Websites provide a lot of outdated, inaccurate, and sometimes even contradictory information. [A best practice is that] sometimes a company in the sending country provides very detailed instructions concerning visa regime, salaries, working time, etc., for posted workers.”

When asked if access to information regarding the posting of workers is a challenge for their company to participate in the posting, about 40% of the survey respondents note that it is. However, they also mention that challenges of obtaining information when posting to certain countries are more significant as the accessibility and quality of country-specific information provided by the Slovenian information channels, as well as other Member States, differ considerably.

## **Posting Companies’ Challenges and Needs**

Our findings show that the challenges and needs of the companies often vary according to the size of the company and their resources and experience with the posting of workers. However, the main challenge for all is finding detailed, credible sector-specific, and country-specific information regarding the applicable rules and regulations in a language they understand.

The survey respondents report that the factors which most frequently create challenges are understanding the information provided (100%), time

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<sup>37</sup> Certificate authorising exemption from tax on construction services provided in Germany.

and effort required (96%), and language (72%). One survey respondent notes that going through complex rules and regulations in place in different countries requires significant effort. Nevertheless, if the rules are only available in a language in which one is not proficient, this task is nearly impossible and can deter companies from posting altogether.

About half of the survey respondents who post workers abroad think it is difficult or fairly difficult to determine the applicable wage and working conditions for posted workers. However, most acknowledge that this depends on the country to which the workers are posted. It is easier to get information for some countries than for others. One interviewee notes that hiring a consultant is an absolute must for some countries. The problem is especially pressing when countries do not provide instructions and administrative forms in English, which makes it difficult for employers to tackle without assistance. Survey participants note that the three main elements that would help companies with compliance concerning the applicable wage and working conditions for posted workers are (1) improved clarity and quality of information, (2) improved support and guidance in determining the wage and working conditions that should be respected, and (3) improved availability and accessibility of information.

The interviewees state that especially smaller companies and the self-employed with less financial resources to outsource legal, accounting, or advisory services and/or without the support provided by legal or human resources (HR) departments often resort to acquiring information via phone, hoping to receive all required information from one contact source. However, national and regional authorities that provide information free of charge are also only specialised in specific issues concerning the posting of workers. For example, a representative of the authority that issues PDs A1 can answer the question of the possibility of posting under different articles of Regulation No 883/2004 on the coordination of social security systems.<sup>38</sup> However, they cannot answer any questions about the regulations and administrative procedures regarding social security provisions in the destination countries. Representatives of the tax administration can provide

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<sup>38</sup> Posting undertakings often prefer to post workers under Article 13 of Regulation (EC) No 883/2004 because that exempts them from the strict provisions and exclusionary criteria set by the Transnational Provision of Services Act (Official Gazette No. 10/17, 119/21 and 40/23), which only regulates posting of workers under Article 12.

information about payroll accounting but are not familiar with collective agreements, parity funds, or minimum wages in destination countries. Most information from one source can be obtained from the representatives of employers' associations that provide services to their members. However, they often struggle to obtain specific information on time, especially if the posting is done to less popular destinations.

The interviewees agree that detailed sector-specific and country-specific information relevant to individual companies is often difficult to obtain and requires significant effort and perseverance. Larger companies with their own HR, legal, and accounting services that attended (albeit sporadically organised and therefore not readily available) educational seminars are more informed and need less information from the competent national authorities and social partners than smaller companies or the self-employed.<sup>39</sup> They have also created a network of people to contact (in Slovenia and abroad) in case of any ambiguities and, therefore, can readily identify contact persons to clear up any uncertainties.

The interviewee representing a large company states that those companies that significantly contribute to the Slovenian economy are also usually involved in the social dialogue directly or through their employers' association representatives. Therefore, they are informed about any new regulations, upcoming legislation, or changes in bureaucratic procedures before they come into force. Larger companies can object to or lobby for amendments based on their experience with the posting and good financial standing. This is a major advantage point compared to lower-income companies and the self-employed. Bigger companies or companies with more financial resources can also employ competent supporting staff or, alternatively, buy information or services offering accounting and legal assistance, saving them the time and hassle of figuring out how to come about it themselves. Outsourcing specialised services from other competent

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<sup>39</sup> This finding is in line with the research results from some other countries included in the project. For example, a Belgian interviewee notes, "Small businesses get lost in all administrative obligations. Large companies with an HR department find the information or find someone who can provide them with the information. Small companies are 'illiterate' in this regard." ... "80% are 'simple' entrepreneurs who do not know how to comply with laws even in their own country" (De Wispelaere & De Smedt, this volume).

firms, in theory, means that any inadvertent breaches of legislation would be avoided.<sup>40</sup>

The financial ability to purchase foreign advising services is also an important advantage. According to our interviewees, hiring advisers in the destination countries is most beneficial, especially in cases where legislation is not easily accessible or is in a language unfamiliar to posting undertakings. In order to ensure compliance with all country-specific regulations and avoid being fined due to a lack of knowledge and awareness about legal and administrative specificities, it is, therefore, useful to obtain advice from competent foreign advising agencies. Another advantage of such outsourcing is the fact that information is supplied immediately or in a very short period. A representative of the employers' associations confirms that specialised foreign private agencies often outdo them in terms of the timely provision of information. The interviewees agree that smaller companies with limited financial resources and the self-employed are less likely to be able to afford the cost of foreign advisors. One of them notes that due to a lack of readily available comprehensive information, they may, in some cases, resort to finding information on social media networks, such as Facebook groups, where company owners or the self-employed post their experience with the posting of workers and offer advice on the posting of workers. This raises the issue of credibility and lack of accountability of the source, as information may not be correct or updated, and the source cannot be held accountable for any violations of the law of the information users. Some construction company owners, including those for whom Slovenian is not their first language, tend to reach out to their colleagues and/or fellow nationals for advice based on their personal experience.

Establishing whether the information is credible can be challenging for some posting undertakings. Many companies without previous posting experience and prior knowledge about regulations and procedures may not recognise whether the information is from a credible source and whether it

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40 Danaj et al. (2021) also note that in order to abide by all the regulations in both sending and receiving countries, companies need to educate themselves and/or employ specialised services provided by legal, accounting, or consultancy companies. However, they argue that outsourcing can be very costly and unattainable for smaller companies or the self-employed, and, in some cases, this can serve as a deterrent to pursue the posting of workers.

is correct and complete. A representative of a large company also emphasises this problem in the context of their subcontracting, i.e., hiring the services of different companies that will themselves post workers to provide services abroad. Namely, their subcontractors, mostly small companies, might not always be aware of country-specific regulations and, thus, may not comply with the rules. Therefore, the responsibility for maintaining a good reputation abroad also includes informing the subcontractors about the applicable rules and regulations by the companies that outsource them.

## **Challenges of Information Providers in Ensuring Provision and Access to Information**

Information providers' main source of information is the national legislation. Most are already involved in the policymaking processes as social partners and are, therefore, well-informed about the legal provisions and bureaucratic procedures. They also frequently attend meetings with the representatives from the Ministry of Labour, Family, Social Affairs and Equal Opportunities to familiarise themselves with any new provisions or resolve ambiguities. Based on their knowledge, they prepare information for their users on their websites and provide contact details (e-mail address, phone number) for further information. Employers' associations, in particular, also tend to organise seminars for their members whenever there is a change in the legislation that affects the posting of workers. The latter also make an effort to provide seminars on the rules and regulations in countries to which workers are most often posted, such as Austria and Germany.

In most cases, the companies inquire mostly about specific rules, i.e., what documentation is required to obtain a PD A1, how long it takes to receive the forms, whether a PD A1 is required even if providing services that only take a couple of hours, how to calculate social security contributions for posted workers.<sup>41</sup> Answering questions about Slovenian legislation is

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41 Other frequently asked questions are: When does a travel order suffice for a work trip, and in which cases do they need to apply for a PD A1? What are the conditions for posting under Article 13 of the Basic Regulation? Is their company eligible to post

much less challenging than responding to requests for information about the rules, regulations, and bureaucratic procedures in other Member States. In order to obtain country-specific information, national services from Slovenia reach out to the relevant Ministries and employers' associations or send inquiries via the IMI system. Employers' associations reach out to their partners, branch offices, or economic advisers abroad. However, finding information is a very time-consuming task that does not always bear fruit. In many cases, the user undertakings benefit more from the foreign-hired expert services that provide verified information quickly but for a fee. The information providers often receive complex inquiries via e-mail or phone, but they can only provide information on a specific issue that is within their competence. The user must then contact several other services to obtain the answer, which is not an efficient and user-friendly way of providing information.

In order to improve access to information for posting undertakings, the national authorities, therefore, need to address the issue of accessibility and fragmentation of information, which is especially troublesome for smaller construction companies and/or those with less financial or HR resources required to access and correctly interpret relevant information. A national contact point for posting undertakings would be helpful in this respect, providing reliable and complete information via e-mail and phone.<sup>42</sup> The national contact point should be able to provide sector-specific and country-specific information. That would contribute to eliminating the

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workers, and how to calculate social security contributions when a worker is posted to several different countries in one month and under different Articles of the Basic Regulation? These questions mostly arise from the complex administrative procedures and rules stated in the applicable Slovenian legislation on the posting of workers, i.e., Transnational Provision of Services Act (Official Gazette No. 10/17, 119/21 and 40/23), which regulates the posting of workers under Article 12, and the Pension and Disability Insurance Act (ZPIZ-2, Article 144, paragraph 4), which states that social security contributions for workers posted under Article 12 of the Basic Regulation are not to be calculated based on the actual wage earned but based on the wage they would have earned in Slovenia for comparable work.

42 According to the interviewees, providing information via phone is considered to be especially useful and efficient, as many users prefer to rely on verbal assistance. Inquiries over the phone would enable them to explain their inquiry in detail, and the provider would be able to ask additional questions in order to identify the root of the problem. One respondent notes that "getting information from a real person by making a phone call" is an example of best practice.

informal exchange of information (which can be false or outdated), often resulting from the lack of resources to employ or outsource competent staff or services.

Some interviewees acknowledge the importance of regular updates of the content on websites. This comment is about providing information as well as visual and structural upgrades to attract users and provide a user-friendly experience. Furthermore, we argue that *users* should systematically evaluate existing websites, which is key to successful updates. Smaller companies, in particular, should be invited to systematically evaluate whether the information is useful and easy to understand and does, therefore, reduce the need to outsource specialised agencies for assistance with interpreting the applicable rules and regulations.

Most interviewees agreed that purchasing information from foreign private consulting companies regarding the posting of workers in other Member States is considered a very efficient and speedy way of obtaining credible information. However, they note that the problem of affordability is especially pressing for smaller, lower-income companies. Based on the data collected, we argue that frequently scheduled and free-of-charge educational seminars provided by employers' associations or other social partners may contribute to the solution. The seminars would need to be organised regularly, i.e., every few months on a fixed date, not sporadically and depending on the availability of funding, either in person or online. The seminars would need to offer the users a chance to ask specific questions relevant to the employers' unique situations and challenges.

The respondents also note that a highly functioning and regularly updated EU portal with country-specific information should be created. The portal should provide detailed information on all relevant rules and regulations in the same format concerning posting in all Member States. It should not merely provide links to the single national websites but comprehensive information on important issues, such as collective agreements in place in all Member States and a wage calculator. A link to the portal should be sent automatically to all PD A1 applicants.



## Concluding Remarks

The findings presented in this chapter are in line with the report of the European Labour Authority concerning information provision, enforcement, social security coordination, and cooperation between Member States about the posting of workers in the EU construction sector (ELA, 2023), which identifies several shortcomings in communicating the relevant information on the posting of workers. These include difficult legal wording, complex language that is not easy to read, lack of translations into relevant languages, and multiple inconsistent information sources. Moreover, they also note that information needs are the biggest from small and medium enterprises that “do not have the capacities or resources to employ or hire legal experts to explain the rules and obligations to them” (2023: 28).

We find that the most pressing challenges emerging from all three sets of data collection, i.e., the mapping of the information channels, interviews with stakeholders, and the employers’ survey, are fragmentation of data across different information channels, the time-consuming process of identifying and collecting comprehensive information about specific regulations in place in Slovenia, and finding credible country-specific and sector-specific information about rules and regulations in other Member States. The research shows that the challenges of posting undertakings seem to vary according to the size of the company, their resources, and their experience with the posting of workers. Larger companies with their own HR, legal, and accounting services are more informed and need less information from the competent national authorities and social partners than smaller companies or the self-employed. Companies with more financial resources also fare better when needing country-specific information, as they can purchase foreign advising services that provide relevant information to ensure compliance with various national legislations.

Access to reliable information, i.e., comprehensive, relevant, trusted, and updated information (González Martínez, 2008), and the capacity to correctly process the supplied information is crucial for making informed decisions. That is why companies must receive clear, unambiguous instructions on how to proceed when posting workers to provide services abroad. Although Slovenian users often resort to websites for information

(albeit not necessarily the single official national website on posting), they consider in-person information provision via help desks, educational seminars, and training sessions the most effective. Efforts should, therefore, be made to develop a sector-specific and country-specific online information channel with all relevant information concerning terms and conditions of employment in different Member States and provide in-person sessions in a language that the information users understand.

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