

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

Iana Wilcoxen

Design

Deja Gliha

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

For more information on the publication:

Kristina Toplak <u>kristina.toplak@zrc-sazu.si</u> and Mojca Vah Jevšnik <u>mvah@zrc-sazu.si</u>

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

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Introduction

Since the past decade, the posting of workers has had an increasingly important economic function in Austria. Despite a steady growth of outgoing postings from the country, Austria remains a predominately receiving country of posted workers (Danaj & Geyer, 2022). Incoming postings accounted for an estimated 2% of total employment in Austria and 1.7% of the full-time equivalent of the Austrian labour force in 2019 (Geyer et al., 2022). Posting is particularly significant for the construction sector, where in 2019, it accounted for an estimated 44.5% of all postings to Austria and 5.2% of all people working in the Austrian construction sector. Despite an initial decline in postings from and to Austria in the first year of the COVID-19 pandemic, the overall number of notified postings to Austria and the number of posting notifications in the Austrian construction sector were higher in 2021 than in 2019, indicating that the pandemic only led to a temporary disruption of the long-term trend regarding postings to Austria (Ibid).

Previous qualitative research on posting to and from Austria has indicated that access to information and the correct processing of information on the posting of workers is a challenge for posting and receiving companies (Danaj & Scoppetta, 2022; Kahlert & Danaj, 2021), despite the existing regulatory framework composed of various laws that cover different aspects of providing information related to employment in

Austria. Although the country has not transposed the EU Directive 2019/1152 on transparent and predictable working conditions, the existing Austrian employment laws already satisfy many of the Directive's stipulations. For example, in the Labour Constitution Act, there are provisions for providing accessible information on collective agreements and arbitration, minimum wages, protection against dismissal, and the rights and responsibilities of works councils. The Labour Contract Law Amendment Act requires that employers provide employees with a written record of their main rights and obligations. Additionally, strict obligations to employers regarding the provision of information to their employees on various aspects of their employment, including safety and health, working hours, rest periods, and social security, among others, are provided by the Employee Protection Act, the Working Hours Act and Work Rest Act, the Maternity Protection, the Child and Youth Employment Act, the General Social Security Act, and the Construction Workers' Coordination. In the specific case of the posting of workers, though, compliance with the Posting of Workers Directives 96/71/ EC and 2018/957/EU and the Enforcement Directive 2014/67/EU is primarily achieved through the implementation of the Anti-Wage and Social Dumping Act (Lohn- und Sozialdumping-Bekämpfungsgesetz - LSD-BG), which includes specific clauses on access to information on posting. Despite these regulations, the complexity of the information to be processed in terms of administrative requirements and wage-setting according to receiving country pay rates, including the application of wages according to collective bargaining categories, are identified as the most difficult for posting companies in Austria (see Danaj et al., 2021).

Taking stock of previous research and drawing on new empirical data, in this chapter, we describe the information channels available in the country and the practices of posting and receiving companies with access to information in the Austrian construction sector, as well as companies' challenges and needs regarding access to information on posting. We then analyse the information providers' challenges and efforts to improve access to information. The chapter is based on empirical data collected during the period November 2021–October 2023 through mixed methodologies that comprise a mapping exercise of 36 online and offline channels of information provided by public and private entities in Austria, semi-structured expert

interviews with 10 representatives of Austrian public authorities, social partners, and private service providers that are responsible for the provision of information on posting, and the survey results of 26 responding construction companies – 18 posting and 8 receiving – based in Austria. The analysis of these data throughout the chapter reveals that while state, social partners, and private actors provide a substantial amount of information, challenges regarding access to information and its provision persist, and more can be done to improve and facilitate access to information on posting in Austria.

Access to Information: Channels and Practices

A wide range of actors provide information on posting in Austria. The desk research on the mapping of channels of information on posting in Austria (see Methodology Chapter) yielded 36 relevant channels, 15 provided by state actors and 21 provided by non-state actors. Information providers include the relevant ministries, social security and social insurance institutions, employment institutions, the Labour Inspectorate, and the Construction Workers' Holiday and Severance Pay Fund (BUAK), social partners (employer associations and trade unions), the Chamber of Labour, and private firms and consultancies. Relevant ministries (19.4%) seem to be the leading actors when it comes to state actors, whereas private consultancy firms (27.8%) are on top when it comes to non-state actors. Information is provided predominantly at the national federal level (88.9%). In contrast, regional actors providing information are mainly the contact point offices of the Austrian Chamber of Commerce (WKO) in the different Austrian states. A common key characteristic of the information channels provided by public institutions is that the content is always available open access without any fees, adhering to Article 5 of the Enforcement Directive (80.6% of all mapped channels). Other channels provide free access only to companies or member companies of their associations. Meanwhile, the information provided by private actors, namely consultancy companies or law firms, is

made available generally to showcase the private actors' areas of expertise, and interested customers can purchase further details and services.

Regarding the target audience, about 94% of all mapped channels have information relevant to posting companies, of which about 14% include "posting from Austria", about 53% include "posting to Austria", and 27.8 % have information on both. About 58% of the channels provide information for receiving companies. Public institutions and employers' associations seem to provide information concerning Austrian posting and receiving companies covering posting activity to and from Austria. Of the 36 channels mapped, 68.5% provide information about posting in general, 22.9% provide information both on posting in general and specific to the construction sector, and about 9% are information channels that target the construction sector only. This construction-specific information is provided through online channels, including the single national website and the websites of BUAK, the employers' organisations, and some private consultancies.

From the perspective of companies regarding their experiences when navigating the posting information landscape, our survey findings show that out of all the available information sources, companies use employers' organisations (46.2%) and public authorities (30.8%) as their main sources. About half of the respondents rely either frequently or sometimes on consulting companies and other companies in the country, including client companies in the case of posting company respondents. However, most of the surveyed companies in Austria never use sources such as trade union organisations, EU institutions, and NGOs. Moreover, companies typically rely on a combination of different sources for information on posting, as most respondents report having used more than two information sources. This behaviour is understandable since many public institutions cover mostly aspects of their own institutional mandate, and consequently, information is fragmented along institutional lines.

The mapped information channels in Austria are overwhelmingly provided online (31 out of 36). The online channel with the most comprehensive information is the single national Austrian posting website (entsendeplattform.at) managed by the Ministry of Labour and Economy and BUAK. Most other online channels (about 61.1% of all mapped channels) are websites, whereas the rest are online manuals, guidelines, leaflets,

brochures, and other such material available online (about 15%). Most online sources were updated at least within the last two years (20 out of 23 for which information could be found), but their main means of providing information is text. One significant difference is that of the Austrian single national posting website, which provides not only the texts of the collective agreements but presents a concise overview, where details about minimum wage pay rates, specialised skills pay rates, and other allowances according to the specific collective agreement are provided and can be used as a wage calculation tool.⁵ Channels of information managed by state actors also provide hyperlinks to other public institutions or social partners' websites; however, none provides any hyperlinks to EU or other Member States' single national posting websites.

The research shows that there are significantly fewer offline channels of information on posting. Only five offline information channels have been mapped; however, one important offline channel of information is the relevant actors' national contact points and offices, which companies can visit in person during office hours. Despite the existence of office hours provided by various public authorities, the interviews with the providers show that since the onset of the pandemic, companies have rarely used them as channels of information. In addition, BUAK has a telephone service through which companies can get information on almost all aspects, particularly related to social insurance. Some actors like private consultancies, social partners, and social insurance institutions also organise offline, i.e., inperson workshops and trainings targeting companies or public authorities, where information on various posting-related topics is presented and explained to the targeted audiences.

Among the information channels available, our findings from the survey with posting and receiving companies show that companies most use the websites of employer organisations, public authorities, and singleposting national websites. Around 40% report they have always or often used the websites of employer organisations and single national websites on posting. In addition, more than half of the companies use information guides, manuals, or leaflets. They also rely on their business partners for

For example, see the wage calculation based on the agreement for Construction Industry and Building Trades.

information, suggesting that these channels remain important avenues for obtaining posting-related information for companies. Companies rarely visit websites and social media platforms of trade unions and NGOs for information on posting. Although respondents less often indicate information channels such as newspapers, specialised magazines, etc., information trainings/workshops, and consultancy company websites, this may not necessarily reflect companies' preferences but rather the availability and accessibility of these channels. For instance, information provided on consultancy websites is often available only for paying clients. Most respondents (68.4%) view the consulted single national websites on posting as either "very useful" or "useful". Only half state the same regarding information accessed through other public authorities' websites, which are among the most often consulted channels by the companies. Interestingly, although relatively few companies report having attended information trainings or workshops or accessing information from trade union websites, many of those who do so appear to have found them rather useful.

Language accessibility appears limited since around 64% of all the mapped channels provide information only in the national language (i.e., in German), and around 25% have one additional language of translated content, mostly English. The Austrian single posting website is the only channel that provides a wider range of language availability, which, besides German, offers its information in English, Hungarian, Polish, Czech, Slovakian, and Slovenian. Importantly, the single website's translated versions are equivalent to the German version, which means that translated versions of the website contain about the same information as the original national language version. The translation qualities are roughly equal to the German versions in the other channels providing information in languages other than German. Service providers also report that German and English are the main languages used to communicate information on posting to companies. The BUAK interviewee says that they have assigned multilingual staff to take inquiries in different languages, mostly from workers, but not only. The Financial Police have made the prior notification declaration form available in 13 languages.

Looking at the content covered in the 36 mapped channels (Figure 1, right panel), the most widely available topic is facilitation information for companies in Austria if they want to post workers to other countries (such as information about entrepreneurship, laws on setting up business, facilitating information on the construction sector in Austria and elsewhere, etc.). Next, the topics of taxation, social insurance registration, and wages are also covered to a relatively larger extent across the mapped channels. Other topics concerning sanctions, enforcement, redress, and work permits are covered only in very few of the information channels. We should also note that even though some content topics are indeed covered on posting workers from Austria to other countries, the proportion of such coverage is quite low, except for facilitating business information. Concerning posting from Austria, all other topics are covered on only about 20% of the information channels. We take this as an indication that information providers consider Austria mainly to be a receiving country for posted workers.

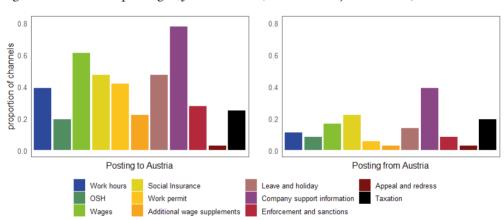


Figure 1: Content on posting to/from Austria (source: Danaj et al., 2023).

Turning to the coverage of topics for companies posting to Austria (see Figure 1, left panel), like posting from Austria, most information channels cover the topic of *facilitating* companies to set up their service provision of sending workers to Austria. Next, around 50% of the information channels cover the topics of workers' *wages*, *social insurance*, *leave and holiday*. About 40% of the channels also cover workers' *work hours* and *work permit*. Content related to *appeal* to any sanctions for companies, *occupational safety and health* regulations, and *additional wage supplements* (other than the main salaries) are the least covered topics for posting to Austria. Here, we also

note that Austria's single national posting website covers almost all topics relevant to posting to Austria.

Interviews with information providers indicate that administrative procedures and wages are the main topics of inquiry from posting and receiving companies. The survey with the posting and receiving companies also shows that companies are looking mostly for information related to administrative aspects, particularly the issuing of the PD A1 (19 out of 26 respondents), followed by information related to applicable wages (16 respondents) and additional allowances (15 respondents). Fewer respondents search for information concerning reimbursements for travel and accommodation, prior notifications, occupational health and safety, and working conditions. Respondents least frequently mention information about the payment of social security contributions, income tax, and postings exceeding 12 months. The survey results show that social security payments for posted workers tend to be outsourced to external companies or consultants. In contrast, the companies themselves mostly take care of requests for PD A1s, prior notifications, and accommodation for posted workers. Since certain services are outsourced, we infer that companies are less likely to seek this information independently. However, concerning the calculation of wages, allowances, and reimbursements for posted workers, an equal share of companies stated that these are outsourced and done in-house, and only when we compare them by company size do we notice that smaller-sized companies are more likely to outsource these latter components. Nonetheless, information on wages and allowances is still one of the main themes about which companies look up information. This indicates that these are crucial aspects for the posting companies we surveyed, regardless of whether or not they outsource the calculation service.

Posting and Receiving Companies' Challenges and Needs

Both the information providers we interviewed and the company respondents who completed the survey identify the challenges and barriers

that companies face in the posting of workers. Close to half of the surveyed companies in Austria perceive access to information as a challenge to participating in posting. The share of those who regard information access as a challenge is higher among the posting than the receiving companies. The smallest companies (i.e., those with less than ten employees) are the most likely to perceive access to information as a barrier to their posting activities. It might be that larger companies have already overcome some of the difficulties related to information access and do not perceive them as an obstacle anymore. Companies that post workers or receive posted workers more frequently are likewise less likely to report information access as a barrier. Companies perceive the most relevant factors for creating barriers to access to information on posting as "time and effort required" (87.7%, i.e., very and fairly relevant) followed by "understanding of the information provided" (57.7%) and language barriers (53.8%). They perceive the "cost of retrieving information" and "digital skills" as two factors that are less of an obstacle; 46.2% of respondents regard them as very or fairly relevant. Factors such as language, digital skills, and cost of getting information appear to be of greater relevance among smaller companies, i.e., with less than 50 employees compared to companies with more employees.

All interviewed information providers also notice a degree of uncertainty among posting companies about the rules and their correct application. In their understanding, the intersection of posting with other regimes such as minimum wage and collective bargaining wage scales, immigration, social security, taxation, and bureaucratic requirements produce complex individual cases that require comprehensive knowledge to reach compliance (cf. Danaj et al., 2021). The different definitions of what constitutes posting according to the labour, social security, and tax regulations are confusing for companies and their HR departments. Moreover, each institution dealing with posting and posting companies looks at the matter from the perspective of their own competence, i.e., when their mandate is to monitor labour law or the anti-wage and social dumping law, they use this legal framework. When their mandate is social security, they use social security coordination regulation, and when it is a tax authority, they use their own legal framework. As these frameworks do not coincide

completely, companies might comply with one but not necessarily the other and, therefore, must ensure they do.

Additionally, the revision of the Directive and the reform of the Austrian Act against Wage and Social Dumping, as well as the complications derived from the global pandemic, have also increased the level of uncertainty about the applicable rules in posting activity (Danaj & Kahlert, 2021). Getting accurate information on rules that companies must comply with entails additional costs, for instance, by investing in human resources and trainings of their staff, which explains why some companies outsource this part to specialised firms. Burdensome administrative requirements appeared to be a recurring topic in the open-ended questions of the survey, as the quotes below illustrate (translated from German):

Presently, it is almost impossible to receive posted workers without an enormous amount of bureaucracy and, therefore, time. Smaller companies are insecure and sceptical. The uncertainty as to whether all papers are available makes some shy away. You are dependent on workers from abroad, but you are constantly stuck in the process and the bureaucracy. Applications take too long to be processed.

Currently, I spend more than 60% of my working time dealing with authorities, application forms, and information on how to get workers as quickly as possible.

Another challenge the interviewed service providers identify is the interpretation of the collective bargaining pay categories and scales and their application for posted workers. Previous research has already evidenced this challenge (Danaj et al., 2021). Since the introduction of the Anti-Wage and Social Dumping Law in Austria and later the revised Directive, posting workers should be paid to receive country wages. Austrian Collective Bargaining Agreements (CBAs) are reportedly complex and, according to the respondent from the ministerial department, they are available only in German and English, with short summaries in the posting platform in five other languages. However, language is not the only problem. It is also difficult to understand which trades can use which CBA, their pay categories and scales based on seniority, training, and other qualifications. Based on

our interviews with stakeholders, the only authority that provides concrete guidance on interpreting the CBAs is the ministerial department behind the official single national website.

The interviewed information providers notice a related issue concerning both the interpretation of legislation and the collective bargaining terms when companies want to inquire without implicating themselves in any wrongdoing. This means that if a company is asking a question, they are concerned about saying something that could be used as evidence of an infringement when communicating with public authorities. The interviewees say that since each case can differ, public information providers must know the details to provide the appropriate information and guidance. However, the posting companies can be reluctant to provide many details, which, according to one of the interviewees, might be considered incriminating. In the case of the department receiving inquiries from the single website, the public officers providing the answers to companies make it clear that they have only an informative role and, therefore, inform the inquiring companies that they limit themselves to warning them when an action could lead to infringement and advise them on how to prevent or repair the issue.

The interviews identify a final challenge: the language barrier for smaller companies. While bigger companies have personnel or consultants who speak German and/or English, it is more difficult for smaller companies to access the relevant information when directly inquiring with the public authorities. The survey respondents also identify the language barrier, with half indicating this as a factor influencing their posting experiences. A few of them also mention language barriers, insufficient information, and limited access to the information available due to often poor or non-existent translation, in the survey's open-ended questions regarding challenges they face.

Regarding their information needs, the survey results confirm that wages and additional allowances for posted workers are among the topics on which companies most often seek information. These areas are also the ones that most survey respondents feel they need more information about to correctly post or receive workers, followed by social security payments and working conditions. Information regarding occupational health and safety and postings longer than 12 months are those that respondents least mention concerning additional information needs. Among posting companies, wages, additional allowances, and working conditions are the top three areas of extra information needs, while receiving companies most often cite social security-related information.

The survey also asked respondents to indicate which aspects of information provision they consider the most important when seeking posting-related content, thus shedding further light on companies' information needs. Having the most up-to-date information is of the highest importance for the companies as almost all respondents consider this to be very important. The second and third most paramount aspects are easily understandable and sufficiently detailed information. Half of the respondents deem accessing posting information from a single source (or place) to be very important. While fewer respondents indicate having an office or person to contact for all posting-related inquiries and information available in different languages, most companies (73.1%) still regard them as very or fairly important.

As for the preferred channels for receiving information on posting, most respondents select social partners' websites as the preferred information channels. Websites of national or EU-level institutions are the next most preferred information channels for companies. Getting information via printed materials, such as guides or leaflets, is indicated by fewer respondents; they nevertheless seemed to be a more favoured option than audio-visual formats (e.g., videos, podcasts, etc.), in-person contacts (e.g., hotlines, chats, contact person) or information sessions, trainings, and workshops. Obtaining information vis-à-vis these latter channels can require more time and effort on the part of companies, which may explain their preference for sources and modes of information that are easier to access. The survey findings also show that employer organisations and public authorities' websites are the key channels through which companies expect to receive future posting-related information, further underlining their importance in ensuring access to high-quality information. Moreover, despite online channels like websites being the dominant choice for accessing and retrieving information on posting, offline channels, such as printed information guides, still appear useful for many surveyed companies.

Information Providers' Challenges and Efforts to Improve **Access to Information**

The interviews with 10 representatives of Austrian public authorities, social partners, and private service providers responsible for providing information on posting reveal a few of the challenges for both public and private information providers. One of the main challenges for information providers derives from the requirements of the Enforcement Directive of the Posting of Workers Directive on making information "generally available free of charge in a clear, transparent, comprehensive and easily accessible way" (Article 5). Information providers report a challenge regarding finding the balance between presenting information in an accessible manner and providing sufficient or appropriate information to account for the specificities of individual cases. The challenge to provide accurate and detailed information in an accessible way relates to the legal framework and the collective bargaining agreements. There are around 500 CBAs for all sectors in Austria, according to one of our respondents from the Federal Ministry of Labour and Economy, and the concepts they contain can be difficult to present in laypersons' terms. In addition to simplifying the terminology, providers must also consider the definition of posting under different regulatory frameworks. Monitoring and enforcement institutions and social partners must be aware of the differences in legislation and be able to provide accurate information to posting and receiving not only on their own competent legal framework but also the other overlapping legislations to ensure compliance.

The clarity challenge is compounded by the fact that in addition to providing information on rules and regulations in simpler formulations, rules and obligations should also be translated into English and other languages. Translating legal and CBA terminology requires accounting for Austria's legal and institutional context to make the rules and regulations understandable and usable by EU companies posting to Austria. Apart from clarity, providers also report the challenge of having the most updated information always available, especially in terms of salary changes and other collective bargaining terms, which in countries like Austria include a high number of collective bargaining agreements and pay rates such as the inflation adjustment raise, which is negotiated annually.

A final challenge relates to exchanging information among institutions from different EU countries. The mapping exercise reveals that the single national websites of other Member States are not hyperlinked in any of the channels available in Austria. The issue of insufficient exchange is also raised about cross-border institutional information exchange. According to one of the respondents from the ministry, although there are many activities at the EU level, more can and should be done to provide institutional counterparts with information on the regulatory framework of each Member State to ensure posting rule enforcement. Our respondents suggest that to provide more and better information to posting companies, public institutions across the EU should also have better channels of exchange among each other.

In the face of the challenges outlined, our research reveals that making the information accessible, comprehensible, and digestible is something that public authorities constantly work on and try to improve. This is particularly the case for the officials involved in updating the single national posting website. The Austrian national website on posting already provides information in several languages (currently seven, including German). It is also the channel with the widest range of themes covered on posting. The platform is updated regularly, allowing firms to stay appraised of the latest regulatory changes. In addition, the contact function allows individual companies to ask specific questions that are processed by a team of legal experts employed by the Federal Ministry of Labour and Economy. A relatively recent addition is the overview of the collective bargaining agreements, which can be used as a wage-calculating tool, as this chapter's section on practices explains. However, there is still room for improvement since the single national website has more comprehensive information on labour law issues and limited information on other aspects, such as social security and taxation. Some interviewees recommend a more holistic approach to information provision in the posting of workers that covers all aspects of their working lives. but the single national posting website seems like the most appropriate channel to do so (cf. De Wispelaere & De Smedt, 2013).

Another institutional platform in the process of being implemented is the Electronic Exchange of Social Security Information (EESSI), which in Austria has recently been complemented with the legal basis that allows other institutions such as BUAK and the Financial Police to verify the validity of a PD A1 through their own login. The application for PDs A1 is also digitalised, which, according to the respondent from the Federation of Social Security Institutions, provides all the necessary steps for the companies to submit their applications for PDs A1 and leaves little room for further questions or clarifications. While the digitalisation of the procedures is deemed positive, there is still a need to provide in-person information and support to companies and their posted workers on properly using the platform.

The Chamber of Commerce respondents we interviewed regard their foreign trade centres as valuable resources. With a vast network spanning over 100 centres worldwide, the foreign trade centres offer significant advantages, primarily due to their physical presence in the destination countries. According to the feedback from respondents of the Chamber of Commerce, the centres of foreign trade play a vital role in providing specific and tailored information regarding the posting of workers. In addition to their support services, centres of foreign trade publish comprehensive and up-to-date country profiles that serve as comprehensive resources for posting companies.

Another good practice comes from the private sector. According to the consultant interviewed, the software used by the Austrian legal firm has received praise from the clients, and they have pushed for it to be used Europe-wide. This tool facilitates the compliance process for firms as it helps translate complex regulatory frameworks into simple actions posting companies can easily take and check whether they are abiding by the rules. The system is also constantly updated, allowing new rules or changes to be implemented on time and to avoid non-compliance. During the interview, we were told that the firm, in collaboration with a pan-European network of 15 legal firms, was about to adopt the software to communicate with their clients and provide them with the necessary information and instructions for posting rule compliance. Public authorities could also use a similar tool to facilitate companies' assessment of rule compliance in collaboration with them.

Conclusions

The Austrian case study shows that based on the mapped 36 channels provided by public institutions and private non- and for-profit entities, construction companies operating in the country have access to a wide range of sources and channels of information on the posting of workers. Most of these channels are free to access except for those of the social partners that provide some information to members only and the private consultancies which provide most information to their paying customers. The main topics of interest from the perspective of the 26 surveyed companies are related to procedures and wages, both in terms of what the companies currently look for and what they need more information on. Despite the wide range of channel options, a significant share of the survey respondents consider access to information a challenge to posting to and from Austria. Companies and information providers list several challenges to accessing information, most of which speak of the complexity of posting information and language barriers. This is particularly the case for smaller companies with fewer resources.

The most comprehensive channel is the Austrian single national website on posting, which provides equivalent information in seven different languages. This platform and, in general, public authorities' websites, along with those of the employers' association, are the main channels used by posting and receiving companies and are also considered very useful. While offline channels are fewer and less used than online channels, especially since the COVID-19 pandemic, in-person information options are still quite valued by those who use them. However, even the more comprehensive channels do not cover all aspects relevant to posting, and most public institutions provide partial information, mostly pertinent to their own competencies. This explains why most companies indicate using two or more different channels to draw information on posting. Outsourcing to specialised consultants is also a practice some companies use to access relevant information and provide them with some of the necessary services related to posting.

To respond to the challenges of access to information in the posting of workers, information providers utilise different online channels, but they also make available in-person (or offline) channels for more direct exchanges. The existing good practices could be further developed and/or supported to increase access to information, the ultimate goal of which is to increase the level of compliance with labour and social standards. The main recommendation that we can draw from all three sources of empirical material is, therefore, the need to provide a more holistic overview of all relevant issues related to posting and streamlining information in concentrated channels.

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