



**Building EU Agreements
for the posting of workers
in the Construction sector**

Information Sharing Agreements (ISA) Project

Event Report – 10th February 2021

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INTRODUCTORY REMARKS

The meeting was opened by **Bianca Baron**, Vice Director at the National Paritarian Committee for the Local Welfare Funds – CNCE (Italy). Ms. Baron gave a short presentation of the CNCE and the role it plays in providing remuneration to workers of the construction sector and in certifying the regularity of companies that operate in this area. Because of this, she stressed the importance of projects like ISA and thanked all for partners for the results achieved so far. She also reminded participants that this project followed other two projects that the organization and many members of the current consortium carried out on posting of workers, namely Post-Lab and EU Post-Lab. Thanks to them, they have addressed important issues to ensure the protection of companies and workers which, hopefully, will lead to the signing of other cooperation agreements between authorities and sectorial funds.

Ms. Baron reminded participants that the [website of the ISA project](#) already hosts the country reports and the guidelines, while the final report will be made available in the following weeks, building also on the inputs received during the event. In her conclusions, she wished that the outcomes of the ISA project as well as of the event would be inspirational for the work of the European Labour Authority (ELA) and its aim of encouraging cooperation between countries.

The second intervention was that of **Terry Reintke**, Member of the European Parliament for the group of the EFA/Greens, who was also a shadow rapporteur in the discussions for the revision of posting of workers directive, adopted in 2018. As she could not be present at the webinar, Ms. Reintke sent a video and shared her reflections over the general issue of posting of workers and labour mobility within the EU. The EU, she said, allows the freedom of workers and services across the single market: great achievements that, Brexit shows, should be preserved and not be taken for granted. Yet, she observed, these rights are often misused, and social protection is mined, especially in sectors like construction.

In the discussions for the review of the posting of workers directive, the European Parliament achieved many good compromises that in her opinion improved the legislation. She recalled that the main point of discussion consisted in guaranteeing freedom and social protection to workers, without creating too much burden to them and to the companies. Another important point was the creation of a swift system to share information, so she expressed her gratitude for projects like ISA that goes on that direction. Ms. Reintke finally congratulated the consortium for the guidelines and looked forward to the final results. She also expressed the hope to continue this conversation at different levels, to make sure that while workers enjoy their freedom, also their rights will be protected.

PRESENTATION OF ISA PROJECT GUIDELINES

Francesca Cattarin, Senior Policy Advisor in the European Association of Paritarian institutions (AEIP) explained that for the sake of time, the consortium selected only two guidelines to present and invited participants to check all the others in the project website.

Giacomo Virgilio, Senior Expert in Labour Law and Collective Agreements at the Italian Confederation of Trade Unions (FILCA CISL) presented the transnational bilateral agreements between the Italian CNCE and other sectoral funds active in other EU countries.

Mr. Virgilio firstly provided an introduction on the role of CNCE and its coordination vis-a-vis- to the Building Workers' Welfare Funds. He explained that these funds operate in the national territory and, since they are a result of collective agreements of the construction sector, they provide workers with an important part of the income. This income derives from the employment contract, supplementary benefits on social security and the welfare plan. In providing some background about the context, he also explained that since the early 2000s, Italy experienced an increasing number of foreign companies in the national territory, working both in the private and public sector. The areas most affected have been the North-West, facing an influx of French and Spanish companies, and the North-East, where the majority of companies come from Austria, Germany and Eastern Europe. At the same time, also Italian companies have been working more and more in neighbouring countries, especially in Germany and France.

To cope with this mobility, the National Associations of Building sector, in accordance with the social partners, agreed on a series of objectives, including: the fight of social dumping, the protection of the building workers through the application of a wage homogeneity and that of companies to work in the European territory without constrains or local privileges. According to these objectives the Associations of Building sector and the CNCE started a confrontation with the respective organizations of France, Germany and Austria to verify the conditions for a shared regulation in the case of posting of workers. Once concluded this preparatory work, in 2008 the CNCE signed three bilateral conventions with, respectively SOKA-BAU (Germany), UCF (France) and BUAK (Austria). These agreements allowed the companies, working in one of this four countries, to be exempted from the registration in the National Welfare Funds while keeping their ranking in the country of origin.

In addition, they are important for companies, because they do not run the risk to pay twice their fees, but also for the workers, as they guarantee the continuity of their remuneration, including benefits that derive from such non-interruption of activity. After illustrating the type of information that countries exchange through these agreements, Mr. Virgilio explained that this information is retained by the four organizations involved in the exchange and included in their digital library. This system allows them to certify that all companies are in line with the due payments and, as the signatory parties inform each other about irregularities, it also ensures the compliance during the period of posting.

The statistics show that the number of companies utilizing the bilateral agreement is constantly growing with a rate that touches the +40% each year. He explained that during the ISA project, they also analysed the interplay of these agreements with other legal instruments that are valid in the national territory. To this end they took the example of the Italian DURC, the Single Regularity Document that since 2006 certifies the regular contribution of the construction companies. Such document is the result of the checks

carried out both by the public institutions (INAIL and to INPS) and the private ones (Welfare Funds), certifying the regularity of payments to the Welfare Funds and to social security institutions. Thanks to DURC, when Italian construction companies send workers in one of the countries covered by the agreement and ask for the exemption of registration in the National Welfare Funds of the host country, CNCE is able to verify compliance of payments both to the Italian Welfare funds and to national social security institutions as part of the process to grant the exemption.

Ms. Julia Frías Gómez, Development Director, NOTUS (Spain) introduced the second cooperation agreement, the one in place between the Spanish and the Portuguese Labour Inspectorates. She started explaining that this agreement was concluded in 2002, at a time of an intense flow of cross-border workers and a boom in transnational service provision. Both authorities soon realized that these agreements created risks in both countries, both in terms of information deficit and difficulties in implementing sanctioning measures.

For example, authorities found hard to verify whether companies were real or fictitious and to figure out what was the employment relationship established with the workers. Because of this situation, authorities decided to start a cooperation, to ensure the proper implementation of the EU legislation and in particular the Directive 96/71/EC. The first objective they set was the creation of a framework, to be reviewed on an annual basis, on different areas of actions. These areas included occupational health and safety, work accidents, work permit for non-EU citizens, verification actions with companies domiciled in the neighbouring country, exchange of information, cooperation, and assistance.

The second objective was the establishment of direct communication links, between regional border authorities and central authorities but also the creation of a mixed monitoring Commission to ensure the compliance of this agreement. Ms. Gómez specified that this agreement differed from the one presented earlier as it is an administrative agreement and concerns different sectors (textile, farming etc.), not only construction. She then explained that the main instrument for the governance of this agreement is the monitoring commission, which establishes the methodology and tools to expedite information exchanges and has antennas in all the border regions (Galicia, Castilla y León, Andalucía and Extremadura). Such commission meets once a year and is chaired alternately by each country annually.

The Commission has several functions. For example, it resolves the incidents that may arise from the execution of the Agreement, it keeps the data of the contact persons at the regional and central level of both countries continuously updated, it ensures the exchange of relevant information on the status of inspection systems, it identifies new areas of interest for both labour inspectorates and it ensures exchange of information on new legislative measures that occur in both countries and that may affect the labour inspection action.

Ms. Gómez highlighted that at the beginning of the establishment of the agreement until 2010, the regional social partners participated in an “ad hoc meeting”, before or after the formal meeting of the Administrations. Regrettably, she pointed out that today neither social partners nor other political stakeholders are involved in the process and only have their participation bodies in their respective state inspection council. From the point of view of the outcomes, she explained that the agreement has improved the knowledge of both countries at different levels. On the political level, the holding of summits and periodical meetings has provided the commitment of coordination at the political and administrative level. On the legal level, it has allowed a better understanding of the existing problems and, as a consequence, the establishment of criteria and action guidelines for joint actions. From the operational

standpoint, such agreement has made the collection of information more agile, improved the speed of open procedures as well as the knowledge of regulatory and legislative changes and so the continuity of cooperation over legislative and political change.

Finally, she explained that some years ago Spain signed similar agreements with France and Romania. However, because of some political changes within the administrations, very little progress was made to make these agreements operational, but some changes should be expected in the future.

PANEL DISCUSSION

Mr. Feliciano Iudicone, moderator of the panel discussion, introduced the panellists and asked them to share their considerations on the agreements presented as well as on the broader topic of cooperation.

The first to take the floor was **Tom Deleu**, General Secretary of European Federation of Building and Woodworkers (EFBWW), who highlighted the importance of securing smooth mobility within the EU while safeguarding workers' rights. Too often, Mr. Deleu highlighted, politics focuses on removing rules and simplifying legislation, as it considered them a burden for companies and therefore for the whole labor market. He also stressed that, while the cooperation between inspection and social authorities is important, such cooperation should not exclude sectorial social partners, who have a deep knowledge of the sector and its dynamics and are added value to their work. Mr. Deleu also praised the work of paritarian institutions, which through the dialogue between employers' organizations and trade unions ensure the sustainable development of the sector and a common understanding of the issues.

The sectorial arrangements such as those presented play a great role in overcoming the challenges linked to the posting of workers and social security coordination, therefore the promotion of their social protection schemes is crucial to secure a fair competition at EU level. Their work is paramount to create fair competition and avoid social dumping. At the EU level, he remarked, few tools exist to provide this equal field therefore paritarian institutions can provide a push for further developing them. With this regard, he gave the example of the electronic exchange of social security information (Eessi) and of the European Social identity card which, despite the announcements, were never into realities. Finally, Mr. Deleu expressed the wish for a high involvement of the European Labour Authority (ELA) in the process of boosting cooperation at EU level, with the Authority having an operational role in the creation and support of these agreements.

Mr. Iudicone highlighted that through a previous project (EU post Lab), the consortium had identified concrete ways for digitalization to work as a strategy to reduce administrative burden for companies while improving data at disposal of administrations, and the ability to make use of the information therein contained.

He then gave the floor to **Domenico Campogrande**, Director General of European Construction Industry Federation (FIEC). Mr. Campogrande stressed that, on posting of workers, social partners have a long-standing cooperation, as they share the same objective of fighting against the social fraud. Likewise, he highlighted that also FIEC is strongly committed to promote the role of paritarian funds across the EU, both

through its members at national level and with EU-funded projects. The primary objective of employers' organization is to create a levelled playfield for companies, by finding the right balance between the freedom to provide services and the reduction of unnecessary barriers. With regard to the agreements presented, he pointed out that both have advantages and limits: therefore, it is not a matter of choosing one over the other, but rather about acknowledging their complementarity. He also added that often decision-makers tend to discourage the creation of bilateral agreements between funds as in their view, for an EU country, this would entail the signature of 26 different agreements. This would not be the case in that, he explained, each Member State would need to focus only on its neighbouring countries or with those that are concerned with the higher exchanges. The most important thing, he added, is to adapt a sectorial approach and involve the relevant social partners, as this allow to target the measures and have a more efficient process.

Looking at the future, Mr. Campogrande highlighted that access to electronic information is key for companies, which should be able to know, for example, which rules apply in a country and whether a certain subcontractor is in order with its contributions. He regrettably observed that in some cases companies are still denied access to this type of information. With regard to the available tools, he expressed some doubts over the utility of the IMI: in his opinion, this centralized system is not the way forward, which should rather be identified through the interconnection of information that are already available. Finally, while acknowledging the important role of ELA for the support of the cooperation, he wondered whether the multilateral approach supported by the Authority is the way forward to foster the creation of these agreements. In fact, he explained, this type of approach requires wide consensus and a lengthy process that often waters down the initial ambitions. Therefore, in his view, the most appropriate decision is to opt for the complementarity between multilateral approach and bilateral agreements.

The final intervention was that of **Leonardo Colucci**, Policy Officer at the ELA. He compared the Authority to a "house of cooperation", where all the agreements, cross-sectoral and multilateral, get a bigger scope. Building on Mr. Campogrande's remark, he reminded that one of the main features of the ELA is to enhance the cooperation through the National Liaison Officers (NLO) of the 27 Member States, who sit together to liaise among each other and improve the exchange of information among them but also between the Authority and the Member States. He highlighted that the Authority was not created to "reinvent the wheel" but rather to build on the existing experiences, move them a step forward and enhance their geographical and sectoral scope.

In addition, he explained that many little but relevant obstacles exist when it comes to cooperation, such as the language and the understanding of the legislation of other countries that even when there is a willingness, make it hard to work together. He explained that the legislators foresaw ELA as a facilitator of the cooperation, through the exchange of information, the monitoring of obligations that Member States have, the follow up on irregularities and the dissemination good practices such as those presented at the webinar. He also explained that also from the practical point of view, having colleagues from the 27 Member States sitting at the same desk will speed up processes that normally requires times and therefore slows down the building of a solid network. When it comes to digitalization, he explained that the ELA will promote the tools currently available such as IMI that, despite the doubts over its efficiency, today is the most trusted by Member States to exchange information.

Yet, he also confirmed the possibility, as stated in the ELA regulation, to investigate innovative approaches such as the interoperability of databases. He concluded by expressing once again his appreciation for the agreements that are already in place as well as the intention of the Authority to build on them and create a “house” where these agreements are scaled up and made even more efficient.

QUESTION & ANSWER SESSION

In the Q&A session, Mr. Colucci was asked whether the 27 NLOs in ELA have the power to commit their countries to share the information. The Policy Officer explained that, according to the EU regulation, their respective Member States need to empower them to request and provide information and that the extent to which they can access data depends on the national legislation. Besides accessing the national databases directly, Mr. Colucci specified that the NLO have also the role to identify the more appropriate and quick way to provide the requested data, by making the bridge between the request and the provision of data about a specific country.

The second question to the panel asked whether having such a “house of cooperation” would be sufficient to foster the cooperation and lead to other agreements. Mr. Colucci replied that, in line with the EU legislation, the ELA was set up to create the conditions to cooperate by providing, for example, funding and methodological guidance. Yet, he admitted, the outcomes of their efforts will still depend on the willingness of Member States and other stakeholders to actually cooperate and move things forward. While the ELA will also conduct analysis and research, he finally insisted on the operational role of the Authority which for example lead to the conductions of inspections during 2020.

Mr. Virgilio was asked whether the number of workers certified as regular through the agreement can be considered satisfying. Another question referred to the consequences that companies would face in case the funds discover irregularities.

Mr. Virgilio explained that the bilateral agreements were born as a voluntary exercise to facilitate the posting and certifying the regularity of companies which can nevertheless decide to go abroad and pay their contribution there. With regard to the numbers, he explained that since 2009 the funds have been registering a 40% increase on annual basis therefore, on the whole, a dramatic increase. Moreover, he highlighted that once considered the voluntary nature of this approach, the numbers confirm the high appreciation for these agreements that offer to companies the possibility of being legal. This tool, he added, clearly works better than just punish a company for not respecting the rules.

Building on Mr. Campogrande’ remark about the difficulty of signing 26 different agreements, Mr. Virgilio also dismissed this argument explaining that, in the case of the bilateral agreements he presented, the discussions occurred mainly between Italy and Germany and basically extended to the other two countries. This, he explained, saved a lot of time as the most challenging aspects had already been addressed. The challenges, he remarked, rather lie in the capacity to fulfil the conditions to sign the agreements, in that besides having a paritarian entities, these need to have a mandatory nature (for example being requested by law) and have the power to certify the regularity at national level. Another useful condition is represented by the salary conditions which need to be similar among the signatory’s parties.

CONCLUDING REMARKS

Aleksandra Kaydzhyska, Executive Director of AEIP, thanked the speakers for their valuable contribution during the panel discussions, as well as the consortium for its support in the organization of the event. She concluded by hoping that the work developed throughout the project will be inspirational for the work of ELA, to ensure fair labour mobility and create a levelled played field for the companies.

ABOUT THE PROJECT

The objectives of the ISA Project are to promote and reinforce transnational cooperation between authorities and stakeholders involved in the posting of workers in the construction sector, by promoting the establishment of information sharing agreements meant to monitor and ease the posting of workers.

The project builds on practices in place between public authorities, mainly labour inspectorates and social security institutions, to strengthen cooperation by means of information sharing, joint inspections, joint training and other activities of interest.

The project focuses also on the role at international level of sectoral funds. In Italy, Germany, Austria and France, sectoral funds, backed by the governments, negotiated and successfully concluded agreements simplifying procedures necessary to post workers abroad, while making sure employers posting workers abroad are in compliance with the payment of due wage elements (like the holiday pay), and easily allowing to check relevant information in the sending country if the need arises.

More information: isaproject.eu



CNCE (Italy)



Fondazione Giacomo Brodolini (FGB) (Italy)



Instituto Universitario de Lisboa (ISCTE-IUL)
(Portugal)



Notus Asr (Spain)



Bulgarian Construction Chamber (BCC)
(Bulgaria)



Union Des Caisses De France Du Reseau
CIBTP (UCF) (France)



Trade Union 'Budowlani' (ZZ Budowlani)
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