

ISA

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Sharing Agreements.
Building Eu agreements
for the posting
of workers in the
construction sector
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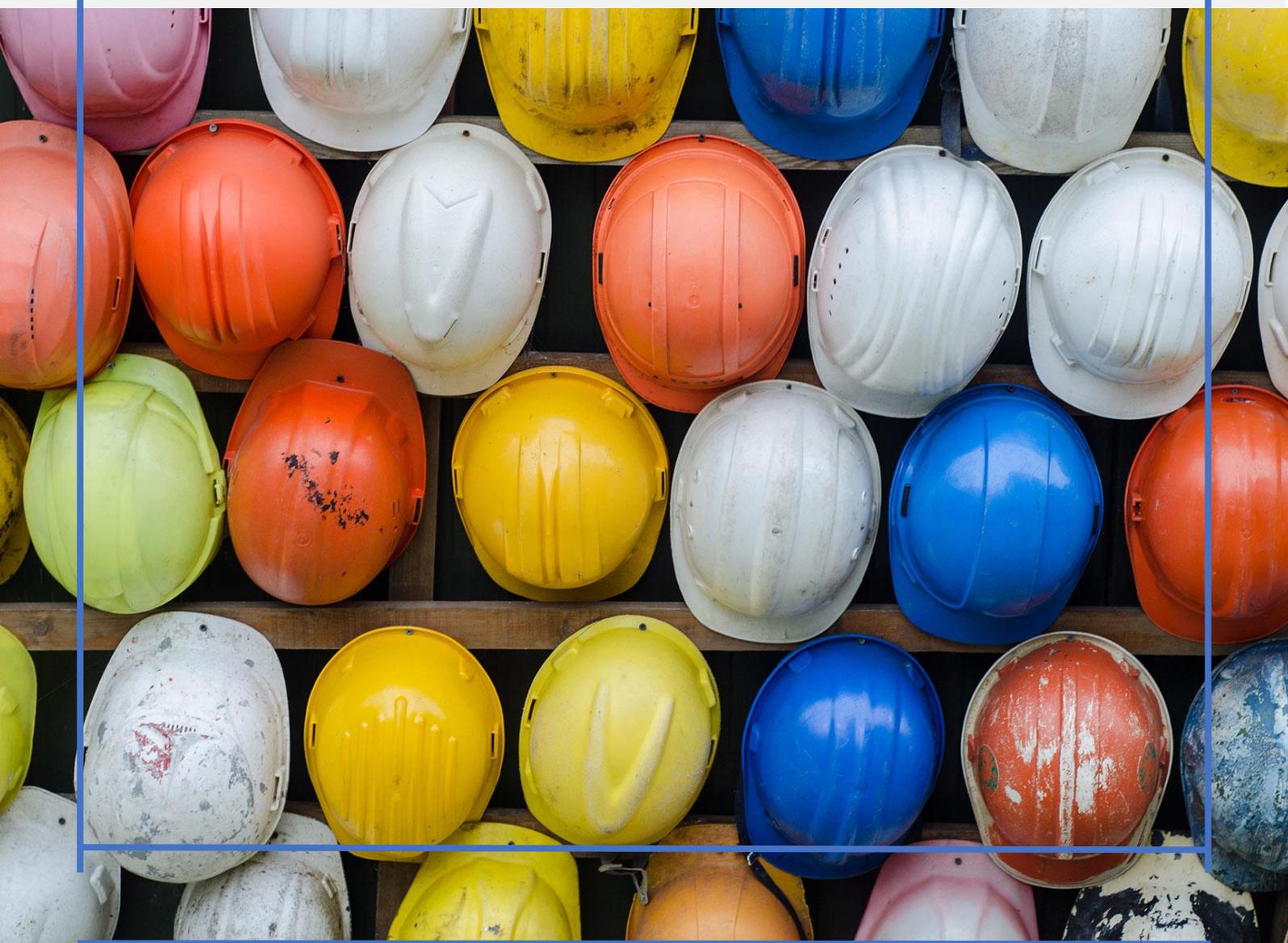


Guidelines

Transnational bilateral agreements between the French UCF and sectoral funds active in other EU countries

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Risks or concerns addressed by the agreement

Since the early 2000s, the number of foreign companies winning public or private construction contracts in France has been on the rise. Five regions accounted for 70% of posted workers in France: Grand-Est (104,000 posted workers in 2018) which has borders with Germany, Ile-de-France (92,000), Auvergne-Rhône Alpes (74,000) which has borders with Italy, Haut-de-France (65,000) which has borders with Belgium and Provence-Alpes-Côte-d'Azur (77,000) which has borders with Italy also

Three sectors of activity make particular use of posted workers in France: industry, with 80,560 declarations and 165,005 posted workers declared, construction and public works, with 52,509 declarations and 123,167 posted workers, and agriculture with 23,981 declarations for 74,255 posted workers.

At the same time, French companies have been increasingly working in neighbouring countries, especially Germany, Belgium, Spain, Italy and the UK.

These trends have brought about an increase in worker mobility, especially through posting, with significant consequences for the management of remuneration and payrolls, which can be particularly burdensome especially for SMEs.

In fact, France and neighbouring countries like Germany and Italy have developed a system of intermediation of construction workers' wages by means of sectoral funds, thought to guarantee income stability despite the temporariness of contracts in the sector or sudden interruption of work due to adverse weather conditions.

Despite some differences in their territorial organisation, ownership model and benefits, these sectoral funds handle about 30% of workers' gross wages by means of 'contributions' paid by the employer to the fund, which, in turn, entitle workers to a set of benefits (e.g. holiday pay, bad weather pay, seniority pay, access to vocational training...).

This means, whenever a worker is sent abroad, the employer shall notify the competent fund in the sending and host country in order to suspend payment in the previous and contribute to the latter.

In turn, workers would gain entitlement to benefits towards foreign sectoral funds, that they can claim back abroad, realistically once the posting ends.

Companies in the construction sector, which are established outside the French territory, must join a French holiday pay fund (Congés intempéries BTP CIBTP), established at local level, when they come to France to work, in accordance with the Labour Code. These funds are monitored and coordinated at national level by the Union des caisses de France (UCF). UCF is managed only by the representative employers' organisation of the construction sector.

One exception to this principle is the conclusion of bilateral agreements signed with certain EU Member States. As for example: after an extensive study, the existence of an equivalent leave entitlement scheme was recognised between France and Germany. It was in this context that an exemption agreement was concluded on 26 November 1997 between the CIPTB-UCF and the national institution SOKA-BAU.

This agreement is implemented through information sharing. In fact, the competent paid holiday fund verifies that, on the date of posting, the company is regularly affiliated and that it is up to date with contributions due in respect of the overall declared workers. Then, the fund draws up a certificate indicating that the company is up to date at the time of posting. The documents are

transmitted by the fund of the sending State to the competent fund of the State of employment through the UCF.

Objectives

The main feature of this agreement is to make a simplified procedure available to companies covered by the system of paid leaves in the construction sector, while ensuring the compliance with national regulation regarding the payment of contributions. The agreements pursue the following objectives:

- a) to prevent posting of workers to work as a driver of social dumping;
- b) to protect construction workers ensuring continuity of enrolment in their sectoral funds, access to related benefits and an overall pay comparable with remuneration applicable in the host country;
- c) to make it easier for construction companies to provide their services abroad;
- d) to share information between social partners and sectoral funds in the involved countries on the terms and conditions of employment entailed in the different countries, especially concerning the structure of remuneration and the role of sectoral funds;
- e) to tackle undeclared work and to supervise the correct application of collective bargaining provisions.

'Business case' for adopting the agreement from the standpoint of stakeholders

Workers:

In the absence of the agreements, posted workers would have their contributions fragmented across different funds, risking losing some wage elements in the host country or losing continuity necessary to accrue entitlements in the sending country.

Companies:

The agreements prevent risks of double payment while reducing the administrative burden for employers, who interact only with their fund in the sending country and in their own language. A standard form to be filled and sent to the national institution which will send the relevant information to the institution of the hosting country.

Unions:

Provided the overall labour costs between the involved countries is similar, unions benefit from a tool which incentivizes compliance with collective agreements by construction companies.

Employers' organisations:

Employers' organisations benefit from a tool which simplifies administrative requirements in case of posting for their companies, ensures the possibility for companies to rectify possible mistakes, and ensures a level playing field for businesses at international level. Once again, the similarity in the remuneration levels in the covered countries is a key precondition for simplification to go hand in hand with fair competition.

Sectoral funds:	The funds benefit from an easy tool to guarantee continued affiliation and payment by companies, while offering a service appreciated by their affiliates ¹ .
Public institutions:	Public institutions (especially social security institutions) benefit from a higher certainty on the regularity of undertakings, especially whenever parallel agreements are in place to share information with sectoral funds. In this respect, it shall be noted, compared to the A1 form, on the top of affiliation in the sending country, the funds certificate also regularity with payments of contributions before and during the posting period, a condition which is not required, instead, under procedures for certifying the correct affiliation of posted workers to the social security institution of the sending country pursuant to Article 12 of the Regulation EC 883/2004.

Main features

The agreement enables the sending company to contribute to the sectoral fund of the sending country rather than to the one of the host countries for posted workers. In order to do so, the company must prepare a declaration, available on both national institution website in the own languages, including: registration number or identifying code, place of posting, kind of activity, name of the client, starting and ending date of posting, and workers to be posted.

In order for the exemption to be granted, the company shall be in compliance with contribution duties towards the sectoral fund in the sending country and remain compliant during the posting period.

In particular, taking the example of the UCF-ULAK² agreement, the text is structured as follows:

- A preamble recalling the objective to set out procedures concerning the exemption from contribution charges towards the sectoral fund in the host country in case of posting.
- A first part about the legislation applicable in Germany and in France with detailed explanation of the legislation at the time where the agreement was signed. Since its conclusion, the agreement has never been updated, but both institutions check on a regularly basis any changes that occur in their respective country and inform its partner. Both institutions are immediately aware about changes in data and have at least one meeting per year.
- A second part sets the objective of the agreement that are mentioned above.
- A third part focuses on the rules of procedures:
 - It gives a definition of the sending state and hosting state;
 - It agrees that UCF will be the only French institution involved in the agreement on the behalf of the several regional affiliates of UCF in France (13 regional funds). UCF is responsible to circulate information within its network of regional funds and to centralise applications sent by these regional funds.
 - It states that when a company is registered by one of the two institutions and pay its contribution to it (CIBTP-UCF or ULAK), then it is not obliged to be affiliated

¹ However, SOKA-BAU does not take care of the request for the issue of the French BTP identity card, which must be directly requested to UCF by the German company posting employees to France.

² ULAK is the fund for paid leave and vocational training established under the umbrella of SOKA BAU (the other being the ZVK pension fund).

to the national institution of the host country and will not have to pay any contribution to it.

- It organises the exchange of data and certificate between the two national institutions to ensure that the company posting workers paid the contribution to its national institution.
- It describes the process to be followed in the rare case where the company send more posted workers than the number mentioned in the declaration sent to its national institution.
- It includes a provision to clarify the situation of companies that are affiliated to the national institution but, according to their activities, would be not covered by the national institution of the host country. For instance, the Customs Authority in Germany, in charge of the control of posting workers, may find a French company on a site which is not affiliated to CIBTP-UCF due to its activities, but should be affiliated in Germany to ULAK if it were a German company.
- It contains provisions on the situation of white collars. The German holiday fund scheme only covers blue collar workers. If a German company sends a white collar worker in France, the agreement stresses that the company has to observe French legislation and the collective agreements that apply to white collar workers.

A final section mentions that the institutions have to cover their own costs. In addition, it is stressed that both French and German versions are binding and that the agreement is concluded in an unlimited period.

Table 1. Contribution rates and parameters on 1.01.2021

Levies on gross wage - France	Share on gross wage	Levies on gross wage - Germany	Share on gross wage
<i>Holiday pay</i>	19.80%	<i>Holiday pay</i>	15.40% (since January 2019)
<i>Vocational training allowance</i>		<i>Vocational training allowance</i>	All areas: 2,40% Except Berlin: 1,65%
<i>Complementary pension</i>		<i>Complementary pension</i>	Western Germany: 3,0% Eastern Germany: 1,1% West Berlin: 3,0% East Berlin: 1,1%
<i>Bad weather pay</i>	0.74 (structural work) or 0.15% (second work)	<i>Bad weather pay</i>	2%
<i>Health and Safety (OPPBTB)</i>	0.11%		
<i>Social benefit (APAS-BTP)</i>	0.40%	<i>Social Expenses</i>	Only for Berlin: 5,7%
<i>Temporary work</i>	0.11%		
<i>Professional contribution depending regional collective agreement</i>	0.10% to 1.17%		
Total	20,67% to 22,33% depending on the nature of activities (structural work or second work) and the location of the employer's headquarters.	Total	Western Germany: 22,8 % Eastern Germany: 20,9% West Berlin: 27,75% East Berlin: 25,85%

Process of adoption and role of different involved stakeholders

Necessary requisites for the agreements to apply were: (i) the recognition of contributions to sectoral funds and of other levies as part of the minimum rates of pay posted workers have a right to; (ii) the recognition of the similar features of contributions and levies across the covered countries.

In France, foreign based companies in the building and public works sector must join a Congés Intempéries BTP (CIBTP) fund as soon as they post employees to France, in accordance with the provisions of [Articles L.1262-4](#) and [D.3141-14](#) of the Labour Code. The latest states that the scheme provided for in the Labour code section on the pay holiday fund '*also applies to undertakings not established in France*'.

The triggering event for the obligation to affiliate to the CIBTP funds, as well as the resulting obligations in terms of declaring the wages paid and paying the related contributions, is therefore the fact that the company posts employees to French territory.

This principle is accompanied by exceptions set out in [Articles D. 3141-26](#) and D. 3141-27 of the Labour Code. It is more particularly on the basis of the latter article that the bilateral agreement in question was established. For instance, article D.3141-26 stresses that '*the companies mentioned in Article D. 3141-14, established in another Member State of the European Union or in one of the other States party to the Agreement on the European Economic Area, may be exempted from the obligations*' set out in the sub-section focusing on companies of the construction sector, '*if they can prove that their employees benefit from their paid leave rights for the period of secondment under conditions at least equivalent to those provided for by French legislation*³'.

In Germany, the legitimacy of the agreements is acknowledged through a sectoral-level collective agreement. Article 5 Nr. 3 Arbeitnehmer-Entsendegesetz states: "A collective agreement as referred to in section 3 may set out ... the collection of contributions and granting of benefits in connection with holiday entitlements as set out in no. 2 by a joint facility of the parties to the collective agreement where it is guaranteed that the foreign employer is not simultaneously required to pay contributions towards that joint facility and towards a comparable facility in the state of the employer's establishment and the procedure applied by the joint facility of the parties to the collective agreement involves crediting those benefits which the foreign employer has already extended to workers in the fulfilment of their holiday entitlement as provided by statute, collective agreement or individual agreement".

Information on the duties of employers is available on the SOKA-BAU website in 14 languages with explanations on "[leave fund scheme for companies posting commercial workers](#)". Information is provided to [employers](#) and to [employees](#). A [leaflet](#) is also available in all 14 languages with various other information.

EU level and national level legal aspects smoothing or hampering the agreement

The legal basis for the agreements are the national acts transposing the Posting of Workers Directive, in particular for what concerns the right of posted workers to receive remuneration and

³ UCF provides on its website a leaflet with the [reference texts](#) that are applicable to the holiday fund.

minimum annual paid leave in line with law or collective bargaining provisions in force in the host country

As explained in the 'process' section, in France the legitimacy of the agreements is acknowledged also by the Labour Code and sectoral collective agreements concluded by the representative social partners.

In Germany, the legitimacy of the agreements is acknowledged by the applicable collective agreement extended to all employers and employees in the construction sector.

Exemptions from the affiliation to the sectoral fund of the host country are considered as legitimate whenever workers enjoy a comparable level of protection in the sending country. Agreements between sectoral funds appear as a particularly appropriate tool to identify these situations as they guarantee reciprocal understanding of the similarity of protection across borders, reducing risks of conflict of laws. While granting a continuity in contributions to funds of the sending country, the agreements maintain all wage elements considered as mandatory at national level.

Actions implemented to address hampers

The signatory parties maintain constant relationships to check companies and declarations. This cooperative dialogue enables to solve cases of irregularities. They have at least one meeting per year and exchange data and declarations. However, the process is not full digitalised, which can lead to some delay. SOKA-BAU also noticed that the funds do not share data on certain employers or employees with stakeholders as trade unions or employers' organisations. These data are seen as sensible personal data and therefore fall under the related "special data protection" regime. Nevertheless, SOKA-BAU has access to notifications that sending undertakings are obliged to submit to the Customs Authority.

Outcomes of the agreement

In 2020 there were 42 employers sending 354 workers from France to Germany.

ABOUT

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 will build on practices in place between sectoral funds in Italy, in Germany, Austria and France, where 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.

www.isaproject.eu



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