

ISA

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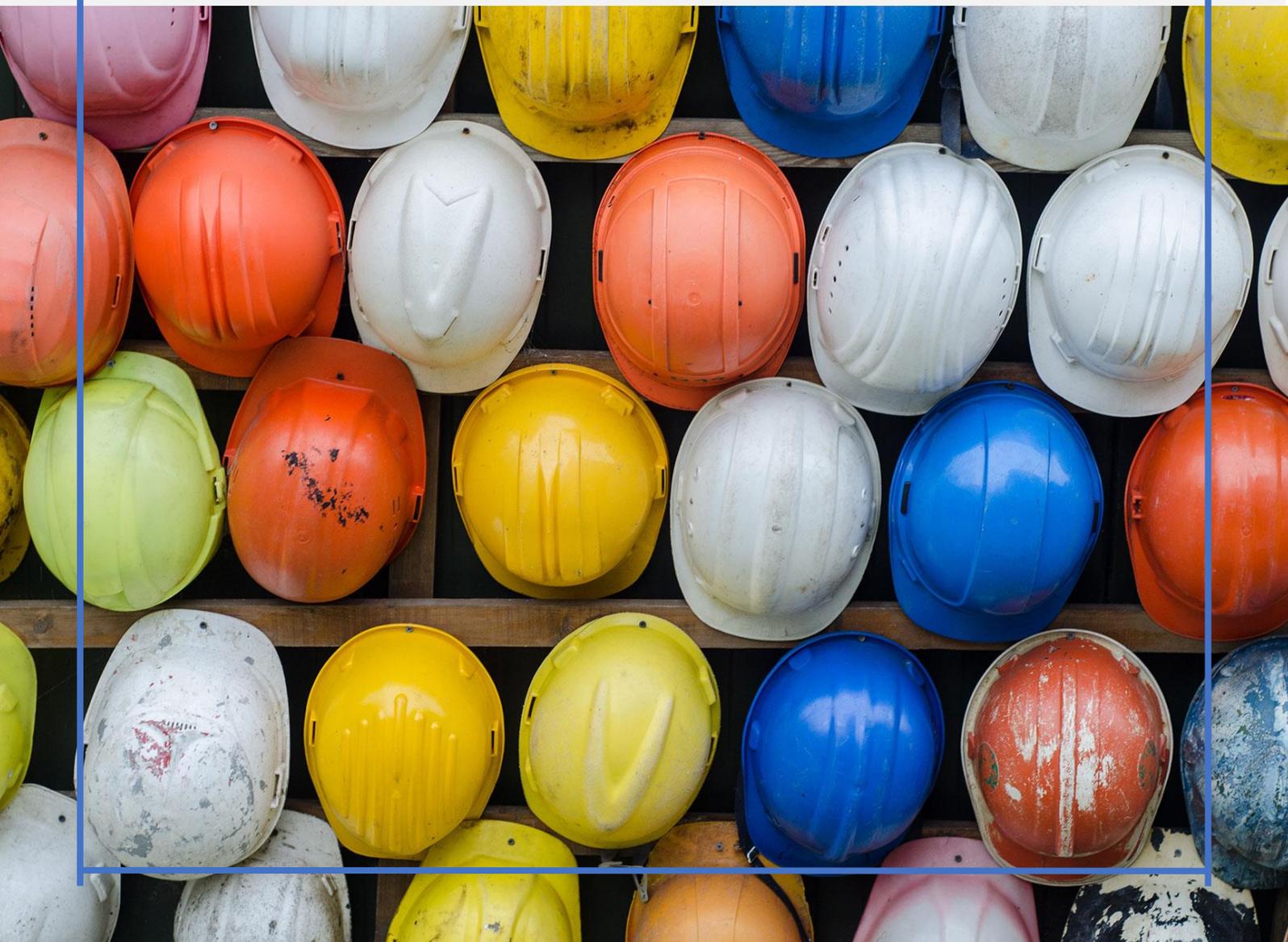


Guidelines

Agreement concerning bilateral cooperation and information exchange between the National Labour Inspectorate in the Republic of Poland and the Work Environment Authority of the Kingdom of Denmark

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Risks or concerns addressed by the agreement

The Polish Labour Inspectorate tries to maintain close cooperation with liaison offices in relevant institutions of other EU countries. The Danish Inspectorate is interested in cooperation with the Polish Inspectorate, mainly due to numerous complaints from Danish trade unions about the behaviour of Polish companies posting workers to Denmark. The complaints mainly concern the failure to comply with Danish collective agreements and the breach of other labour law provisions (including working time). The complaints also concern the underestimated - according to the trade unions - remuneration of posted workers. Trade unions say that companies that violate labour law are dumping in the labour market.

Objectives

The agreement regulates cooperation and exchange of information on matters related to work performed in both countries on the basis of contracts concluded directly with Danish or Polish employers. It also covers the transfer of employees to the territory of the parties through employment agencies providing employment services for foreign employers.

The main objective of the agreement is to improve the cooperation of control institutions tasked with overseeing posting in Poland and Denmark. Institutional cooperation is defined in the Posting of Workers Directive (Directive 96/71/EC) and in the Enforcement Directive (Directive 2014/67/EU). The agreement details the terms of cooperation, taking into account the differences in the functioning of the labour market in Denmark and Poland.

The agreement covers both information exchange and bilateral cooperation. The IMI System is currently used for information exchange. In addition to being user friendly, it represents a safe and efficient tool for exchange of sensitive data, it has a built-in automatic translation tool and the possibility to attach files when formulating a request. Yet, there are some limitations such as the definite number of questions which limit the scope of information that might be requested.

The agreement therefore covers other forms of information exchange in an organized manner (electronic and traditional).

The agreement also covers various forms of direct cooperation (meetings, exchange of staff, consultation), including inspections within the scope of the Inspectorates' competences concerning posting companies and their employees. Controls may be carried out at the request of one party in the other party's country or even jointly.

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

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|---------------------------|--|
| Workers: | The agreement allows posted workers to have wider access to information on the conditions of posting to Denmark and Poland. The Polish inspectorate (liaison office) provides detailed advice in this area. The posted worker also receives information on the procedure for submitting complaints to the inspectorate and the conditions of their consideration in the host country. |
| Companies: | The current and detailed exchange of information on changes in labour law, collective agreements and on specific companies violating the provisions on posting significantly hinders the provision of services by these companies abroad and restores the principles of fair competition in the area of posting. It is important that such information exchange is systemic in nature, and not only at the request of the party. Polish companies wishing to obtain information on employment conditions in Denmark (including collective agreements) may ask the Polish inspectorate to provide such information. |
| Unions: | Formally, trade unions may join the implementation of the agreement by providing up-to-date information on the state of collective bargaining and the content of collective agreements. The unions may also submit complaints and count on their consideration in both the sending and the host country, using the cooperation of the inspectorate. |
| Employers' organisations: | They are not included in the scope of the agreement. They can receive information on posting in Denmark and Poland to the extent provided by the labour inspectorates. |
| Sectoral funds: | Not applicable |
| Institutional actors: | Other institutional partners are involved in implementing the objectives of the agreement when the parties are not competent to solve the problems that arise. They also benefit from easier access to information necessary to monitor the application of the Posting of Workers Directive in the area of competence and interests of each institution (insurance, tax, etc.) The Parties agreed to indicate the relevant institutions. |

Main features

Forms of cooperation

The participating national authorities commit to assist each other within the framework of the competences conferred on them by national law, in particular through:

1. Control of compliance with the provisions on the posting of workers specified by Directive 96/71/EC and Directive 2014/67/EU in the countries of the parties, and, if agreed by both parties, conducting joint controls in matters regarding cross-border employment relationships;
2. Cooperation in the development, implementation and distribution of information activities and preventive measures, in particular the exchange of information and education materials related to the areas of operation of the parties, addressed to posted workers or migrants for work purposes to the territories of the parties, as well as employers and other interested people;
3. Taking actions, in accordance with their competences, in matters concerning persons performing gainful work in the territory of the party, in particular in on the basis of received complaints and other indications about irregularities with work, and in cases where the party is not entitled to act – informing about the incident of the competent authority;
4. Exchange of information on the degree of implementation of actions taken by the party in a given case on the request of the other party, whenever required;
5. Mutual information on serious, fatal and collective accidents involving nationals of the parties, occurring in connection with work performed in their territory, in the event of becoming aware of such an event;
6. Providing information, at the request of a party, according to the possessed knowledge, about: collective bargaining agreements from specific industries in the countries of the parties, e.g. via the national website on posting referred to in Directive 2014/67/EU, and workers' organisations;
7. Sharing, upon request from a party, information on changes in regulations the laws in force in the territory of the party relating to matters covered the scope of this Agreement;
8. Exchange of available information on the structures, functions and competences of the institution controlling and supervising working conditions, their working methods and carrying out monitoring activities, for a better understanding of the principles and traditions that characterise the respective labour markets;
9. Organizing, if necessary, joint meetings at the expert level, with the goal of discussing current issues covered by cooperation and participation in meetings and seminars, conferences and other events organized by the parties, as well as by other domestic and foreign bodies as relevant.

Process of adoption and role of different involved stakeholders

The agreement with the Danish inspectorate was concluded at the end of 2017. A similar agreement was signed with the Slovak inspectorate on 9 September 2019. The pandemic has limited closer direct contact. The report of the Polish inspectorate for 2019 shows that contact was maintained before the pandemic. Polish trade unions received information about the agreement quite late.

Eight other agreements were concluded with: Belgium, Lithuania, Norway, the Netherlands, Luxembourg, Bulgaria, Estonia, Spain, all covering similar issues regarding posting of workers in the framework of the provision of services.

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

There is no direct influence from the EU or national level on the implementation of the agreement.

The Directive 96/71/EC in its Article 4 provides for the possibility to address liaison offices in other MS with requests on posting of workers but until the transposition of the Enforcement Directive 2014/67/EU and the introduction of Internal Market Information System (IMI), there were no clear-cut and uniform rules on the scope and mode of information exchange with regard to posted workers. With the transposition of the Enforcement Directive, the IMI was designated as the only official medium for exchange of information.

Extended cooperation of labour inspectorates is possible on the basis of the directives, it is allowed by national law and even recommended by the Senior Labour Inspectors Committee.

Actions implemented to address hampers

Not much information is available on such aspects. Anyway, joint inspections were not undertaken.

Outcomes of the agreement

As part of the implementation of the bilateral cooperation agreement with the Work Environment Authority of the Kingdom of Denmark, the PIP delegation paid a visit to Copenhagen in 2019, where the topic of posting workers to work in the territory of both countries and the cooperation of liaison institutions were discussed. In turn, the Polish inspectorate received a delegation from the Task Force for Corporate Social Responsibility, operating within the structures of the Copenhagen authorities, whose aim is to guarantee fair wages and working conditions for all employees involved in projects implemented for the city. Information on accidents at work of posted workers is exchanged on an ongoing basis.

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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