

ISA

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

Cooperation agreements to tackle illegal posting, breaching of legislation in the field of labour relations, working conditions, and health and safety at work signed by Romania with Greece, Hungary, Italy, Portugal and Spain

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Risks or concerns addressed by the agreement

These agreements were adopted to strengthen cooperation with other Member States in order to address concerns over illegal posting in the field of labour relations, working conditions, and health and safety at work.

A very important feature of all the agreements is the mapping of common areas of interest. Depending on the signing parties this can vary considerably. For example, a state which receives a large number of posted workers may wish to prioritize action, and a state that has a large diaspora could emphasize the importance of information and of occupational safety and health (OSH) measures. All these priority areas should be identified and included in the final text and their prioritization should be agreed upon by the signing parties.

The Protocols of cooperation concluded with Italy and Spain were signed because of the large number of Romanians working/posted to Italy/Spain. This aims to equalise working conditions for Romanian and local workers.

The Protocol with Hungary was based on the need for cooperation due to the cross-border mobility of workers and companies, the number of workers posted to/from Hungary being much lower.

The period prescribed for the transposition into national law of Directive 2014/67/EU expired on 18 June 2016. All Member States have implemented this legislation (requiring, among others, companies which post workers on their territory to submit posting declarations before the beginning of the posting¹). However, there is still insufficient statistical data collected at the level of all Member States, based on a common methodology, comparable between Member States, to allow an accurate picture of the number of posted workers.

The other source of data collected at the European level is data on posting provided by the A1 certificate. It should be noted that A1 certificate data sources only provide an indicative picture of the phenomenon of intra-EU posting, because of several limitations of the data.

The statistics related to A1 documents issued in recent years by Romania and signatory states are shown below for 2014 – 2018²:

Romania as sending State – A1 documents issued/year						
Host State		Romania (2014)	Romania (2015)	Romania (2016)	Romania (2017)	Romania (2018)
	Greece	148	359	95	164	112
	Hungary	359	443	357	437	382
	Italy	7976	6518	7110	6025	5543
	Portugal	39	80	570	34	54
	Spain	2453	7027	74	379	367

¹ European Commission (2019), REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE on the application and implementation of Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) 1024/2012 on administrative co-operation through the Internal Market Information System ('the IMI Regulation'). (SWD(2019) 337 final). <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2019:426:FIN>

² Data from the reports published by the Commission on A1 documents issued in 2015-2018: <https://ec.europa.eu/social/main.jsp?pager.offset=10&catId=471&langId=en&moreDocuments=yes>

Sending State – A1 documents issued/year						
Romania as host State		Greece	Hungary	Italy	Portugal	Spain
	Romania (2014)	22	691	819	52	1230
	Romania (2015)	37	596	869	85	1823
	Romania (2016)	151	740	1079	57	1493
	Romania (2017)	152	471	1773	25	1681
	Romania (2018)	132	463	2715	49	1717

Objectives of the agreements

The key goal was to create a permanent administrative partnership in the fields of labour relations, working conditions, and occupational health and safety.

In order to streamline the flow of information, the agreements contain reference to the creation of a single contact point between the two parties with decision capacity. The contact points were established at the level of RO, EL, ES, HU, IT and PT labour inspectorates.

‘Business case’ for adopting the agreement from the standpoint of stakeholders

Workers:	Many citizens work in the Member States concerned as posted or cross border workers
Companies:	A significant number of companies post workers in the Member States concerned.
Unions:	
Employers’ organisations:	
Sectoral funds:	
Institutional actors:	Institutions that are parties in the agreement benefit from a strengthening of bilateral cooperation activities, meaning also they improve their ability to inform workers about their rights and obligations.

Main features

The main features of the agreements concern:

- exchange of information between the parties who have signed the agreements: namely the Ministry of Labour and Social Protection of Romania and: the Ministry of Labour and Social Security of Greece; the Italian Labour Inspectorate; the Portuguese Labour Inspectorate; the Spanish Labour and Social Security Inspectorate (ITSS); and the Hungarian Labour Inspectorate;
- in the framework of provision of transnational services: cooperation and granting necessary technical assistance regarding justified requests of information, including in cases of abuse and transnational illegal activities;
- mutual support to verify whether the company which posted workers has sufficient logistic and human resources to carry out its activity and that it carries out an important activity in the home Member State;
- carrying out special control campaigns or elaborating reports on the working conditions of the nationals in the other state, or other aspects of interest;
- exchange of information regarding the companies from the other state operating on its territory. Mutual information regarding accidents at work, the result of the investigations and the measures taken following such accidents.

Process of adoption and role of different involved stakeholders

Regarding the cooperation protocol between the Romanian and Italian Labour Inspectorates the elaboration and conclusion of the protocol was one of the results of the EMPOWER Project³ carried out by: the "Guglielmo Tagliacarne" Institute in Italy; the Ministry of Labour and Social Policies from Italy; the Labour Inspectorate from Romania for a period of 12 months (2009 – 2010)⁴.

In the case of Italy, the signing of the agreement is also a key example of long term cooperation that came about as a direct consequence of the “EMPOWER – Exchange of Experiences and Implementation of Actions for Posted Workers” project.

The Memorandum of Understanding and Cooperation for the Exchange of information and Cooperation between the Romanian Labour Inspectorate and the Spanish ITSS is a framework for permanent administrative cooperation and exchange of information between the signatory parties, negotiated and signed by the two institutions. This Memorandum of Understanding was signed because of the large number of Romanians working in/being posted to Spain. It aims to equalise working conditions for Romanians and locals.

Similarly, the Memorandum of Understanding between the Labour Inspectorate of Romania and the Authority for Working Conditions of Portugal aims to set up a framework for administrative cooperation, as well as an exchange of information between the parties on law enforcement of the occupational health and safety and labour legislation.

These technical agreements have been negotiated by the signatory institutions. Prior to signing, the agreements were submitted for approval by the Ministry of Foreign Affairs (in the case of Romania).

The Cooperation Agreement between the Romanian Ministry of Labour, Family and Social Protection and the Ministry of Labour and Social Security of the Hellenic Republic was signed by the respective labour ministers. The agreement entered into force on the date of the last notification through diplomatic channels of the completion of the

³ The EMPOWER Project was funded by the EC PROGRESS programme (Call for Proposals VP/2009/015, Pilot Project – Working and Living Conditions of Posted Workers).

⁴ For more information, see: https://www.inspectiamuncii.ro/web/itm-teleorman/proiecte/-/asset_publisher/bpvOvwn17Oc6/content/proiectul-empower?inheritRedirect=false&redirect=https%3A%2F%2Fwww.inspectiamuncii.ro%2Fweb%2Fitm-teleorman%2Fproiecte%3Fp_p_id%3D101_INSTANCE_bpvOvwn17Oc6%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26p_p_col_id%3Dcolumn-2%26p_p_col_count%3D1.

necessary national legal procedures. These legal procedures were necessary for Romania, because the document was approved by the government.

Romania's government decision required the opinion of the Ministry of Foreign Affairs and of social partners as mandatory steps.

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

Depending on the national responsibilities of the signing parties', further delays might occur as specific competence might be split between more than one actor at national level. For example, in Ireland the labour relations and OSH are covered by two independent agencies whereas in Romania these fall under the competence of just one agency.

According to the national legislation and practice in Romania, the ministries and public authorities subordinated or under their coordination may conclude protocols or memorandum of understanding with similar institutions from other states, if:

- they have legal attribution to sign such cooperation documents stipulated by their own laws and/or statutes of establishment and functioning, and
- those protocols or memorandum of understanding do not create, amend or extinguish legal or other rights and obligations governed by public international law.

These protocols or memorandum of understanding are negotiated by the signatory institutions, and are subject, prior to signing, to the opinion of the Ministry of Foreign Affairs and shall enter into force on the date of their signing.

If the agreements or protocols signed between the institutions create, modify or extinguish legal or other rights and obligations, governed by public international law, then they fall under the scope of the Law no. 590/2003. This concerns the Treaties, as subsequently amended and supplemented, and have another procedure for negotiation, signing and entry into force.

This law (no. 590/2003) regulates the conditions under which treaties or agreements may be concluded, both at government and department level and establishes all the procedures to be followed from the moment of approval of negotiations until the signing of treaties/agreements.

According to the provisions of this law, the treaties signed at government level as well as the treaties signed at department level are submitted to the government for approval by government decision.

All protocols, memorandum of understanding, and agreements subject to analysis in this project took into account that the exchange of information should be carried out in electronic format, in compliance with the provisions of national legislation on the regime of personal data in force in each signatory state.

In Romania, the legislative provisions on the protection of personal data and on the free movement of such data have been in force since 2001, being updated and harmonized after Romania's accession to the European Union with European legislation provisions (Regulation EU/2016/679 - General Data Protection Regulation).

Starting with the launch of the IMI pilot module for the posting of workers in 2011, the Romanian Labour Inspectorate started to use this system for the exchange of information required under the Directive 96/71/EC on the posting of workers. Thus, out of the total of 93 requests for information received by the Labour Inspectorate during 2011, 25 of them were managed through the IMI System⁵.

Since 2012, requests for information on posted workers received from/sent to Italy have been managed through the IMI System, and since 2013 exchanges of information through the IMI System have also covered the requests received from/sent to Hungary, Spain, Portugal and Greece⁶.

⁵ See: <https://www.inspectiamuncii.ro/raport-anual-al-activitatii-inspectiei-muncii> - Activity report of the Labour Inspectorate for 2011.

⁶ See: <https://www.inspectiamuncii.ro/raport-anual-al-activitatii-inspectiei-muncii> - Activity report of the Labour Inspectorate for the years 2012 and 2013.

With the adoption and entry into force of the Enforcement Directive EU/2014/67, the use of the IMI System became mandatory and all Labour Inspectorates have a legal obligation to respond to any information requests through it from other Member States.

In accordance with Art. 21 of the Directive, Member States may apply bilateral agreements or arrangements on administrative cooperation and mutual assistance between their competent authorities with regard to the application and monitoring of employment clauses and conditions applicable to posted workers referred to in Art. 3 of the Directive 96/71/EC. However, such agreements or arrangements are without prejudice to the rights and obligations of the workers and undertakings concerned.

In the context of the above-mentioned bilateral agreements or arrangements, the competent authorities of the Member States shall use the IMI System as much as possible. If a competent authority in one of the Member States concerned communicates with the IMI System, it shall be used, where possible, for any further action required.

The use of IMI System is straightforward and has the advantage of ensuring all European and national rules are abided by in the protection of personal data.

According to data from Expert Committee on Posting of Workers questionnaire, most Member States (Austria, Belgium, Bulgaria, Czech Republic, Germany, Spain, Finland, Lithuania, Luxembourg, Poland, Portugal, Romania, Slovakia, Estonia, Denmark, Croatia, France, the Netherlands) have bilateral agreements or joint statements in force with other Member States covering the posting of workers and administrative cooperation between different authorities. Many of these Member States report that they use these agreements instead of, or in addition to, the IMI System.

However, there are also many Member States (Czech Republic, Germany, Hungary, Ireland, Italy, Lithuania, Latvia, Malta, Portugal, Sweden, Slovakia, Cyprus and the Netherlands) which only communicate through the IMI System for administrative cooperation because of its convenience in the absence of applicable bilateral agreements⁷.

Romania also uses the exchange of information through the IMI System with all Member States regardless of the existence of the bilateral cooperation agreements. As an example, in 2019⁸ most IMI requests for information were sent by: Austria (242), Belgium (103), France (52), and Italy (49).

During the same period, the liaison office within the Labour Inspectorate sent 34 requests for information (IMI) to the respective offices in Italy, France, Germany, the Netherlands, Hungary, Bulgaria, Sweden, Belgium etc. on the secondment of employees for transnational services.

⁷ See: European Commission (2019), op. cit.

⁸ See: <https://www.inspectiamuncii.ro/raport-anual-al-activitatii-inspectiei-muncii> - Activity report of the Labour Inspectorate for 2019.

Actions implemented to address hampers

Prioritization of specific agreements should mitigate delays. Prioritization should be an objective process and take into account the size of the diaspora and the number of postings. Once the analysis is completed by the competent parties, the negotiation party should ask the subordinate agencies to act with due diligence. This is difficult when the agreement is signed at Government level and a large number of actors (Ministries and agencies) have to be involved.

Outcomes of the agreement

The signing parties use the IMI System for the exchange of secure information in case of the agreements signed by the Romanian Labour Inspectorate with Labour Inspectorate from IT, ES, and EL.

In the cases of cooperation with HU and PT, the use of the IMI System was combined with the conventional systems for exchange of secure information.

Since January 2016, the volume of information exchange was of 310 IMI requests received by the Romanian Labour Inspectorate from a range of institutions from the signatory states of the agreements subject to analysis⁹:

- Greece – 3 requests;
- Hungary – 4 requests;
- Italy – 283 requests;
- Spain 20 requests.

Since January 2016, the Romanian Labour Inspectorate sent through IMI System 92 requests of information to:

- Hungary – 8 requests;
- Italy – 79 requests;
- Spain – 5 requests.

The need to respond within a clear time frame set by Directive 2014/67/EU as well as the categories of information requested led to increased targeting inspections in order to check the compliance with the law, and improved ability of the inspectors to identify abuses or irregularities in case of posting of workers.

Regarding other activities carried out on the basis of the Memorandum of Cooperation with Spain, within the exchange of good practices, the Labour Inspectorate organized a workshop to present the Spanish approach to inspection activities.

The key outcome of the EMPOWER project was the conclusion of a Collaboration Protocol between the Labour Inspectorate from Romania and General Directorate for Coordination of Inspection Activities within the Ministry of Labour and Social Policies from Italy.

Activities developed within the framework of the Protocol include the elaboration of a guide for labour inspectors and employers: *Vademecum – Posting of workers in the European Union* and the organisation of national workshops for the labour inspectors in Bucharest, Iași and Timișoara.

⁹ Data communicated by Labour Inspectorate, resulted from the interrogation of IMI Platform.

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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The opinions hereby expressed reflect only the authors' view.

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