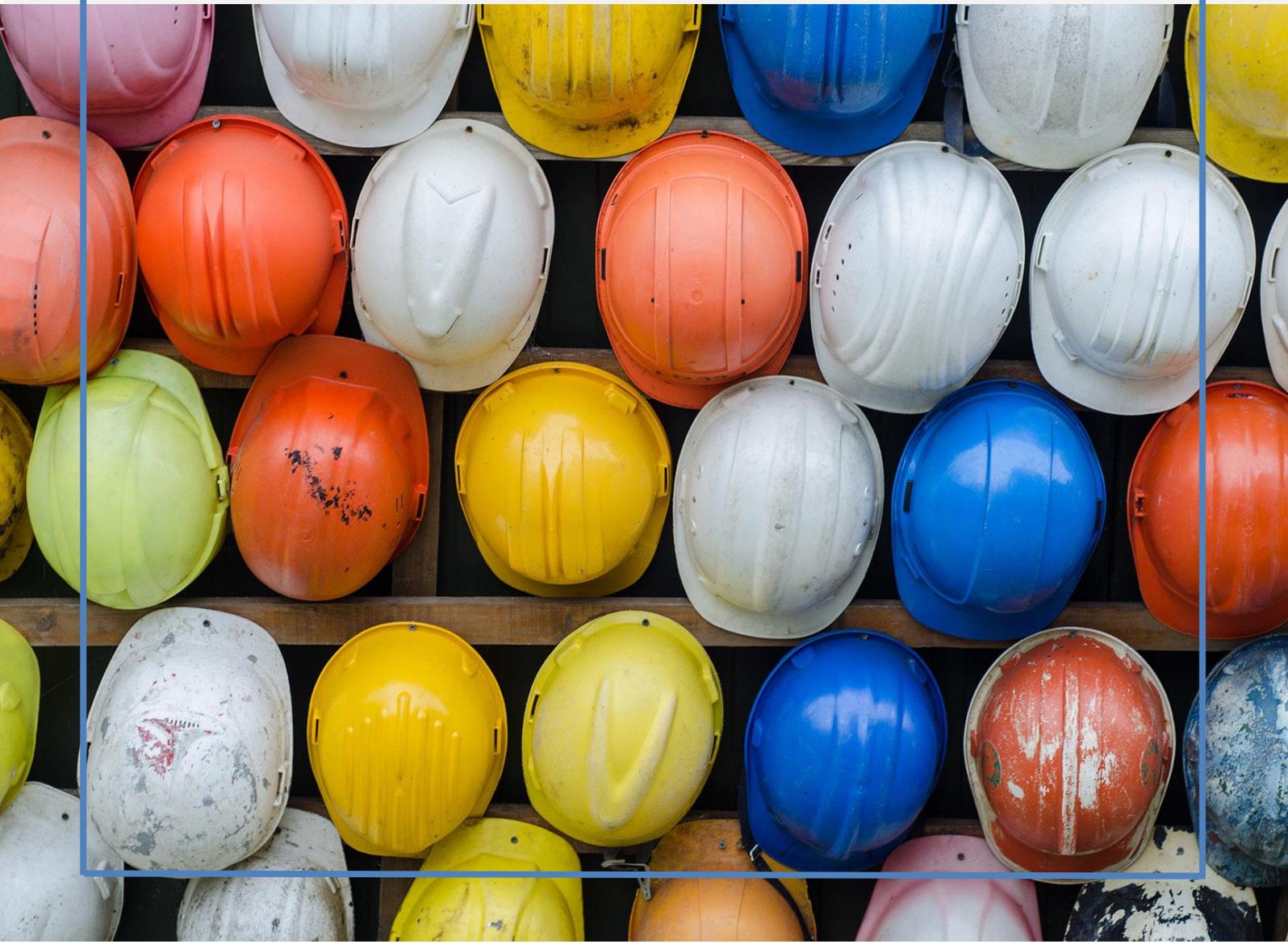


Country in focus report – Poland

Good practices in the field of digitalization and cooperation with social partners in the field of posting of workers

Author: Trade union “Budowlani”

March 2021



CONTENTS

Introduction..... 3

Application creator for A1 certificate as an example of good practice for migrant workers and employers posting them abroad 3

The MoveS network of experts supports the exchange of information at the institutional level and cooperation with social partners 5



The ISA project is carried out with the financial support of the European Commission. The opinions hereby expressed reflect only the authors' view. The European Commission is not responsible for any use that can be made of the information contained therein.

Introduction

Poland issues the most A1 forms in Europe. In 2017 it was over 573 thousand, in 2018 - over 605 thousand, and in 2019 - almost 646 thousand. The COVID-19 pandemic influenced the posting process, but did not radically limit the posting process from Poland. In addition to employees, more and more often people who run business and provide services under civil law contracts leave. For this reason, issues related to employee mobility, its organization and coordination of benefits are extremely important for Poland. Considering the scale of posting of workers from Poland (including employees who are citizens of other countries) to other EU countries and the growing scale of the inflow of workers from third countries to the Polish labour market, the issue of mobility and free movement of workers becomes a key issue for Poland.

In this situation, one of the most important tasks is the coordination of administrative cooperation of both institutions competent for posting in Poland and other EU / EEA countries, as well as administrative cooperation of various institutions in Poland, within whose competences include problems related to the labour market, legality of employment, health and safety at work, border protection, taxes, the functioning of sectors that are crucial for the posting and migration of workers. The most important institutions for posting in Poland are ZUS and the National Labour Inspectorate. Their cooperation is formally based on the "Agreement on cooperation concluded on November 5, 2010 between the Chief Labor Inspector and the President of the Social Insurance Institution". The Labour Inspectorate is a largely independent institution (subordinated to the parliament, not the executive authorities). Its cooperation with other relevant public institutions is based on a number of bilateral agreements with the above-mentioned institutions.

As in many other EU countries, the problem is not only the efficiency of the process of coordination of activities and information exchange of competent institutions, but also the introduction of tools simultaneously facilitating the process of legal posting of workers and ensuring the correctness of this process. An example of introducing new, digitized tools to optimize this process is given below.

Application creator for A1 certificate as an example of good practice for migrant workers and employers posting them abroad¹

Applications for A1 certificate at PUE

In order to meet the expectations of customers, including payers posting employees abroad to EU / EFTA countries and the insured, the Polish institution *Zakład Ubezpieczeń Społecznych* (Social Insurance Institution) has implemented new solutions on the Electronic Services Platform to facilitate applying for an A1 certificate confirming being subject to social insurance in Poland by delegated persons.

¹ Source: Department of Foreign Pensions, Social Insurance Institution (ZUS), director Dr. Andrzej Szybkie

ZUS customers who want to receive the A1 certificate can use the ZUS Electronic Services Platform (PUE ZUS) for this purpose and fill in the appropriate application form electronically.

Application forms for the A1 certificate were successively posted on the Electronic Services Platform. Currently, all types of A1 certificate applications are available on the Electronic Services Platform.

A1 Application Creator

At the end of September 2020, the "A1 Certificate Application Creator" was implemented, which guides the client step by step through the process of submitting the A1 certificate application. The customer answers subsequent questions and the system, based on the information provided, automatically recognizes which type of request is appropriate in a given situation.

The creator also prompts the client on how to properly complete the application. After completing all the required data and completing the Creator's work, a complete set of documents will be created in the form of a proper application for an A1 certificate with the required attachments, which the client may be asked to add, depending on a specific situation.

First, a creator was launched for customers submitting the most typical applications, i.e. customers who want to receive an A1 certificate, in the following situations:

- posting an employee to another EU Member State, EEA or Switzerland,
- temporary transfer of self-employed activity to another EU Member State or EEA or Switzerland,
- pursuing an employed or self-employed activity in several EU Member States, EEA or Switzerland.

Workshops with payers

In 2020, at the initiative of the Social Insurance Institution, online workshops were held with representatives of affiliated payers. The subject of the meeting was to test the application creator for A1 certificates in practice. This is an important meeting because the payers' tests were attended by people who fill and submit hundreds of A1 applications to ZUS for employees posted to work in the EU.

The test participants agreed that the application is very friendly and facilitates the preparation of the application. The function of automatically completing the data of the employee for whom the application was to be issued turned out to be very helpful. Payers positively assessed the idea of a decision tree behind the creator. Thanks to subsequent clicks, you can efficiently complete the application that is appropriate in a given case, i.e. according to the legal basis of posting.

The creators of applications for the A1 certificate posted on the PUE met with a very positive reception from employers.

One of the problems related to the coordination of activities of entities dealing with the issue of posting of workers (not only institutional) is insufficient cooperation of public institutions with social partners (employers' organizations and trade unions). The following is an example of supporting such cooperation, using existing cooperation networks within the EU.

The MoveS network of experts supports the exchange of information at the institutional level and cooperation with social partners

MoveS² is a network of independent experts in the field of EU internal mobility. MoveS is funded by the European Commission. It covers the 27 EU countries, as well as Iceland, Liechtenstein, Norway and Switzerland.

The network provides the Commission with legal expertise in the areas of free movement of workers and social security coordination through thematic legal reports and ad hoc analytical support.

Seminars and information sharing

MoveS also plays a role in increasing experts' and practitioners' knowledge on free movement of workers and social security coordination in Europe by:

- organising **seminars**;
- sharing **information**;
- building **networks** between stakeholders.

Each year, approximately 10 MoveS seminars are organised throughout Europe. The seminars are targeted at representatives of social partners and NGOs, civil servants, judges, lawyers, academics and other stakeholders in the field of free movement of workers and social security coordination.

In Poland, MoveS has been organizing thematic seminars for several years on various problems of posting employees. Such seminars were organized in 2018, 2019 and 2020.

On 27 February 2020, MoveS network, in cooperation with the public Institute of Labour and Social Affairs, organised a seminar in Warsaw.

The topic of the seminar was: *Posting of workers – EU Regulation No. 883/2004, Directive 2018/957 and Directive 2014/67. Case-law of Polish courts concerning free movement of workers and social security coordination*

The seminar focused on the consequences of the proposed changes in the EU Regulation no. 883/2004, on amendments to posting rules under Directive 2018/957 and Directive 2014/67, and on the credibility of the A1 documents in Europe. The prevention of forgery and determining applicable legislation has been looked at. Also, marginal work and marginality criteria in the context of employment and self-employment were discussed, including good practices in cooperation with the competent institutions of other EU Member States in detecting fraud situations.

² Network of independent legal experts on internal mobility in the EU:
<https://ec.europa.eu/social/main.jsp?catId=1098>

The seminar also paid attention to recent case-law in the area of free movement of workers (FMW) and social security coordination (SSC) with reference to Court of Justice of the European Union (CJEU), Polish administrative courts and Polish labour and social insurance courts, in the years 2009-2019. The aim was to determine the key directions and tendencies in the recent case-law in the area of SSC and FMW.

The conference was attended by representatives of the European Commission, Polish representatives of the competent authorities and competent institutions, as well as Polish and EU experts who deal with the above-mentioned subject. During the meeting, the problems and obstacles that arise at the present stage of applying the regulations concerning the free movement of EU citizens and the coordination of social security systems were presented.

The participants of the conference were: experts, representatives of scientific circles, judges, representatives of employers, trade unions, public administration, institutions guaranteeing protection to persons enjoying the right to move within the European Union.

The seminar was moderated by prof. Gertruda Uścińska, president of the Social Insurance Institution. Representatives of the construction sector participated in three subsequent debates in 2018, 2019 and 2020. Noteworthy is the participation of representatives of social partners - employers and trade unions, who were invited to present their positions in discussion panels together with representatives of public institutions, authorities, experts from other countries and representatives of the European Commission. Such a composition of discussion participants allows at the same time to maintain a high, expert level of the debate and at the same time to make the positions of stakeholders public. It should be emphasized that the debate at MoveS seminars is systemic in nature and does not concern ad hoc and intervention issues. Undoubtedly, the cooperation of social partners with ZUS, as part of MoveS seminars as well as EU-Post Lab and ISA projects, contributes to building a partnership for the legal posting of workers and combating fraud in this area.