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# ACCESS TO INFORMATION ON LABOR AND SOCIAL REGULATIONS AND COMPLIANCE IN THE POSTING OF FOREIGN WORKERS IN CONSTRUCTION IN AUSTRIA

Sonila Danaj,<sup>I</sup> Elif Naz Kayran,<sup>II</sup> Eszter Zólyomi<sup>III</sup>

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## ABSTRACT

### **Access to Information on Labor and Social Regulations and Compliance in the Posting of Foreign Workers in Construction in Austria**

In this article, the authors examine information provision, access to rules on posting, and rule compliance by companies from the perspective of information providers and users. Using a mixed-method approach, they first study the role of access to information for rule compliance in the posting of workers in Austria and then discuss company-level factors that may mitigate this relationship. The analysis is based on an original dataset of 36 mapped information channels available in Austria, 10 interviews with information providers, and the results of a new company survey conducted in Austria with 26 respondents from individual construction companies. The assessment of the channels of information, the practices of information providers, and the companies' experiences, challenges, and needs provides a nuanced understanding of company behavior regarding rule compliance in the posting of workers. The findings reveal a potentially important link between the access to and use of information on the rules about the posting of workers as a relevant factor in rule compliance, which is recognized by both the supply side and the demand side.

**KEYWORDS:** posting of workers, construction companies, rule compliance, access to information, Austria

## IZVLEČEK

### **Dostop do informacij o delovnih in socialnih predpisih ter njihovem spoštovanju pri napotitvah tujih delavcev v gradbeništvu v Avstriji**

Avtorice v prispevku obravnavajo zagotavljanje informacij, dostop do pravil o objavi ter spoštovanje pravil s strani podjetij z vidika ponudnikov in uporabnikov informacij. Z mešano metodo najprej preučijo povezavo med dostopom do informacij ter spoštovanjem pravil glede napotitev delavcev v Avstriji in nato analizirajo dejavnike na ravni podjetja, ki bi lahko zmanjšali to povezavo. Njihova analiza temelji na izvirnem naboru podatkov iz 36 identificiranih informacijskih kanalov, ki so na voljo v Avstriji, 10 intervjujev s ponudniki informacij ter rezultatov

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nove anketne raziskave, izvedene v Avstriji s 26 anketiranci iz posameznih gradbenih podjetij. Ocena informacijskih kanalov, praks ponudnikov informacij ter izkušenj, izzivov in potreb podjetij omogoča podrobnejše razumevanje ravnanja podjetij na področju upoštevanja pravil pri napotitvah delavcev. Ugotovitve razkrivajo potencialno pomembno povezavo med dostopom do informacij o pravilih glede napotitev delavcev in njihovo uporabo ter upoštevanjem pravil, ki jo priznavata tako stran povpraševanja kot stran ponudbe.

**KLJUČNE BESEDE:** napotitve delavcev, gradbena podjetja, spoštovanje predpisov, dostop do informacij, Avstrija

## INTRODUCTION

The posting of workers within Europe has become one of the increasingly prevalent forms of cross-border labor. Posting is regulated mainly through Directive (EU) 2018/957 of the European Parliament and of the Council of 28 June 2018, amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services (OJ L 173, 9.7.2018, p. 16–24), 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) No 1024/2012 on administrative cooperation through the Internal Market Information System (“the IMI Regulation”) (OJ L 159, 28.5.2014, p. 11–31), and Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ L 166, 30.4.2004, p. 1–123). Posting occurs when a company sends their employees to another (EU) country to provide a service for a definite period, during which the person remains under the social security system of the sending country. Companies in receiving countries, such as Austria, benefit significantly from the facilitated way of filling critical labor shortages in sectors such as transportation and construction. However, research has shown that companies engaged in posting activity have higher rates of non-compliance with labor standards and social protection than local companies (Arnholtz, 2021; Berntsen & Lillie, 2015; De Wispelaere et al., 2022). This increases the threats of wage and social dumping, irregular posting, the deterioration of working conditions, and the violation of collective agreements and other social dialogue instruments (Arnholtz & Lillie, 2020; Cremers, 2011; 2014).

The transnational nature of posting and the interplay of posting rules with other related regulations at the EU and national levels, such as social security, occupational safety and health, and company law and taxation, have created a complex regulatory framework that can be difficult to navigate by companies wanting to engage in posting activity. For posting to be genuine, companies must comply with all relevant regulations. Based on the stipulations of the EU regulatory framework on posting, the main risks relate to the equality of treatment principle, in particular, related to remuneration, including collective bargaining rates, allowances,

accommodation, and other terms and conditions (see Article 3 of the Directive (EU) 2018/957). Another risk relates to the continuation of the social security coverage by the sending Member State during the posting assignment (Article 12 and 13 of the (EC) Regulation 883/2004), which should be attested by the issuance of the portable document A1<sup>1</sup> by the employer before the posting of workers. Non-compliance is also linked to the non-declaration of posting, which would make it irregular in the eyes of the receiving country authorities (Article 9 of the Enforcement Directive 2014/67/EU). These risks have been assessed to derive not only from the criminal intent of rule circumvention and violation but also from the complex regulatory framework generated by the interplay between EU regulations and national systems (ELA, 2023; Houwerzijl & Berntsen, 2020). Therefore, to minimize the abovementioned risks, the Posting of Workers Directive and the Enforcement Directive have linked compliance to the provision of information on the posting regulatory framework to companies engaged in posting (Article 5 of the Enforcement Directive 2014/67/EU and Article 3 of the Directive (EU) 2018/957) as both a preventative and enforcement mechanism.

In this article, we examine information provision, access to information about rules on posting, and compliance from the supply (i.e., information providers) perspective and the demand (i.e., firms) perspective, an otherwise understudied aspect in previous social policy and labor migration studies. Information on the posting of workers is defined as content on rules, rights, obligations, entitlements, procedures, sanctions, redress (complaint and/or appeal), and institutions related to the posting of workers presented in descriptive, instructive, and/or otherwise guiding format. Policy areas that this information might cover include employment relations, labor mobility, migration, company law, temporary agency work, taxation, social security, occupational safety and health, collective bargaining, holiday and severance pay, monitoring and enforcement, subcontracting and liability, and health insurance (Danaj et al., 2022). Compliance, on the other hand, is understood as the application of all relevant rules and regulations on posting. In contrast, non-compliance is understood as the lack or circumvention of applying posting rules and regulations. While the study does not claim a causal relationship between information provision and rule compliance, it brings forward some of the first evidence on the state and characteristics of the information available on posting and the challenges companies face in complying with this complex legal field.

Empirically, we use a mixed-method approach. First, we study the potential role of access to information in rule compliance in the posting of workers to and from Austria and, then, discuss company-level factors that mitigate this relationship. To address the former, we analyze EU regulations on information provision and availability in the posting framework and how rule compliance could arguably be linked to the availability of information on labor and social policy regulations. Next, we use

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1 The Portable Document A1 (PD A1) certifies the social security system that applies to a posted worker and is issued by the sending Member State per posting.

an original dataset that systematically maps the 36 online and offline information channels available in Austria. In this way, we discuss how the provision of information varies between different actors and public vs private channels. Turning to the latter, we analyze 10 interviews with stakeholders on the factors that influence the information provision and uptake from the companies' side. Lastly, we provide our results from a new company survey fielded in Austria with 26 respondents from individual companies on the experiences of accessing information and how that relates to their ability to comply with posting rules from the perspective of both posting companies, i.e., companies that post their workers from Austria, and user companies, i.e., companies in Austria that make use of the services of posting companies.

## **CONCEPTUAL FRAMEWORK: INFORMATION ACCESS AND REGULATORY COMPLIANCE FROM THE PERSPECTIVES OF SUPPLY AND DEMAND**

Extant research on regulatory compliance demonstrated that firms might have multiple, interlinked, and potentially competing motivations concerning compliance or non-compliance behavior (May, 2005; Sutinen & Kuperan, 1999). Some of the most evidenced reasons for compliance are material motivations (to avoid any economic losses), social motivations (to prevent loss of respect by others), and normative motivations, i.e., beliefs that following the law is the legitimate form of action (Nielsen & Parker, 2012). While understanding motivations for compliance or non-compliance is an important research inquiry, in this article, we do not concentrate on the endogenous motivations of firms linked to compliance but instead focus on an exogenous factor, i.e., information availability, and how it relates to compliance behavior and the compliance challenges faced by firms. We theoretically assume and focus on firms who, arguably, do not purposefully choose not to comply with the existing regulatory frameworks. Instead, we examine the views of firms and information providers related to the potential link between information availability and compliance behavior. In this respect, we provide a framework to explore this from the sides of information providers, i.e., the supply side of information, and the firms, i.e., the demand side of information.

In the case of intra-EU posting rules, the regulatory framework of study in this article, access to information has increasingly become a key component and a tool for enforcing compliance on firms. Article 5 of the EU's Enforcement Directive (2014) of the posting rules has placed a significant responsibility on the supply side, i.e., information providers, for compliance. Each EU country is mandated to ensure regulatory compliance through better information availability and dissemination for firms and workers. The Enforcement Directive stipulates that all countries, via their public institutions, must improve access to information on posting regulations free of charge in a user-friendly format and accessible languages. The Enforcement

Directive requires establishing a single website presenting the regulatory framework. The single website should facilitate navigation by including links to various sources of information, thus creating an interconnected domain of information provision in the posting of workers. The public institutions must also provide a national liaison point to ensure that workers and firms in posting have a contact for information on the rules. Importantly, the revised Posting of Workers Directive (EU) 2018/957 has further entangled information provision by public authorities with compliance by stipulating in Article 3 that national authorities need to consider the availability of information by the single national websites when determining the proportionality of sanctions in cases of non-compliance with the regulations (Rocca, 2020).

While the supply side of information provision has been given a great deal of responsibility in enhancing compliance behavior by firms, it remains open how such a link could be understood. Here, we argue that perceptions of information providers should be considered to explore the potential link between information and compliance in posting rules. This is because Directive 2018/957, pushing for a link between potential sanctioning of non-compliance and information availability and quality, relies heavily on the interpretation of such public institutions on how they see their roles and responsibilities. Therefore, it is essential to examine and understand how public authorities of the EU countries involved in incoming and outgoing postings perceive and understand the responsibility for information provision. Moreover, it is unrealistic to consider public authorities solely responsible or even the most active actors in the information provision. For instance, while public authorities might perceive a territorial standpoint to their responsibilities, meaning that they only need to provide information for posting activity taking place in the host country from a receiving perspective, other actors, such as employers' associations, may privilege the interest of posting firms, which have a greater requirement for information from a sending perspective. Jointly, then, there needs to be a systematic account of which types of information are provided, how such providers view their role, and how decisions on what to provide, how, and when they are made should be specifically studied to shed light on understanding the mechanisms linking information and compliance.

Regarding the demand side, i.e., firms as information users, past studies of firm behavior in posting have shown that such companies frequently engage in cost-cutting behavior via non-compliance or by not fully complying with the working and social conditions regulations (Arnholtz & Lillie, 2020; Berntsen & Lillie, 2015; Houwerzjil, 2014). This would suggest that firms may intentionally not comply with the rules due to economic motivations for reducing costs. While this logic may be true for some firms, there are reasons to think that many firms in posting do not have such motivations. For instance, even if we assume a key role in economic motivations, studies already show that rational material interests, such as cost-cutting, can be overridden by social costs and normative considerations (Nielsen & Parker, 2012). Moreover, other economic considerations may offset cost-cutting motivations,

such as sanctions and exclusion from the sector. Likewise, the sheer complexity of determining the applicable rules in each national context, such as correct collective bargaining wages for each occupation in each sector as well as all the relevant wage supplements that apply, is often a challenging task to fully comply (Houwerzijl & Berntsen, 2020), even for some local companies of a country with a stable collective bargaining system like Austria (Glassner & Hofmann, 2019). This means there may indeed be room for better information availability of the regulatory frameworks to improve compliance behavior by firms in posting. While it is true that other factors, such as time and financial resources, may also play a crucial role in compliance behavior, arguably, information availability and its accessibility could also be factors in dealing with the legal complexity of the posting framework.

What is critical, therefore, is that previous studies on the non-compliance of firms engaging in posting activity (e.g., Arnholtz, 2021; Berntsen & Lillie, 2015) have not explicitly examined the issue directly from the perspective of the firms. This means that such findings rely on assumptions about firms' compliance behavior and motivations and cannot tell us much about the challenges related to information access on regulations (or any other challenges) they face when trying to comply. Furthermore, earlier studies are also unable to consider the absence of information (or lack of adequate resources for firms), which may impede certain firms from entering posting activities. In such cases, the desire to fully comply with the regulations could also be a barrier for certain companies to enter the posting activity in the sectors. Notably, studies on compliance have shown that better information on rules is evidenced to lead to greater compliance in other issues (Kim & Kim, 2017; Le Maux & Necker, 2023) while not specific to the behavior of firms. Considering the gap in past studies and the complexities of the regulations, it is plausible that many firms may be unable to fully comply or face significant challenges when trying to do so due to deficiencies in accessing and making sense of the actions needed to be taken. Such a demand-side perspective, focusing on the perspective of companies, has not yet been explored in past work in the field, which we aim to remedy in this article.

## AUSTRIA AS CASE STUDY AND METHODOLOGY

This article follows the case study approach focusing on access to information in the posting of workers in the construction sector in Austria. The country makes for a relevant case study due to its profile in the posting of workers as one of the top five receiving countries for posting in the last ten years (De Wispelaere et al., 2023, Table 7, p. 31). After transport, construction is the leading sector where posting occurs, accounting for an estimated 44.5% of full-time equivalents of workers posted to Austria and an estimated 5.2% of domestic employment in the Austrian construction sector (Geyer et al., 2022). In general, construction is an important sector of the



Austrian economy, accounting for 10.7% of employment and 10.6% of the country's GDP in 2020 (Statistik Austria, 2022, p. 25), thus making the study of compliance and access to information on posting in this sector of particular interest.

Austria is also a country that has enforced a national act against wage and social dumping (Lohn- und Sozialdumping-Bekämpfungsgesetz – LSD-BG) since 2011 (amended in 2017 and 2021), where rule compliance of posting companies to national labor standards, including the application of Austrian wage rates set in the national collective bargaining agreements is closely observed and enforced through national enforcement institutions such as the Financial Police and the Construction Workers' Annual Leave and Severance Pay Fund (BUAK). The monitoring of non-compliance in the posting of workers can be traced through national statistics and the posting information exchanges through the Internal Market Information (IMI) system. For instance, the data from national inspection authorities indicate that underpayment is widespread among posting companies in construction, with the Financial Police suspecting about 10% of inspected posting companies of underpaying their workers; for BUAK, the share is 38% (Geyer et al., 2022). About half (2,146 out of 4,234) of all criminal complaints for underpayment recorded by the authorities between 2011 and 2021 were directed against companies located outside Austria, 20% to local companies, and 30% unknown. Non-notification of posting is also significant, accounting for more than half of all complaints (Geyer et al., 2022). Data retrieved from IMI also indicate suspected non-compliance traced through the requests for information exchange. In 2020, Austria was the country that received only 11 requests from other Member States but has sent the most requests, precisely 2,394, out of which 292 requests to recover a penalty/fine, 862 notifications of a decision regarding an investigation on a posting company, 917 requests to send documents for verification purposes, and 303 information requests (IMI, 2021). The complexity of the posting rules in general and the specifics of the Austrian context make this case study appropriate for observing a potential interplay between access to information on rules and rule compliance from the perspectives of information supply and demand.

The case study is part of a larger research project with a common research protocol covering five EU countries: Austria, Belgium, Italy, Slovakia, and Slovenia (Danaj et al., 2022). The empirical data for Austria were collected through mixed qualitative and quantitative methods. The qualitative component of the study builds on desk research for mapping information channels and stakeholder interviews. The quantitative research component is based on survey data and provides information directly from posting and user companies involved in the posting of workers in the construction sector. The fieldwork was conducted from December 2022 to August 2023.

We assess 36 channels of information identified in the mapping exercise, comprised primarily of national and regional information providers conducted from December 2022 to February 2023 (Danaj et al., 2023a). The main themes assessed were based on the literature and the specifications for access to information

prescribed in the Enforcement Directive (Article 5), including the information provider (type and characteristics of the supplier), availability (format and type of information provided), target audience (posting companies, user companies, incoming or outgoing posting, workers), accessibility and quality (easily accessible format, language availability), and scope and content (whether the information provided addresses the target audience's information needs and concerns, particularly from the perspective of user or posting companies). For the scope and content analysis, we coded eleven key topics, namely work hours, occupational safety and health, wages, social insurance, work permit, additional wage supplements, leave and holiday, company support information, enforcement and sanctions, appeal and redress, and taxation (for more details see Danaj et al., 2023a). Since the mapping was done through desk research, our sample is comprised mainly of channels that can be traced online.

Further, we conducted ten semi-structured interviews between March and April 2023 with representatives from public authorities, social partners, and private consultants involved in providing information about posting and/or user companies in Austria. The interviews aimed to validate the mapping exercise results and generate new empirical data from the perspective of the information suppliers. The informants were asked about the content of their work as information suppliers, how they monitor and enforce information provision, their challenges, and recommendations. While the interviews were conducted with Austrian stakeholders, the selection of interviewees was made with the criterion that data on both posting to and posting from Austria could be collected.

Finally, between March and August 2023, we conducted a pilot web survey targeted toward user and posting companies in the construction sector. The 15-minute-long online survey consisted of three sections: (1) questions about the availability, accessibility, and quality of information when sending a worker to another Member State temporarily or receiving a worker from another Member State in the context of posting; (2) questions about the posting activity in the company; and (3) questions about the company's profile. The survey was distributed through the Chamber of Commerce (*Wirtschaftskammer Österreich – WKO*) and via direct emails to construction companies based in Austria. We received 26 responses from Austrian-based companies, 18 of which were posting companies, and the other 8 were user companies. Given the relatively small sample, our analysis relies on descriptive and summary statistics, and we refrain from over-interpreting the data. While the user company respondents proxy the current state of the information provision with respect to Austria, we note that considering the larger number of respondents coming from posting companies from Austria, our findings from the survey are more limited regarding incoming postings.

## INFORMATION LANDSCAPE IN AUSTRIA AND EXAMINING INFORMATION AND COMPLIANCE FROM THE SUPPLY-SIDE

In this section, we present and discuss our findings from mapping information channels in Austria and the semi-structured interviews with information providers. Our sample of the information channels in Austria comprises 36 sources we have mapped and coded. Within this sample of channels, 41.7% were provided by state actors and 58.3% by non-state actors. Relevant ministries in the field of posting, such as the Ministry of Labour and Economy (Bundesministerium für Arbeit und Wirtschaft), Ministry of Finance (Bundesministerium für Finanzen), Ministry of Social Affairs, Health, Care, and Consumer Protection (Bundesministerium für Soziales, Gesundheit, Pflege und Konsumentenschutz), seem to be the leading actors when it comes to state actors (19.4% of all channels) and private consultancy agencies (27.8%) are on top when it comes to non-state actors supplying information. Likewise, public authorities, other than ministries, where the responsibilities of the actors touch upon the governance of posting, also provide information, such as the Labour Inspectorate, which informs on the legal provisions with links to the websites of the abovementioned ministries. The Austrian Health Insurance Fund (Österreichische Gesundheitskasse – ÖGK), the Construction Workers' Annual Leave and Severance Pay Fund (Bauarbeiter-Urlaubs- und Abfertigungskasse – BUAK), and the Employment Service (Arbeitsmarktservice – AMS), for instance, also provide comprehensive information on the regulations that need to be respected in the case of posting to Austria.

When looking at how such public authorities orient their information provision, we see a prioritization of the rules and regulations on posting to Austria arguably based on the direct obligations placed by the Enforcement Directive on public national authorities in this dimension of posting. This shows that, from the perspective of compliance, the extant landscape of information in the country is focused more on ensuring that such posting regulations are adhered to in Austria by foreign posting companies and user companies. When looking at the available channels beyond the public ones, we also see that most information channels in Austria target companies posting to Austria as expected. For instance, looking at the distribution of the target audience of the mapped channels, about 94% of all mapped channels have information relevant to posting companies, of which about 14% include posting from Austria, about 53% include posting to Austria, and 27.8% have information on both.

This picture of extant information channels aligns with our findings from the interviews with information providers. Respondents from public authorities, such as the ministerial department, BUAK, or the Financial Police, reported that their institutional mandate is to provide information to user and posting companies in the cases of posting to Austria specifically. In terms of mandates, only the respondent from BUAK reported that information on postings from Austria could be provided

if the receiving country has an institution equivalent to BUAKE with which BUAKE has signed a mutual recognition agreement on contribution payments (e.g., SOKA-BAU in Germany). Only the social security institutions provide information to posting companies from Austria because of the regulations for registering posted workers in the social security system in the sending country and the issuing of the portable documents A1 forms which attest to their being part of the sending country system. This demonstrated that except for such clear cases of reciprocal relationships or needs, the interpretation of the mandate of the public information providers remains within the territory of Austrian law and regulations.

The territorial focus of Austrian public information providers is also exemplified in the case of the Austrian single official national website on posting. The Austrian single national posting website, i.e., *Die Entsendeplattform*,<sup>2</sup> is established to implement the EU directives, mandating the creation of a single online resource detailing the regulatory framework, which should be complied with in posting. Our assessment shows that when looking at topics relevant to posting to Austria, the website covers all 11 key topics, which we coded. The website provides not only the texts of the collective agreements but also a concise overview providing details about minimum wage pay rates, specialized skills pay rates, and other allowances according to the specific collective agreement. This is indicative of the providers aiming for better accessibility of the information, which is crucial for companies looking for information and can facilitate better compliance. The relevant ministry staff updates the information on the website and responds to inquiries submitted through the website's contact form, by phone, or by email. Most information on the website is available in German, English, Hungarian, Polish, Czech, and Slovak, and direct inquiries are answered in English and German. The website is also well hyperlinked to other public institutions' websites, the national liaison point, and the social partners and groups representing the interests of workers and employers. However, the single website has no information on regulations and rules for companies posting from Austria, reflecting the perspective of the Austrian public authorities regarding their information provision responsibility to facilitate compliance among posting companies. This choice from the side of information suppliers could arguably be linked to Austria being primarily a receiving country of posted workers and the national authorities paying more attention to compliance with the regulations applicable within the Austrian national borders.

I have to say that we concentrate on the situation that posting companies seated in other Member States or other countries, post workers to Austria .... But we do not deal with questions of our Austrian companies posting workers to other member states or states .... This, of course, is the question of the receiving states that they have to inform about their legal situation. If an Austrian company posts workers to, for

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2 [https://www.entsendeplattform.at/cms/Z04/Z04\\_0/home](https://www.entsendeplattform.at/cms/Z04/Z04_0/home)

example, Italy or Serbia. We do not, of course, we do not know each law of other [EU] member states or states. (public authority informant interviewed on April 17, 2023)

Turning to the means of supplying information, our interviewees from the Austrian public authorities have reported that they predominantly use digital platforms as their primary information channels. They pointed to the single official national website on posting and other institutional webpages to fulfill their responsibility of information provision. In addition to such passive provision of information, public authorities reported receiving direct inquiries regularly. For instance, the Department of Labour Law of the Federal Ministry of Labour and Economy, which is tasked with the role of the posting liaison office as described in the Enforcement Directive, receives about five questions a day, the Financial Police gets one or two inquiries a day, and the Federation of Social Security Institutions receives two to three inquiries a day, overall, about six hundred to seven hundred a year. Such a large volume of direct inquiries reveals that companies rely on the availability and accessibility of information on posting to comply with posting regulations and participate in posting activity.

While the responsibility of the public authorities as information suppliers to increase compliance is clearly laid out in the EU regulatory frameworks, two actors in Austria are highly active in the information provision for companies: the Chamber of Commerce (Wirtschaftskammer Österreich – WKO) and private consultancies. About 16.7% of the information channels we have mapped are provided by the WKO. The national Chamber of Commerce and the regional offices across Austria provide information to companies pertinent to posting to and posting from Austria. Likewise, 27.8 % of the mapped channels in our sample come from private actors, and these consultancies provide information to companies related to the rules to comply with when posting to Austria and when posting from Austria. As demonstrated by the case of WKO, the employers' responsibility and need to get information to comply is being handled mainly by their interest group organization. Specifically, the WKO provides information to their members either in Austria or through their network of over 100 foreign trade centers, which, having the competitive advantage of being established in the receiving countries, can provide relevant information to Austrian companies posting their workers there through country profile publications and support services (WKO information interviewed on April 3, 2023).

Likewise, and in the cases of companies with the resources and willingness to pay for such information, private international companies or those involved in a network of service providers established in different member states specialized in posting have emerged to fill this gap of need for Austrian companies to correctly post workers abroad. Our interviews with the relevant stakeholders also confirm both inferences. The activities of both such actors and their prevalence demonstrate some evidence for the information-seeking behavior and its vital role in engaging in posting activity. In addition to providing information, these consultancies also take

over HR tasks companies must conduct to comply with posting obligations. As one private consultant put it:

A: ... we do only to Austria ... for other postings, we have partners in other countries, which are doing the same that we do [in Austria].

Q: What prompted your company to be involved in this particular specialization?

A: Let's say it was unserved for many years. It was totally unserved. Nobody did it. No law firm, no tax consultant. They all came later. It was unserved. And the consulting need is huge in this area. It is extremely huge, because in the immigration departments, in the HR departments, you do not have the know-how about these issues. Because it is an issue for which the receiving company, the user undertaking, is not responsible. And the posting undertaking does not have Austrian lawyers. So, it is a perfect match for us because we are working only internationally and that is why we specialized in this one 20 years ago, almost. (Interviewed on March 27, 2023)

Finally, all types of information providers we interviewed have noticed a degree of uncertainty among posting companies about the rules and their correct application, which is not a good indicator for ensuring compliance. Despite the multiple and diverse information channels available in Austria, covering many different aspects of regulations (Danaj et al., 2023b), the intersection of posting with other regimes such as minimum wage and collective bargaining wage scales, immigration, social security, taxation, and bureaucratic requirements produce complex individual cases that require comprehensive knowledge to reach compliance. From the perspective of the interviewed information providers, different definitions of what constitutes posting according to labor, social security, and tax regulations (cf. Bottero, 2020) are challenging for companies to apply correctly. Likewise, and linked to such complexities, our interviewees also said that it is difficult for them to find the right balance between presenting information in an accessible manner and providing sufficient or appropriate information to account for the specificities of individual cases. Making the information understandable and digestible was reported by the public authorities, who are constantly working on and trying to improve every round of updates for the single website.

For instance, one area identified as a core challenge for compliance is the interpretation of the collective bargaining agreement (CBA) pay categories and scales and their application for posted workers in Austria. Since the introduction of the Anti-Wage and Social Dumping Law in Austria and later the revised Directive, posted workers should be paid the host country's wages. Nevertheless, Austrian CBAs are reportedly complex. According to one respondent from the ministerial department, they are available only in German and English, with short summaries in the posting platform in the other five languages. Language access is not the only problem, but

understanding which agreement applies to which case and continuously making updated information available for wages and all other relevant aspects is reported as challenging by information providers even when companies fully intend to comply with Austria's regulations.

## **INFORMATION ACCESS FROM THE DEMAND SIDE AND AS A RELEVANT FACTOR FOR COMPLIANCE**

Now, we turn to the question of information access and its use concerning compliance with the posting of workers from the perspective of the companies engaged in posting. We gathered the experiences and insights of 26 companies through a pilot online survey as already described in the Methodology section of the article. The Austrian sample comprised 18 posting companies and 8 user companies based in Austria. Therefore, their responses shed light on both access to information in their country of registration, i.e., Austria, and their experiences with posting abroad. Size-wise, 16 responding companies were small and medium enterprises of 10–249 employees, 10 had less than 10 employees, and one was a large company of more than 250 employees. Twenty-five companies were active in the construction sector, and most had either posted workers or used posted workers in 2022, which means they had recent experience with posting rule enactment. Out of the 22 who reported it, 11 had posted/used posted workers up to five times a year, while the others had more than five times. Germany was by far the most frequent destination for workers posted by the companies from Austria. Other lesser-reported receiving countries include Switzerland, Italy, the Czech Republic, Hungary, and France. User companies indicated eight countries from which they received posted workers. They were mainly neighboring countries of Austria, i.e., the Czech Republic, Germany, Hungary, Slovakia, Slovenia, as well as Croatia, Poland, and Romania. The profile of the responding companies demonstrates that they had substantial experience with posting across diverse EU countries.

The companies in our sample looked for different types of information on posting, the main topics including the issuing of the PD A1 forms (19), wages (16), additional allowances (15), reimbursement for travel and accommodation (13), making a notification in the prior declaration tool of the receiving country (12), health and safety (12), and working conditions (11). Companies tended to seek information on issues they resolved in-house, such as requests for PDs A1, rather than what they outsourced, such as social security contribution payments. However, wage calculation, allowances, and reimbursements for posted workers were of interest to most companies regardless of whether they outsource these tasks, indicating their importance for the business. Responding companies turned mainly to employer associations and public authorities for information on posting, followed by consultancies and clients in the case of posting companies. The single

official national websites for posting were an important channel of information for 19 of the respondents, mostly posting companies. However, most respondents also used more than two information sources suggesting that to get a comprehensive outlook on their posting obligations, companies need to consult with various sources of information.

Despite the availability and use of multiple sources of information as evidenced by all three types of empirical data (i.e., mapped information channels, data from the interviews, and company survey data), close to half of the surveyed companies perceived access to information as a challenge to participating in posting. The share of those who regarded information access a challenge was higher among the posting (9 out of 18) than the user (3 out of 8) companies. Furthermore, there was considerable variation according to company size, with the smallest companies (i.e., those with less than ten employees) being the most likely to perceive access to information as a challenge, most likely due to their limited resources. Companies that posted workers or received posted workers more frequently were likewise less likely to report information access as a barrier, arguably because the more they engaged in posting, the more familiar they became with the rules and obligations.

When asked about their needs regarding posting information, responding companies again indicated wages (11) and allowances (11) in order to correctly post or receive workers, followed by social security payments (10) and working conditions (10). The channels through which companies would prefer to draw information in the future continue to be predominantly the websites of the social partners (20) and public institutions (13), as well as printed materials (11). The main factors that create challenges for them to access information on posting at a very relevant or fairly relevant degree are reportedly the “time and efforts required” (22), “understanding the information provided” (15), and “language barriers” (12), whereas the “cost of retrieving information” and “digital skills” were not considered as relevant. Nonetheless, we noticed that language barriers, digital skills, and costs were more important to companies with less than 50 employees.

Considering the importance of equal remuneration for posted workers, especially since the coming into force of the amended Posting of Workers Directive of 2018, and the high risk of wage and social dumping evidenced in the literature (Cremers, 2011; Berntsen & Lillie, 2015; De Wispelaere et al., 2022), the survey respondents were also asked about the elements that would help companies engaged in posting to better comply with the applicable wage and working conditions for posted workers. Information-related elements were selected as the main elements among the seven options provided. Concretely, most respondents (17) viewed “improved availability and accessibility of information” as a crucial element. Greater clarity on remuneration (16), more guidance for employers in determining required wage and working conditions (15), and “improved clarity and quality of information” (14) were the following most frequently identified elements. “Increased inspections” and “increased penalties,” on the other hand, were considered helpful by very few



respondents. Their responses are not surprising in terms of the companies' preference not to be subject to further inspections and more penalties. However, their answers regarding their experiences, challenges, and needs strengthen the link between rule compliance and access to information on the posting of workers from the companies' perspective.

## DISCUSSION AND CONCLUDING REMARKS

In this article, we examined information provision and access to rules on posting as a potentially relevant factor for compliance from the supply and demand perspectives. This article fills a gap in the literature on posting, bringing forth the perspective of the companies in the overall debates about compliance and social dumping in the posting of workers (Arnholtz, 2021; Arnholtz & Lillie, 2020; Berntsen & Lillie, 2015; Cremers, 2011) as well as in the broader social policy and labor migration literatures. The relevance of access to information in rule compliance in posting has already been embedded in the posting regulations (Article 3 of the Posting of Workers Directive and Article 5 of the Enforcement Directive). This article contributes to the perspective of both information providers and companies. The findings reveal a non-negligible link between access to and use of information on the rules about the posting of workers and rule compliance is recognized by both the supply side and the demand side.

The findings of the mapping exercise show a broad landscape of information sources and channels, including public authorities, social partners and private service providers delivering information and support on the posting of workers. However, a closer look at public authorities' information provision shows that they prioritize the rules and regulations on posting to Austria and, therefore, predominantly target foreign companies providing services in Austria. The territorial focus of Austrian public information providers, in line with Article 5 of the Enforcement Directive, is exemplified in the case of the Austrian single official national website on posting, where there is currently no information for companies posting from Austria. The interviews with representatives of public authorities confirmed that their mandate is national. Therefore, from the compliance perspective, they are focused on ensuring that such posting regulations are adhered to within the Austrian territory. The few exceptions identified refer to BUAK in the case of bilateral agreements with countries where the equivalent institution in the construction industry exists and the social security institutions responsible for issuing the PDs A1. The choice can be explained by the confines of the institutional mandates and the fact that Austria is primarily a receiving country of posted workers; therefore, national authorities pay more attention to rule compliance within the Austrian national borders.

Our research shows that social partners and, in the specific case of companies, employers' organizations and private actors have stepped in to fill the gaps in

information provision from public authorities. The Chamber of Commerce focuses on their members; therefore, they provide information to companies registered in Austria who are engaged in posting either as user companies or companies posting their workers abroad. The findings show that the business model of support services on the posting of workers through private consultancies is also quite established in Austria as elsewhere in the EU (e.g. Arnholtz & Andersen, 2018). These private actors operate within the territory of Austria, thus targeting foreign companies as clients, while they refer Austrian companies to their partners in other countries. Unlike other information providers, these private consultancies provide support with rule compliance by taking over various tasks companies need to implement when posting workers.

This configuration of information supply does respond to companies' demands, albeit not fully. The survey results, while based on a small number of respondents, suggest that construction companies use various sources to retrieve information on posting. However, they still consider access to information a challenge in their posting activity and require further information or support on the key aspects, such as bureaucratic procedures and applying the correct remuneration for posted workers. Likewise, the interviews with the suppliers showed that apart from the ready-to-consume information they provide through their digital and printed channels, they also receive a significant volume of direct inquiries from posting and user companies. This reveals that some companies are uncertain about how to comply with the posting regulatory framework and, therefore, demand further information on posting than is presently available to be able to comply with the rules. It also shows that many companies are interested in applying the rules and, therefore, contact the authorities to ensure they apply them correctly.

The assessment of the channels of information, the practices of information providers, and the companies' experiences, challenges, and needs provides a nuanced understanding of company behavior regarding rule compliance in the posting of workers. It is important to note that the reported challenges in access to information neither relieve companies from their legal obligations nor justify non-compliance and social dumping but, to some extent, confirm the need for providing information and improving the accessibility and intelligibility of information on the posting of workers (Danaj, 2024). In other words, our research indicates the relevance of information provision as an important factor in rule compliance in the posting of workers.

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## POVZETEK

### DOSTOP DO INFORMACIJ O DELOVNIH IN SOCIALNIH PREDPISIH TER NJIHOVEM SPOŠTOVANJU PRI NAPOTITVAH TUJIH DELAVCEV V GRADBENIŠTVU V AVSTRIJI

Sonila Danaj, Elif Naz Kayran, Eszter Zólyomi

Avtorice v prispevku preučujejo zagotavljanje informacij, dostop do informacij o pravilih glede napotitev delavcev ter njihovo upoštevanje s strani ponudbe (npr. ponudnikov informacij) in povpraševanja (npr. podjetij), kar je bil v dosedanjih študijah socialne politike in delovnih migracij premalo raziskan vidik. Čeprav avtorice ne dokazujejo vzročne povezave med zagotavljanjem informacij in spoštovanjem pravil, pa študija prinaša nekaj prvih podatkov o stanju in značilnostih razpoložljivih informacij o napotitvah ter o izzivih, s katerimi se soočajo podjetja pri spoštovanju tega zapletenega pravnega področja.

Avtorice uporabljajo pristop študije primera, pri čemer se osredotočajo na dostop do informacij pri napotitvah delavcev na delo v gradbenem sektorju v Avstriji. Gre za pomembno študijo primera, saj je bila Avstrija v zadnjih desetih letih ena od petih največjih ciljnih držav napotitev. V sektorju gradbeništva je zaposlenih 44,5 % ekvivalentov polnega delovnega časa vseh delavcev, napotenih v Avstrijo, kar predstavlja približno 5,2 % domačega zaposlovanja v avstrijskem gradbenem sektorju, zaradi česar gre za pomemben sektor avstrijskega gospodarstva. S kombinacijo kvantitativne in kvalitativne metodologije najprej preučujejo povezavo med dostopom do informacij ter upoštevanjem pravil pri napotitvah delavcev v Avstrijo, nato pa analizirajo dejavnike na ravni podjetij, ki bi lahko zmanjšali to povezavo. Njihova analiza temelji na izvirnem naboru podatkov iz 36 identificiranih informacijskih kanalov, ki so na voljo v Avstriji, 10 intervjujev s ponudniki informacij ter rezultatov nove anketne raziskave, izvedene v Avstriji s 26 anketiranci iz posameznih gradbenih podjetij (18 podjetij za napotitve delavcev in 8 podjetij uporabnikov delovne sile). Študija primera je bila opravljena v sklopu širšega raziskovalnega projekta s skupnim raziskovalnim protokolom, ki vključuje pet držav EU, in sicer Avstrijo, Belgijo, Italijo, Slovaško in Slovenijo (Preučevanje dostopnosti in uporabnosti informacij pri napotovanju delavcev: INFO-POW).

Ugotovitve raziskave kažejo, da je na voljo veliko virov informacij in kanalov, vključno z javnimi organi, socialnimi partnerji in zasebnimi ponudniki storitev, ki zagotavljajo informacije in podporo pri napotitvah delavcev. Vendar pa podrobnejša

analiza zagotavljanja informacij s strani javnih organov kaže, da slednji dajejo prednost pravilom in predpisom o napotitvah v Avstrijo in so zato usmerjeni predvsem na tuja podjetja, ki opravljajo storitve v Avstriji. Intervjuji s predstavniki javnih organov so potrdili, da imajo pristojnosti na nacionalni ravni, zato so na področju upoštevanja pravil osredotočeni na zagotavljanje spoštovanja tovrstnih predpisov o napotitvah na avstrijskem ozemlju. Avtorice so z raziskavo pokazale, da so vrzeli pri zagotavljanju informacij s strani javnih organov začeli zapolnjevati socialni partnerji, v primeru podjetij pa organizacije delodajalcev ter zasebni akterji. Rezultati raziskave, ki sicer temeljijo na majhnem številu anketirancev, nakazujejo, da gradbena podjetja za pridobivanje informacij o napotitvah uporabljajo različne vire. Še vedno smatrajo, da imajo pri svojih dejavnostih premalo dostopa do informacij glede napotitev, zato potrebujejo dodatne informacije ali podporo glede ključnih vidikov, kot so birokratski postopki in pravilno plačevanje napotenih delavcev. Ugotovitve razkrivajo potencialno pomembno povezavo med dostopom do informacij o pravilih glede napotitev delavcev in njihovo uporabo ter upoštevanjem pravil, ki jo priznavata tako stran povpraševanja kot stran ponudbe.

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**NAPOTITVE DELAVCEV: PROFILI PODJETIJ, DOSTOP DO INFORMACIJ IN SPOŠTOVANJE PRAVIL / POSTING OF WORKERS: COMPANY PROFILES, ACCESS TO INFORMATION, AND RULE COMPLIANCE**

***Sonila Danaj***

Introduction: Posting of Workers – Company Profiles, Access to Information, and Rule Compliance

***Frederic De Wispelaere, Lynn De Smedt***

Unraveling the Profile of Posting Companies: A Case Study for Slovenia

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Access to Information on Labor and Social Regulations and Compliance in the Posting of Foreign Workers in Construction in Austria

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