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## The Administrative Side of Industrial Relations in Selected EU Countries: Case of Posted Workers

REMIGIJUS CIVINSKAS<sup>1</sup>, JAROSLAV DVORAK<sup>2</sup>, and ARVYDAS GUOGIS<sup>3</sup>

<sup>1</sup> Assoc. professor, Vytautas Magnus University, Faculty of Political Sciences and Diplomacy, Department of Public Administration, Kaunas, Lithuania, e-mail: r.civinskas@pmdf.vdu.lt

<sup>2</sup> Assoc. professor, Klaipeda University, Faculty of Social Sciences, Department of Public Administration and Social Geography, Klaipeda, Lithuania, e-mail: Jaroslav.dvorak@ku.lt

<sup>3</sup> Professor, Mykolas Romeris University, Institute of Public Administration, Vilnius, Lithuania, e-mail: arvydasg@mruni.eu

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### ABSTRACT

This article analyses the issue of posting workers and administrative challenges in the Baltic States and Poland. The administrative challenges are explained through administrative cooperation and information sharing/exchange between national labour inspectorates in the selected countries. The data for the analyses collected from the documentary and legal sources. The series of in-depth interviews were made with officials, experts and other interested actors that to collect data about information sharing/exchange and administrative cooperation between labour inspectorate through the Internal Market System (IMI). The results show growing need for personal and informal cooperation for exchange of administrative information in the European Administrative Space. We find that there are four advantages for information exchange through IMI: it is easier to find a responsible and coordinating authority in the Member States; it protects personal data; the information from the system is used for the purposes of legal proof or it is legitimized; and it is easier to find information. However, the strict procedural communication mode may overcome informal interactions by linked authorities or civil servants.

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### INTRODUCTION

In the perspective of policy-making, the European regulatory space is based on the operation of special agencies and informal networked organizations. This institutional architecture has some advantages and disadvantages in terms of regulatory organization. This is evident in the case of the EU posted workers' policy. National public agencies have formal independence in assurance of single market functioning. At the same time, their regulatory effectiveness depends on administrative cooperation on the EU or bilateral level.

One can identify four main administrative challenges for national agencies (or the so-called competent authorities): national agencies (mainly labour inspectorates, but also tax and social security agencies) cannot fulfil their tasks due to their design to operate in one territory. Thus, national agencies need to cooperate by overcoming state jurisdictions; national agencies are faced with new administrative demands (request for information; administration of trans-border processes); formalisation of cooperation by the use of the IMI system (Vifell & Sjögren 2014; Wall, 2016; Hartlapp & Heidbreder, 2017); different modes of information sharing, coordination, or partnership (the IMI system, bilateral partnership, or institutional coordination) (Hartlapp, 2014, Kulmann, 2015; Hartlapp & Heidbreder, 2017).

These challenges arise from single market functioning and the EU regulations. The integration of cross-border services into a single market minimises the capacity of national institutions to monitor and control the market. The research question is focused on how national agencies/labour inspectorates and other institutions (in the Baltic states and Poland) deal with new pressures in the field of posting workers. It will be explained how national administrators participate in shaping the work of the IMI, a European Commission-initiated network with the formal mandate for cooperation and exchange of information. Rather than researching the effectiveness of the IMI for achieving better regulations, the role of communication, institutional arrangements, and network partnership will be analysed.

The main aim of this article is to examine key challenges and opportunities for administration of posting workers in the Baltic states and Poland. The following questions guide the research: a) What is the state of affairs of the IMI system in the Baltic states and Poland?; b) How and to what extent do administrative cooperation and information sharing influence administrative practise in the Baltic states and Poland in the field of posting workers?. These research questions integrate and consolidate the theoretical and practical evidence in the field of administration of posting workers into an explanatory framework that makes possible to explain differences and similarities of labour inspectorate administrative practice in the selected EU states.

Previous research on the administrative information sharing focus on coordination, monitoring, enforcement and partnerships. In contrast, little attention paid on information sharing, exchange and quality between EU member states administrative bodies. The research constructively contribute to empirically grounded evidence on administrative cooperation and information sharing in the selected EU member states. When analysing the present situation in the field of posting workers, classification of documentary source facts, synthesis, logical analysis, and document interpretation have been applied.

The interview method (in the present policy research, both individual and group interviews have been applied) has been used in order to collect the data on the situation analysis, as well as analysing the experiences of partnership and cooperation with external actors. This method helped analysing other data in greater detail and allowed defining the issues of the situation analysis more accurately. In-depth interviews are useful in the sense that they provide individuals' rather than group perspectives of interested actors. It is effective qualitative research method in order to influence people to reveal their opinions, and experience. This can be achieved focusing on respondents' explanations on what they have experienced and what they believe in, as well as questioning them on the relationship and attitudes highlighted about certain events, processes, and beliefs. Primary information and ideas for the analysis were collected using conversations and discussions which involved an international group of experts. A deeper qualitative research was conducted by telephone and e-mail interviews in 2017. In addition, interviews were carried out with experts (labour inspectors working with the IMI or lawyers) and some trade union and NGO representatives. In total, this methodology is based on the data of 11 interviews with individual experts and one focus group.

## 1. EXPLAINING ADMINISTRATIVE COORDINATION – INFORMATION EXCHANGE AND PROCEDURES

The literature on the new modes of information sharing and partnership has focused on coordination (Galetta, Hofmann & Schneider, 2014; Vifell & Sjögren, 2014; Hartlapp & Heidbreder, 2017; Mastenbroek & Martinsen, 2017), monitoring (Levi-Faur, 2011; Benz, Corcaci & Doser, 2016), enforcement and partnerships as specific policy implementation tools at the EU level. These studies analyse the socialisation process that the national agencies undergo when these instruments are introduced. Researchers always discuss the benefits and negative effects of decentralized network models. In some cases, compare them with a more centralized agency lead type model (Boin, Busuioac & Groenleer, 2014; Maggetti, 2014). Other academic research and studies focus on practice of variation in the design of regulatory networks (Blauberger & Rittberger, 2015), institutional arrangements the actors' performance, and effects on coordination and monitoring processes (Kullmann, 2015; Egeberg & Trondal, 2017).

However, very little attention has been given so far to another crucial implication of information sharing and exchange conditions in governance networks, i.e., the effects of informative networks on their members' activities. The governing of internal market is a very specific field, where researchers have emphasised forms informal governance (informal partnerships or information sharing) with the combination of legally based instruments (Wall, 2016; Heidbreder, 2017; Thomann & Sager, 2017). Some legal scholars argue that critical research issue is related to the legal framework for procedures based on inter-jurisdictional information exchange in the EU (Galetta et al., 2014; Wall, 2016). While others focus on the approach of complex administrative change in the perspective of policy implementation development. The argument has been proved by a study on labour inspectorates' roles in the implementation of the EU social policy. M. Hartlapp's (2014) study has revealed insufficient enforcement capacity overall, as well as that important changes have taken place regarding coordination, steering, and the pressure capacity of national labour inspectorates, and also regarding cooperation among them.

From a critical theory perspective, such administrative coordination and monitoring, information sharing systems are the only instruments of political arrangements as rationalities. The researchers (Bartolini, 2011; Vifell & Sjögren, 2014) make an assumption that these kinds of governance instruments produce effects outside their functional goals.

Administrative coordination is legally determinate and provided in a form of legal assistance between responsible institutions. In the case of the IMI system, administrative coordination encompasses some modes of administrative cooperation related to information provision (information exchange or data provision); shared administrative procedures execution (obligation to execute a single administrative decision/act by an institution from different Member States) and networking on a specific institutional structure (working of agencies or groups in formalised policy implementation processes) (Hartlapp & Heidbreder, 2017). National responsible institutions and agencies have to make a strategic choice for administrative cooperation left to their discretion. According to researchers, the decision-making process depends on multiple factors, such as actual policy problems (i.e. relevant to the posting of workers or others), national capacities and formal responsibilities (i.e. the functions of some national labour inspectorates or other agencies are limited). They are also restricted by specific legal regulation, which limits gathering of information and the provision of inspections (Dekker et al. 2010).

The literature on the new modes of horizontal coordination and cooperation in the posting policy implementation is limited. M. Hartlapp and E. Heidbreder (2017) studied how public administration (the usage of the IMI in the case of posting was a research priority) respond to the pressures that they are inevitably confronted with in the single market in case of workers' mobility. They noted that *horizontal administrative cooperation is a relevant additional integration dynamic that buffers unintended effects of market integration on formally independent but increasingly interde-*

*pendent member state executive bodies [...] For politicized matters, in contrast, the route administrative coordination and integration will take still poses multiple puzzles* (Hartlapp & Heidbreder, 2017). The challenge of politicization is evident in the case of posting of workers in the EU and national political arenas. The essential question is whether it is possible and how to overcome the barriers for better cooperation between agencies and administrative institutions. Some academic expectations are related to stepwise development and the institutionalisation of administrative cooperation in the modes of formalisation of procedures (Heidbreder, 2014; Eliantonio, 2016) and the creation of supplementary partnership tools (Wagner & Berntsen, 2016).

To sum up, there are two main forms of coordination in the field of posting policy:

- information exchange (via the IMI system or other communication channels in the case of bilateral communication); and
- administrative procedure (partially the IMI system).

Information exchange is the least pressure for the posting policy better coordination. Still, it is formalised and grounded on some administrative procedures or formal agreements among different institutions. This form is based more on incremental decisions, but there are some organisations with top-down organisation from the EC. One of the main problems related to information exchange via the IMI system is administrative burdens and possible dysfunction from other Member State institutions (Hartlapp & Heidbreder, 2017). Secondly, it seems that administrative cooperation in the form of information exchange can take two forms: a) the usage of the IMI system; b) bilateral cooperation base on agreements.

## **2. POSTING OF WORKERS AND THE MAIN ADMINISTRATIVE CHALLENGES IN THE BALTIC STATES AND POLAND**

The posting of workers as a socio-economic phenomenon has some specific trends and patterns in the Baltic States and Poland. The posting of workers in the EU has been growing steadily. The annual rate of increase is of 9.6% from 2010 to 2014 (over 1.9 million posted workers during this period). In 2015, the absolute numbers of PDs A1<sup>1</sup> issued to persons insured in a Member State or other than the Member State of temporary employment increased by roughly 7%, reaching a total of 2.05 million (Pacolet, De Wispelaere, 2017). The last figures do not exactly correspond (the issued number of PDs A1) to a number of persons involved. The number of individual posted workers is estimated to the amount of roughly 54% of the total number of PDs A1 issued.

It is important to note that there are some gaps or limitations in the statistical data for a comparative analysis. The statistical data do not disclose all persons involved in this form of mobility involved despite the limited nature of posting. The numbers do not mirror the real picture due to the fact that some firms do not apply PDs A1 in case the workers are posted for a short period of time. Also, some workers are posted several times per year. Thus, PDs A1 statistics explain the posting phenomenon rather than the numbers and dynamics of posted workers. Despite this data drawback, it is possible to note some specific patterns of labour migrations in Poland and the Baltic states.

Some scholars argue that posting worker directive (PWD) enabled a new pattern of labour migration after the Eastern European countries joined the EU. This pattern was based on subcontractors in the new EU Member States which facilitate the posting of workers to the Western European building sites, some factories, working in the transport sector, etc. (Hassel et al., 2016; Voss et al.,

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<sup>1</sup> Portable Documents A1 (PD A1). PD A1 is a formal statement on the applicable social security legislation. It means that posted worker is active in two or more Member states and pay social contributions in another Member State. This implies posted worker do not fall under the social security scheme of the Member State of employment.

2016). It necessary to point out that posting as a cross mobility form started to grow in Eastern Europe since 2010 (Cremers, 2013; Voss, 2016).

In the EU, the most of the PDs A1 were issued by Poland (463,174 PDs A1) in 2015. The share of Poland amounts to 23% of the total number of PDs A1 issued in all over Poland. (Table 1). Therefore, it is possible to refer to Poland as one of biggest sending countries in Europe (Table 1). In comparison, Lithuania is the 19<sup>th</sup> EU country per number of workers posted to other Member States. Estonia follows with the 21<sup>st</sup> position and Latvia with the 25<sup>th</sup> one. In relative numbers, Poland has the highest proportion of posted workers compared to other Baltic states.

**Table 1.** Workers posted and received in 2015

	<i>Workers posted to the state</i>	<i>Workers posted from the state</i>
Estonia	2,315	15,363
Latvia	1,431	7,738
Lithuania	2,404	25,254
Poland	17,897	463,174

Source: Pacolet and De Wispelaere, F. (2016). Posting of Workers-Report on A1 Portable Documents Issued in 2015. Network Statistics FMSSFE: European Commission; European Commission. 2016. Country Factsheet - Posted Workers in Estonia (2015); European Commission. 2016. Country Factsheet - Posted Workers in Latvia (2015); European Commission. 2016. Country Factsheet - Posted Workers in Lithuania (2015); European Commission. 2016. Country Factsheet - Posted Workers in Poland (2015).

Some main trends and variations in the Baltic states and Poland in 2012 -2017:

- The highest increase among the sending countries was recorded in Lithuania;
- The highest increase among the receiving countries was recorded in Estonia similar to Western high-wage countries as well as Slovenia;
- Estonia and Latvia became receiving countries with the influx of posted workers mainly from Ukraine as well as from other third countries (Belorussia, Kazakhstan, Russia, etc.). In 2016, almost 1.3 million of Ukrainians received temporary work registrations permits, and 116,000 Ukrainians received longer-term work permits (Brunarska et al., 2016).
- Posted workers represent a noticeable part of the population, particularly in Lithuania and Estonia;
- In Latvia, posted construction sector workers represented over a half of total workers received in 2014; from the sending perspective, construction workers represent over 50% of the posted workers sent from Estonia.
- In the EU, the most of the PDs A1 forms were issued by Poland (463,174 PDs A1) in 2015. The share of Poland amounts to 23% of the total number of PDs A1 issued all over the EU (Table 2). Therefore, it is possible to refer to Poland as one of the biggest sending countries in Europe. In relative numbers, Poland has the highest proportion of posted workers compared to the Baltic states.

The main sectors of employment of workers posted from the Baltic states and Poland are in construction (Estonia - 62.6%; Latvia - 47.2%; Lithuania - 46.9%; and Poland - 36.9%). The high proportion of Polish (19.6%) and Latvian (14.6%) posted workers are employed in the transport sector. Comparatively, the transport sector is of third-rate importance in Lithuania (5.8%) and Estonia (1.1%) (European Commission, 2016a,b,c,d). Estonia had the highest number of posted workers who were employed in the personal service sector (62.5%)

These data indicate that the distribution of posted workers by economic activity had similar patterns, but at the same time there were noticeable differences. The new phenomenon is third-country workers what are coming to the Baltic states through Poland as an incoming Member Sta-

te. Recently, the need has increased for the workforce, and it has been fulfilled by incoming Ukrainian workers with the help of Polish agencies (Olszewski, 2014; Buckley, Huber, 2017). The Ukrainians have been posted by Polish companies to work for Estonia and Lithuania. They are often sent without fulfilling all required legal documents to obtain a formal status. This phenomenon is often named as a “*semi-legal Polish path*” in unofficial discourses. The migration of Ukrainian workers to Poland has been rapidly increasing since 2014 (Buckley, Huber, 2017).

Polish government institutions are much more flexible in giving visas to Ukrainian workers. It is estimated that more than one million visas to Ukrainian citizens were issued in 2016. At the same time, the issuing of work permits has increased several times (Figure 1). The Polish companies and agencies had sent some workers to other countries formally as posted workers. This phenomenon of incoming posted workers employed mostly in the building sector is noticeable not only in the Baltic states (especially in Estonia and Lithuania), but in the Czech Republic as well (Czech News Agency, 2017).

The statistics of incoming countries have corresponded to the tendencies of incoming posted workers from the third countries. For instance, posted workers from Poland make up to 42% of all workforces coming from this country to Lithuania. In the case of Estonia, it makes up to 15.8% (Pacolet & De Wispelaere, 2016). As has been mentioned earlier, A1 data have some serious limitation. Many employers do not fill out A1 forms. Thus, it only indicates that the number of incoming posted workers from the third countries sent from Poland has been increasing. On the other hand, the figures in the Baltic states and Poland clearly indicate that posting occurs on cross border from Lithuania to Latvia or from Poland to Lithuania, even though there are significant numbers of postings which do not follow that pattern. Regardless of these flaws, the statistics of posted workers explain the need for information exchange, cooperation, and controlling and monitoring in terms of posting policy implementation.

### **3. RESULTS OF RESEACH: THE IMI SYSTEM LABOUR INSPECTORATES IN THE BALTIC STATES AND POLAND**

The administrative systems for controlling employment conditions, social protection, etc. have been formed over time and have been influenced by different historical factors, administrative traditions, and degree of centralization, participation of stakeholders, legal settings as well as delegated responsibilities. These national administrative systems are efficient in controlling at the national level, but they can face difficulties, working at the EU posting policy implementation levels.

Academics point out that the EC focused on the effective protection of workers by providing information and by strengthening administrative cooperation for host and home countries, and it is up to the Member States and social partners to act in this field (Cremers, 2013; Voss et al., 2016).

In the Baltic states and Poland, the Labour Inspectorate could be ascribed to the “generalist” model (Euro Posting project, 2011) (Table 2). In comparison, the responsibilities of some Western agencies are limited to labour relationship (“specialisation” model). Another feature is related to the structure of labour inspections. Labour inspectorates of the Baltic states have a similar structure. They also have an authorised access to the IMI system. The inspections of posted workers are performed by inspectors of the territorial divisions of Labour Inspectorates. They make an inspection in case it is necessary by request for information from another Member State. Information exchanges are done via the IMI system as much as possible, but some requests are addressed directly to the Labour Inspection directors. The structure of the Polish National Labour Inspection is a three-level structure which includes Chief Labour inspectorate and two lower administrative levels. The requests by the Member States are handled by the Labour Relations Department. The query is forwarded to the regional level, to labour inspectors to find out circumstances, to carry out an investigation on the company and its employees and obtain answers. A chief lawyer reviews the material and prepares the answer to the requesting Member State.

**Table 2.** The IMI system management and institutional setting in the Baltic States and Poland

	<i>Estonia</i>	<i>Latvia</i>	<i>Lithuania</i>	<i>Poland</i>
“Competent authority” in the area of administrative cooperation – posting of workers	Labour Inspectorate of Estonia. Areas of responsibilities - regulations concerning working conditions, safety, legality of employment and remunerations of posted workers from the EU countries	State Labour Inspectorate. Areas of responsibilities - regulations concerning working conditions, safety, legality of employment and remunerations of posted workers from the EU countries	State Labour Inspectorate. Areas of responsibilities - regulations concerning working conditions, safety, legality of employment and remunerations of posted workers from the EU countries	National Labour Inspection. Areas of responsibilities – regulations concerning health and safety at work and regulations concerning the legality of employment and other remunerated activities.
Communication channels	The IMI system Some requests are addressed directly on the base of agreements, the use of personal contacts (with Finish colleagues, etc.) for communication in some cases.	The IMI system Some requests are addressed directly; the use of personal contacts for communication.	The IMI system Some requests are addressed directly; the use of personal contacts for communication in some cases.	The IMI system Some requests are addressed directly on the base of agreements.
Request and replies provided by the IMI in 2016	In 2016, 12 requests sent and 13 replies received.	In 2016, 2 requests sent and 22 replies received.	In 2016, 8 requests sent and 15 replies received	In 2016, 11 requests sent and 240 replies received.
International partnership practice between the Baltic inspectorates and the Polish counterpart	An agreement between the Estonian Labour Inspectorate and the Polish Labour Inspection on bilateral information exchange. (2017.04.11). Cooperation agreement with Finland (Since 2014), Lithuania and Latvia (Since 2007).	Protocol on the cooperation between the National Labour Inspectorate in Poland and the State Labour Inspection in the Republic of Lithuania was issued on May 25, 2005. On November 13, 2012 both authorities signed an Annex to the Protocol which broadened the existing cooperation with the issues related to legality of employment.	Broad cooperation agreements are signed with labour inspectorates of Poland, Latvia, and Estonia. Intense cooperation with Norwegian authorities.	For many years, the National Labour Inspectorate has cooperated with its Lithuanian counterpart (May 25, 2005; November 13, 2012). Cooperation agreement with Estonia (2017.04.11).

Sources: Interview with EE1; LV1, LT1, PL1; The liaison office on posting in Estonia, [http://www.eurodetachment-travail.eu/synthese/surveiller-controler/LOEstonia\\_ENG.html](http://www.eurodetachment-travail.eu/synthese/surveiller-controler/LOEstonia_ENG.html); Darbinieku nosūtīšana strādāt uz citām ES dalībvalstīm kļūst arvien biežāka.2016.gada sākumā, Published on Apr 27, 2016 [https://www.slideshare.net/Valsts\\_darba\\_inspekcija/postings-in-latvia](https://www.slideshare.net/Valsts_darba_inspekcija/postings-in-latvia); National Labour Inspectorate's activity in 2015, <https://www.pip.gov.pl/en/f/v/168087/Poland%202015%20NLI%20report%20for%20ILO.pdf>; Porozumienie o współpracy bilateralnej i wymianie informacji zawarte we Wrocławiu w dniu 11 kwietnia 2017 roku pomiędzy Państwową Inspekcją Pracy w Rzeczypospolitej Polskiej Inspektoratem Pracy Republiki Estońskiej, <https://www.pip.gov.pl/pl/f/v/172057/Skrot%20porozumienia%20Estonia.pdf>; The Liaison Office in Latvia on Posting is situated at The State Labour Inspectorate, [http://www.eurodetachment-travail.eu/datas/files/EUR/LO\\_Latvia.pdf](http://www.eurodetachment-travail.eu/datas/files/EUR/LO_Latvia.pdf); Supervision and monitoring by State Labour Inspectorate in Lithuania, [http://www.eurodetachment-travail.eu/datas/files/EUR/LO\\_Lithuania.pdf](http://www.eurodetachment-travail.eu/datas/files/EUR/LO_Lithuania.pdf); European Commission statistics [http://ec.europa.eu/internal\\_market/imi-net/statistics/2016/12/index\\_et.htm#t\\_1\\_2](http://ec.europa.eu/internal_market/imi-net/statistics/2016/12/index_et.htm#t_1_2)

The performance of inspection provided by the inspectorates depends on legal frameworks in the Baltic states and Poland. This very important factor determines requests for information in terms of effectiveness. Firstly, the responsibilities of agencies differ in the provision of investigations. Secondly, the labour inspectors could not provide certain information to the IMI request, as

they do not have limited authority for investigation or there are no concrete documents (Interviews with PL1, LT1; Kullmann, 2015). Thus, legal limitations of responsible labour inspectorates could determine the administrative burdens in using the IMI system.

Performance indicators could explain gaps in the usage of the IMI system. EC assessed member states IMI system according 5 indicators: (i) speed in accepting requests (% accepted within 7 days); (ii) speed in answering requests; (iii) requests answered by the date agreed in IMI (%); (iv) timeliness of replies as rated by counterparts; (v) efforts made as rated by counterparts. The results of IMI system assessment in 2016 shows that Poland is lagging behind the Baltic states (Figure 1). The green colour on map represent higher/good performance (calculated by 5 indicators, - speed in accepting requests, speed in answering requests, requests answered by the date agreed in the IMI, timeliness of replies as rated by counterpart, efforts made as rated by counterparts) and yellow colour represents medium performance.

**Figure 1.** Performance of the IMI system according to 5 indicators, 2016



Source: European Commission. 2017. Single Market Scoreboard. Performance per governance tool, Internal Market Information System (Reporting period: 01/2016 - 12/2016). [http://ec.europa.eu/internal\\_market/scoreboard/docs/2017/imi/2017-scoreboard-imi\\_en.pdf](http://ec.europa.eu/internal_market/scoreboard/docs/2017/imi/2017-scoreboard-imi_en.pdf) (accessed October 15, 2017)

In the posting of workers area, Poland had lower performance indicators (answering speed to requests by other Member States) in comparison to the Baltic states. In 2016, responses were issued within 31 working days by the Polish General Labour Inspectorate and Regional Labour Inspectorates. Comparatively, the Lithuanian Labour Inspectorate issued them in 25 days, Latvian - in 20 days, and Estonian - in 17 (European Commission, 2017). Several reasons lay behind this tendency. Firstly, Poland received the largest number of information requests along with Romania and Portugal. Secondly, the legal limitation and organisational factors play an important role.



#### 4. ADMINISTRATIVE COOPERATION AND INFORMATION SHARING IN THE BALTIC STATES AND POLAND

When Poland and the Baltic states joined the EU, their citizens obtained the right to move freely for temporary work according to the EU law. As has already been mentioned, the Baltic states and Poland have become sending countries with the gradually increasing mobility of workers during the last decade. The major incoming pattern changed two years ago with the influx of workers from Ukraine and some others countries with work permissions in Poland. This trend became evident in Estonia, Lithuania and in some cases in Latvia. In all three-member states, labour inspectorates make inspections to control working conditions, social security coverages, minimum wages, etc. It is definitely challenging to find a building site or factory for a worker from another Member State. Facing these workers, labour inspectors are confronting constraints due to the lack of information. They also have to deal with the cases of unregistered work. The following responses in interviews reveal the difficulties:

*]... They are mainly the citizens of Ukraine, working in the building sector. They work in small teams mostly for private persons. The numbers of Ukrainian posted workers is constantly growing. This is a big problem in the current situation. Our inspectors examine documents of foreigners and often find that they do not have all the documents that prove their status as employees of that company. Of course, they give inspectors some uncertain documents. But we have many doubts about them. Thus, we make a request using the IMI system to Polish colleagues to prove or disapprove if this worker is employed in a certain company. [...] We have not received any answer with confirmation that these workers are employed legally. [...] The regulation has been tightened on this matter since last May. And bingo.... One inspector has called me last week to inform that one posted worker, a Ukrainian citizen had all the documents and even the A1 form. He said in astonishment to this: it is unbelievable, all the documents are in order. And that is only one case (laughs) (Interview with LT1).*

*Of course, the main problems are still the same. The companies are not bound here. For example, we make surveillance procedures here and we want to check Poland about the countries and about third-country nationals, then we do not get much information and they do not find a company, we do not find workers any more [...] [...] I can't say anything about the Polish colleagues. I know that they have to make the best. [...] The main issue are companies that disappear or don't get answers. It is not up to the labour inspectorates. They do the job well. It is just not the IMI. Sometimes they do not find a company or people anymore. Or a letterbox that the company has registered ... [...] (Interview with EE1).*

These reflections describe not only the new challenges and decisions to overcome them, but also the reactions to a new trend and a pattern of posting. Latvian respondents noted that labour inspectors had only several cases relevant to problems in other Baltic states (Interview with LV1). However, all three respondents reflected the new posting trend administratively challenging for inspections and control activities in terms of data collection and information exchange. They pointed out that this new problem would not affect negatively the enforcement systems in the perspective of capacity to exert pressure. On the other hand, the respondents highlighted that this new trend of posting was raising coordination, information exchange, and cooperation pressures. The Estonian respondent pointed out that they needed better organisational and informal cooperation on individual level, guaranteeing higher performance of inspections and minimising negative effects in terms of "social dumping" (Interview with EE1). Also, the interview analysis indicates that the need for information is becoming essential for enforcement activities. Summing up, cross-border information about posted workers coming from Poland proves insufficient enforcement capacity to withstand pressure. Consequently, old and new means (information sharing, coordination, etc.) have become necessary to allow labour inspectorates and other national agencies to remain functioning in a changing posting environment.

**The demands for cooperation in the posting area.** As has already been highlighted, new demands for better coordination, information exchange, and cooperation to realise enforcement responsibilities led to the development of new forms of administrative cooperation (new agreements between national labour inspectorates specially designed for new posting issues) or the enablement of old forms of cooperation. Academic research has revealed that there is intensive administrative cooperation between national authorities relevant to posting issues. It is based on bilateral agreements for information exchange, coordination, and joint enforcement activities. The Western Member States initiated this cooperation with Eastern European countries (Kullman, 2015). From this perspective, in this respect, bilateral cooperation or regional networking activities could be understood as a new phenomenon.

At the same time, administrative cooperation between labour inspectorates was based on two factors: 1) to provide better enforcement activities relevant to new cross-border movement trends (withstand pressure with cases of letterbox companies, abuse of A1 form, or undeclared work); 2) traditional partnership and institutional cooperation. For instance, the Estonian respondent points out: *We have cooperation with Finland. With Finland, there has been both Ministry and with labour inspectorates contact that we have used all the time. We also have completed an agreement with Poland a few months ago. Poland is the main country from which posted workers are sent to Estonia* (Interview with EE1).

Interestingly, Estonian labour inspectorates base and relate the performance of enforcement activities (or narrowly information exchange) with administrative challenges. Cooperation with Finnish labour inspectorates has started due to Estonian workers' migration (including posted workers) to Finland. An opposite situation was observed with posted workers coming from Poland (Ukrainians with working permissions issued in Poland). This cross-border work movement pattern and relevant problems are the reason for starting cooperation between the Polish and the Estonian Labour inspectorates. In this regard, Lithuanian – Polish cooperation was based on more general and wider list of partnership subjects and was not focused on information exchange related mainly to posting issues. It started in 2005 and was renewed in 2012. The renewal of agreement supposed the regulation of information exchange between inspectorates in regard to posted workers (Article 1) according to PWD directive (Directive 96/71/EC).

The Latvian Labour Inspectorate did not initiate similar agreements with Poland in comparison to other Baltic countries. Possibly, because of this reason, the Latvian respondent observed eventual needs for starting it: *Again, when I was in seminars, these kinds of contacts are promoted in general, but not limited to posting issues. Indeed, these agreements could be used not only in posting, but in broader areas for cooperation between labour inspectorates. [...] Of course, one country cannot have agreements with other 26 Member States. As far as I know, the Estonians have an agreement with Finland, all three Baltic states have some kind of agreements in labour protection field, but still there are some points about posting [...] There has to be a big need for agreements. In general, there is no necessity for this with every country. But if you have some common problems, you can sort them out with the help of this agreement* (Interview with LV1).

It is necessary to emphasise the significance of partnership interactions as well as on their relevance to everyday inspection, control, and other enforcement activities. Another respondent disclosed the cooperation content i.e. information exchange. *From the perspective of the National Labour Inspection, the partnerships with Labour Inspectorates with the Baltic countries is important in the perspective of information exchange for provisions of services and other activities relevant to posted workers. This kind of cooperation helps to provide better enforcement and control activities. For the same reason, it is important to get the explanations about the application of the overriding mandatory provisions (tzw. „przepisów wymuszających swoje zastosowanie”) of the countries, Poland, Latvia, Lithuania, or Estonia, to which a worker is posted. The cooperation agreements between the National Labour Inspection of Poland and the Lithuanian and Estonian Labour Inspection demonstrate the importance of partnership* (Interview with PL1).

The respondents (representatives from the Labour Inspections of the Baltic states) emphasised the existing cooperation agreements between these three countries. They pointed out that it was based on institutional agreements, regular meetings of responsible officers, and participation in a joint project and various activities (Interview with LV1, LT1, EE1). In addition to formal partnership agreements, the Polish National Labour Inspection concluded similar narrow-focused agreements with the agencies of the Netherlands (in 2013) and Luxemburg (in 2010). Other issued agreements were on broader topics. It should be noted that the Baltic states and Poland have collaboration practices on the EU and regional networks (the Baltic Sea Network on Occupational Health and Safety since 1994 and the Committee of Experts on Posting of Workers since 2009). They also participated (as partners or guests) in several projects financed by the EC for posting issues in the Baltic states. (For instance, Posting of Workers: Enhancing Administrative Cooperation and Access to Information, Reference: VP/2014/007)

Summing up it could be noted that cross-border cooperation in information exchange is not new, but it increased during the last several years. The respondents report the growing demand and importance for “formal” (based on agreements between national labour inspectorates) bilateral cooperation to fulfil enforcement responsibilities. Information exchange and coordination are one of the agreed relations modes for cooperation. In principle, it is possible to assign it to the information cooperation mode according to M. Hartlapp and E.G. Heidbreder’s typology. This issue is prioritised on administrative decision agenda. Ultimately, cooperation between sending (Poland) and receiving countries (Estonia, Latvia, Lithuania) is still in its early stages; however, there are good practice examples and some possible developments.

**Informal administrative cooperation in the field of posting.** Researchers have defined and described not only networked (organisational networks on the EU level) or formal bilateral cooperation, but also informal cooperation between responsible civil servants (Hartlapp, Heidbreder, 2017). This mode of cooperation enables information exchange and coordination. Some researchers refer to it as “voluntary negotiations in networks” because of studies on such personal networks on EU implementation level (Maggetti, Gilardi, 2014; Benz et al. 2016). Individual interactions could overcome difficulties in information exchange as empirical research on the struggle against undeclared work across the EU countries has revealed (Williams, Nadin, (2012).

In-depth interviews with the representatives of labour inspectorates from Poland and the Baltic states identified three key issues in regard to personal contacts of individual actors in public administration. Personal introduction has been the first major incentive and condition for personal interaction between the representatives of labour inspectorates (Interview with LV1, LT1, EE1). The respondents pointed to the importance of participation projects and meetings at the EU networking activities. Participation in these activities has been a starting point in their reflections, which enabled personal links and cooperation practises. Secondly, they prioritised this information exchange mode for cooperation. The following arguments have been expressed:

*Nobody here has a joyful point of view to the IMI from the information flow approach. The use of personal contacts is the best way for getting information. It is perfect when you can call somebody or write an email and you know with whom you are communicating [...] we know Norwegians after cooperation projects finished. We can personally write emails, and, consequently, getting information is easier (Interview with LT1). The topic of social security is not the area of the IMI. We have always exchanged information with Finland. [...] If they need information, we ask the Social Security Board and share the information with them. But other countries have not asked the information, only Finland. [...] I have the connection with different authorities. I personally have contacts with the Social Security Agency. I can call or write an email and I do not need to send a request and wait for an answer for 40 days. So, I have links and it takes a few days. But for the bigger countries it is impossible. [...] With Finland, there has been a contact with both, the Ministry and the Labour Inspectorates that we have used all the time. Sometimes we even do not use the IMI. We get contacts by emails (Interview with EE1).*

Interestingly, this personal cooperation mode for information exchange is prioritised by the arguments of effectiveness, efficiency (less time-consuming than other modes), mutual trust, and understanding. The links are formed between labour inspectorates partially in a bottom-up fashion. Indeed, it is evident from the interviews that organisational cooperation has made an impact in developing personal links. The cooperation between labour inspectorates (and in some cases with other agencies of receiving countries) remains mostly informal, less constraining (event comparing bilateral agreements that define some procedures) and intended for solving a specific problem. This administrative cooperation is preferred to using the IMI by respondents with strong arguments, i.e. it is less time-consuming, decreases burden on administration (less formalised), efficient for providing enforcement activities, etc. At the same time, the respondents pointed out that the information provided by the IMI system has an advantage in comparison to less formalised personal interaction in terms of information legitimisation or scope (it can reach all Member States). Essentially, it is possible to see a tendency towards less formalized forms of cooperation over time. The analysis of the interviews proves that civil servants managing information (especially in the Labour Inspectorates of the Baltic states) on posting have steady relations that are often refreshed by daily contacts as well as having special projects and annual meetings (Interview with LV1, LT1, EE1, PL1). Communication has been less intensive on the matter between Polish, Latvian, and Estonian new administrative challenges.

## 5. INFORMATION EXCHANGE VIA THE IMI SYSTEM: BENEFITS AND PROCESS GAPS

Until recently, the functioning of the IMI system was understood as being in its early development stages (this electronic tool is applicable since 2012). Secondly, it is too early to evaluate new practises in regard to new regulations introduced by transposition PWD Enforcement Directive. Nonetheless, labour inspectorates and other state agencies have five-year experiences of using it for checking the employment conditions for workers posted in a country or sharing and requesting information according to other needs. As highlighted in the previous section, working with the IMI system has some downsides due to answering speed to the request by another Member State or the quality of responses (the data or documents are sent).

Still, the qualitative research indicates that there are many benefits related to using this system. The respondents from Poland, Lithuania, Latvia, and Estonia highlighted several aspects: 1) it is easier to find a responsible and coordinating authority in the Member States (Interview with PL1); 2) it protects personal data (Interview with PL2); 3) the information from the system is used for the purposes of legal proof or it is legitimised (Interview with LT1; LV1; EE1); 4) it is easier to find information. The Lithuanian, Estonian, and Polish representatives from labour inspectorates emphasised the need of the system (sent request and received replies) for institutional activities (provided inspections or legal representation in legal civil proceedings). On the contrary, the Latvian responded mentioned that the system is important, but not essential concerning its small-scale usage (a few requests sent or replies received using it). To sum up, the most important benefit of the IMI system seems to be the exchange of information. This can include the experiences or best practices, and the processes with operational character.

The analysis of interviews data indicates more problematic aspects of using the IMI system that have technical, legal, or organisational features. Primarily, all respondents stressed that slow answering to the request is the main difficulty (Interview with LT1; LV1; EE1, PL1). Another problem, which is in a way related to no prompt information, is that the needed information is not accessible due to different restrictions and limitations (i.e. different legal frameworks, limited responsibilities by labour inspectorates and other agencies, etc.). One respondent indicates the following: *First, according the directive 2014/67/UE [...], requests for information should be justified. Our experience indicates that this condition is not always fulfilled. [...] Such request absorbs our institution resources. The second thing, it happens that some questions in request do not need*

*replies. They are very simple. On the contrary, the “essential” questions (for example) are in the conclusion, as a formal part of the message. The response to such replies takes extra time from civil servants of Poland National Labour Inspectorate. In addition, there have been cases in the same request when contradictory questions were given. [...] The IMI system usage has a relatively short period for reply (the period is defined by 25 working days). It is difficult to keep a reply to request during this time limit in case the requests have many questions (Interview with PL1).*

This interview has revealed that information exchange by using the IMI could have some administrative burden. On the one hand, it has well-defined forms, standards, and procedural rules for information exchange, but, on the other hand, there are many disadvantages in practice. Several problems are demonstrated by this interview. Firstly, even strong formalisation and strict procedural rules in e. forms could not standardise and delimit informative content of the request and responses. It leaves it on the discretion of a civil servant who provides information or fulfils procedures. It seems that there are some indications about faulty applications of procedures. Secondly, labour inspectorates and other public agencies have faced pressure due to keeping on standards and procedures. The respondent reflected the analytically structured responses and to what extent the different responses are applied. It seems that the administration of information has some constraining dissent. Another problem is the administrative burden that some public agencies are facing. Organisational and time resource deficit is another issue. The open question is if the IMI systems lacks regulatory policy developments.

The administrative challenges (administrative burden, capacity loss, gaps in procedural rules, etc.) could be determined by the cases. Poland National Labour Inspectorate received 240 requests in 2016 (only 11 were sent) and 189 in 2017 (01.01.2017 - 19.07.2017) (Interview with PL1). It is also necessary to take in account that Poland is the so-called biggest sending country in the posting area (463,174 PDs A1 were issued in 2015). This country faces challenges with huge numbers of work permissions issued for third-country nationals who are posted to the neighbouring countries under the formal status of posted workers. Thus, these historical patterns and new tendencies explain administrative impacts on the enforcement activities (e.g. on street level services) as well as on information administration via the IMI. Of course, the other Baltic countries do not have such negative externalities related to the IMI. For instance, the Latvian State Labour inspectorate received 22 requests via the IMI (Interview with LV1). Thus, the country size variable and organisational capacities may play an important role.

One responded explained how procedural rules for information exchange are solved: *The preparation of questions is a problem. If we know the facts for sure, our practice has been, to use a lot of free text.<sup>2</sup> It takes much time to find the right question from the structure there. For example, with Finland, we use much free text. We know what question we need; therefore, we use much text in English. And we get the right answers in the free text module. If we find the right questions, it might suit for a concrete case exactly. Thus, we still use much free text (Interview with EE1).*

The structuring of request questions and answering to them is constraining and requires analytical abilities even though at the first sight the problems seem to be very technical. The problems are solved on day-to-day practice by requesting/providing information or fulfilling procedures. The interview indicates that time for the individual and informal cooperation is another important factor. However, it could also be a limited instrument for overcoming problems. In the previous section, it was explained that Estonia and Lithuania are facing a new trend of incoming posted workers from Poland. The Interviews indicate that this new phenomenon slightly changed the attitudes of the respondents. This was a slightly unintended effect conditioned by administrative challenges.

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<sup>2</sup> In the IMI system, creating any request is to indicate the motivation or justification for the request. This may take the form of a free text field or a list of pre-defined motivations, or even both, depending on the form at hand. Asking the sender to provide a motivation for sending a request helps ensure that it is being sent within the relevant legal framework. (Posting of Workers User Guide for Requests for Information & Sending documents, [http://ec.europa.eu/internal\\_market/imi-net/\\_docs/library/pow-user-guide-draft\\_en.pdf](http://ec.europa.eu/internal_market/imi-net/_docs/library/pow-user-guide-draft_en.pdf))

The respondents noted that the information provided via the IMI systems may reduce costs in case the need of lawful information (for instance, the courts accept documents or answers from the IMI as lawful) arises (Interview with EE1, LT1). They also speculated (there is no current practice) concerning the cross-border enforcement of imposed financial administrative penalties and/or fines which could be sent via the IMI.

In general, all respondents from the Baltic states and Poland emphasized the problem related to the translations of information in requests. This problem was reflected in regard to additional resources needed for translation of received requests or answers to them. *For the Estonian part, the main problems are translation. When it's English or some other common language. Then the translation is OK. But if we talk about the Lithuanian or Latvian language, then the translation is very bad. So, translation is always a key issue for us. We always use English for IMI communication so that it would be clear for everybody. But if our Latvian colleagues are making a request in Latvian, we do not understand. We need to use the google translator and then the translation is very bad. Thus, for us translation is a very special issue. Therefore, we think that all countries could use English for translation [...] Especially, if we talk about free text parts. Then translation is needed and quite accurate...* [(Interview with EE1).

In the interview, the respondent further underlined that problem, which was also related to the quality of the English language or translated documents sent via the IMI: *The problems are related with inaccurate translations [...] (provides example with mistranslation) ...] It means the translation was erroneous. From this point, it is necessary to eliminate relevant system imperfections for informing the receiver better* (Interview with PL1).

Inaccuracy of translations is a problem discussed by academics and experts without finding a solution. Wall (2016) suggested to use pre-translated question/answer sets in connection with the European Commission Machine Translation (ECMT) tool. However, it still would be difficult to overcome deficiencies with pre-translated questions and answers. Experts also recommend for the IMI users to write as clearly as possible with short sentences and to use a language understood by the contacted person or English (even it is possible to use several languages in the IMI). This could be possible, but it requires cooperation by labour inspectorates or other agencies, using other modes. There is another option, i.e. to use official translations. The interviewers reflected on this option as sometimes used in their practice when it corresponded to their case and needs (this is done mainly for legal purposes). Nevertheless, they also clearly pointed out the practical problems related to difficulty finding translators, time-consuming process, and additional costs for labour inspection (Interview with LV1, LT1).

## CONCLUSIONS

Firstly, it is important to emphasize that horizontal cooperation between the Baltic states and Poland in the posting area has been used in response to pressures of the new posting pattern (the Ukrainians with work permissions in Poland are sent to work mainly in the building sector in Lithuania and Estonia. The qualitative research has revealed that the administrative cooperation between labour inspectorates was based on two features: 1) to provide better enforcement activities relevant to new cross-border movement trends (withstand pressure with cases of letterbox companies, abuse of A1 form, or undeclared work). For instance, the bilateral cooperation between Poland and Estonia determined a new trend of posting; 2) traditional partnership and institutional cooperation. In this regard, Lithuanian–Polish cooperation was based on a more general and wider list partnership subjects and was not focused on information exchange related mainly to posting issues. It was started in 2005 and renewed in 2012. The renewal of the agreement supposed the regulation of information exchange among the inspectorates in regard to posted workers.

The qualitative research has revealed the growing demand and importance for “formal” (based on agreements between national labour inspectorates) *bilateral cooperation* to fulfil enforcement

responsibilities. The information exchange and coordination are one of the agreed relations mode for cooperation. In principle, it is possible assign it to the information cooperation mode according to M. Hartlapp and E.G. Heidbreder's typology.

In-depth interviews with the representatives of labour inspectorates of Poland and the Baltic states identified the importance of *personal and informal cooperation mode for exchange of information*. It was prioritized by the arguments of effectiveness, efficiency (less time consuming compared to other modes), mutual trust, and understanding. The links are formed between labour inspectorates partially in a bottom-up fashion. The cooperation between labour inspectorates (and in some cases with other agencies of receiving countries) remains mostly informal, less constraining (even comparing bilateral agreements which define some procedures), and intended for specific problem solving.

Information exchange via the IMI (procedural information exchange mode) is important for the enforcement institutions in the Baltic states and Poland. Still, qualitative research has indicated that there have been many benefits related to the usage of the system. The respondents from Poland, Lithuania, Latvia, and Estonia have highlighted several aspects: 1) it is easier to find a responsible and coordinating authority in the Member States; 2) it protects personal data; 3) the information from the system is used for the purposes of legal proof or it is legitimized; and 4) it is easier to find information. The analysis has revealed that there have been problems related to the quality of the English language or the translation of documents sent via the IMI. The Polish respondent reflected the issues in regard to negative externalities. Administrative cooperation modes (mode on information exchange, procedural, and organizational) practice between the Baltic states and Poland complement each other. The exchange of information could be faulty or rise administrative burdens via the IMI system. Nevertheless, the limitations and the procedural communication mode may overcome informal interactions by linked authorities or civil servants or formally keeping obligations to share information by cross-borders institutions. This is evident in case of cooperation between the Polish-Lithuanian and Estonian-Polish labour inspectorates. It is also possible to find partially formalised (based on cooperative agreement, but also on bottom-up type practices) administrative network in the Baltic states, which joins enforcement institutions, working with posting issues.

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