

Control, monitoring and administrative cooperation in Romania

Simona NEACȘU, Labour Inspector

Daniela Mircea, Labour Inspector

Tel: 004021 302 70 54,

Email: simona.neacsu@inspectiamuncii.ro

daniela.mircea@inspectiamuncii.ro

Labour Inspection website:

<http://www.inspectmun.ro/site/>

1. Knowledge of posting situations

Romanian Labour Inspection is an institution subordinated to the Ministry of Labour, Family, Social Protection and Elderly having following responsibilities regarding posting of workers:

- Controlling the posting situations in terms of labour relations and occupational health and safety (workers posted to and from Romania);
- Receiving written communications from employers - service providers - from other European Union (EU) member states (MS) regarding the posting of workers to Romania;
- Liaison office - exchange of information with the competent authorities concerning posting of workers;
- Managing general register of the employees in electronic format;
- Employer level collective agreements registration and conciliation of the collective labour conflicts.

In Romania, companies established in another MS of the EU or the European Economic Area (EEA), which, in the framework of provision of transnational services, intend to post employees on the Romanian territory are required to submit a written communication to the Territorial Labour Inspectorate (TLI) in the district where the activity will be performed. This communication must be written in Romanian and be sent at least 5 days prior to the start of the activity of the employees posted in the territory of Romania, no later than the first working day.

Companies must also notify the TLI of any changes in information concerning the posting situation within five days of this change occurred.

A copy of the communication is submitted to the beneficiary of the services, on the same date it was submitted to the TLI.

If the enterprise posts an employee citizen of a third country, who is not national of a MS of the EU or the EEA, it must supply a declaration stating that the respective employee fulfils the legal conditions of employment in the MS where the enterprise is established.

The declaration must be submitted in the Romanian language to the TLI under whose jurisdiction the working activity will be performed, at least 5 days prior to the start of the activity of the posted employee.

According to the Government Decision no. 104 from 31 January 2007, the legal representative in Romania of a enterprise established in a MS of the EU or the EEA, which, within the framework of provision of transnational services, posts employees on Romanian territory, is obliged to possess documents necessary to perform inspection of labour conditions and submit such documents to labour inspectors, upon their request, whenever deemed necessary.

Such documents refer to:

- a) Duration of working time and duration of rest periods;
- b) Duration of yearly paid vacations;
- c) Wage, including compensation or payment of overtime work;
- d) Conditions for the provision of employees, especially by temporary work agencies;
- e) Labour health and safety;
- f) Protection measures applicable to labour conditions for pregnant women or for those who gave birth recently, as well as for children and young people;
- g) Equality of treatment among men and women, as well as other non-discriminatory stipulations.

The legal representative in Romania of the enterprise is required to keep the documents necessary to carry out the control of the compliance with the working conditions and make them available to the labour inspectors, upon request and whenever needed.

The companies that post workers in Romania in the framework of the transnational provision of services and do not have a legal representative in Romania are required to appoint one of the posted workers as contact person with the competent enforcement authorities.

Labour Inspection does not have information on the number of E101/A1 certificates, because another public institution provides them (National House of Public Pensions).

2. Exchange of information with other Member States

The **Labour Inspection** is the liaison office, which ensures an exchange of information with competent authorities in EU or EEA member countries.

Simona NEACȘU, Labour inspector

Daniela Mircea, Labour inspector

Tel.: 004021 302 70 54

Email: simona.neacsu@inspectiamuncii.ro

IMI pilot project

The Romanian Labour Inspection was named IMI Delegated Coordinator - posting of workers module.

For this mission, the institution is in charge of keeping watch on the general operation and proper functioning of IMI (posting of workers module) at the Romanian national level, including the identification, registration and training of competent authorities on the tool.

In Romania, according to the article 12 of the Law no 344/2006 on the posting of employees in the framework of the transnational provision of services, Labour Inspection is the public authority functioning as liaison office, which accomplishes the information exchange with competent bodies in MS of the EU or of the EEA.

Romanian Liaison Office is organised only at the central level of the Labour Inspection.

Romanian Labour Inspection is the only authority in the IMI, which ensures the administrative cooperation regarding the posting of workers.

Labour Inspection has designated five labour inspectors (civil servants) to be users of the internal market information system (IMI) and the head of the Labour Relations Control Service.

The designated users receive requests for information through IMI at the central level.

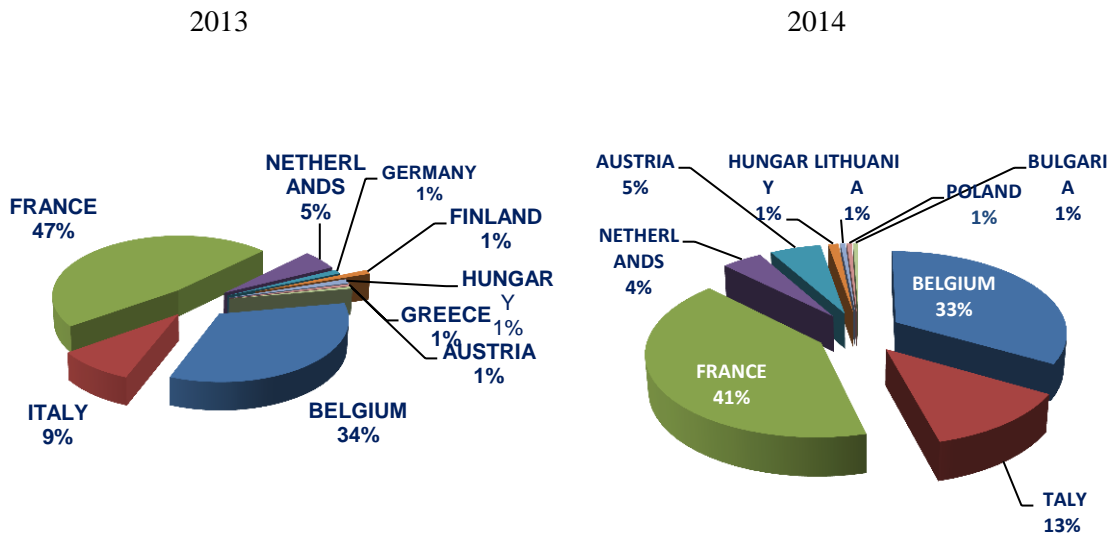
They transmit the requests to the Territorial Labour Inspectorates (TLI - organised in every county and the capital - *Bucharest*) for the purpose to obtain the information that has been requested in order to provide an answer to the requesting authority.

When obtains the information, the TLI send it to IMI users, who reply to the requesting authority through IMI system.

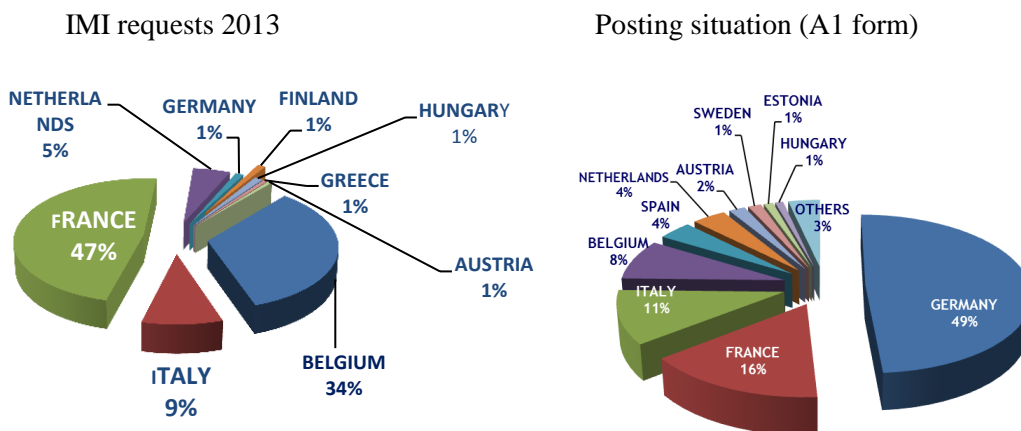
Within the framework of administrative cooperation, the Labour Inspection ~~respond~~ reply to motivated requests for information from institutions in the different MS on employee posting carried out within the context of providing transnational services, including in cases of abuse or of transnational activities which are thought to be illegal.

As a liaison office, Labour Inspection has received the following numbers of requests for information via IMI: year 2013 = 175 requests, year 2014 = 183 requests.

IMI requests received by Romanian Labour Inspection (2013 versus 2014):



IMI requests (to Romania) versus posting situation (from Romania) 2013

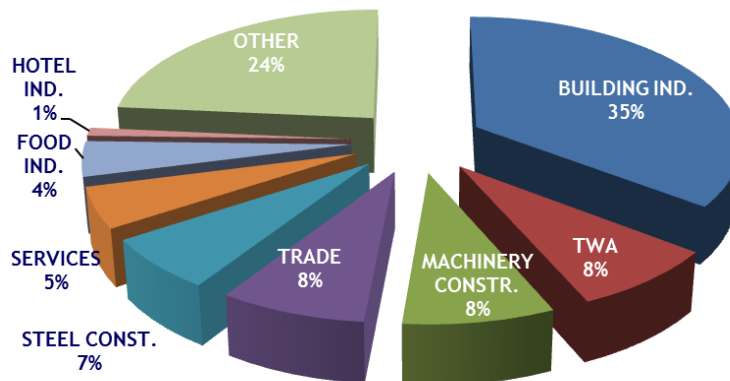


Data on the number of posted workers is based on the only relevant and accessible information regarding *portable documents A1* issued by the *National House of Public Pensions*.

The comparison shows that the number of posted workers in a MS does not influence the number of requests from the authorities of that State in relation to other MS.

Requests for information concerned Romanian enterprises, which had posted Romanian workers in the EU for different activities.

Posting situations (from Romania) 2013 (employer activity)



In 2013, Labour Inspection sent 13 requests via the IMI system to Hungary (2), Germany (2), France (2), Austria (1), Lithuania (1), Spain (1), Bulgaria (1), Portugal (1), Netherlands (1) and Sweden (1).

In 2014, Labour Inspection sent 15 requests via the IMI system to Hungary (4), France (2), Germany (2), Austria (2), Belgium (1), Poland (1), Netherlands (1), Slovakia (1) and Italy (1).

Most of the questions formulated through IMI concerned individual work contracts for posted workers, the payment of a minimum wage, the payment of the posting allowance, the duration of working hours, rest periods, the payment of overtime and the payment of social services.

The most common questions by public authority concern date of hiring, date of posting, function upon hiring and function for which the employee was posted if they are different, the amount of posting compensation and the existence of the A1 form.

Questions also refers to the enterprise's situation at the time of inspection (active, insolvent? – if yes, since when is the enterprise insolvent?), data on the identity and address of the enterprise's administrator.

The link between the liaison office and the bodies in charge of control

The Labour Inspection includes 42 *Territorial Labour Inspectorates* (TLI) in charge of verifying and controlling companies that post Romanian workers in the EU or receive EU employees posted in Romania. <http://www.inspectmun.ro/site/Inspectorate/inspectorate.html>

3. Collaboration at the national level

TLI collaborates with all other government institutions. To do this, ~~it has drawn up~~ cooperation protocols were signed aiming to carry out joint inspection actions with Tax Antifraud Inspection, Inspectorate General of Romanian Gendarmerie and the Inspectorate General of Romanian Civil Police.

Coordination is implemented through information exchange and regular meetings. TLI has also drawn up protocols with the social partners in the area of labour relations, without, however, specifically aiming at worker posting.