

ISA

Final Report

March 2021



ISA consortium



Project coordinator (Italy)

www.cnce.it



КАМАРА НА СТРОИТЕЛИТЕ В БЪЛГАРИЯ
BULGARIAN CONSTRUCTION CHAMBER

(Bulgaria)

<https://ksb.bg/>



Association Européenne des Institutions Paritaires
European Association of Paritarian Institutions

(Belgium)

<https://aeip.net/>



(France)

<http://www.irshare.eu/en/>



Fondazione
Giacomo Brodolini



(Italy)

www.fondazionebrodolini.it

(Poland)

<http://zzbudowlani.pl/>



(Portugal)

<https://www.iscte-iul.pt/>



MINISTERUL MUNCII
ȘI PROTECȚIEI SOCIALE

(Romania)

<http://mmuncii.ro/>



(Spain)

<https://notus-asr.org/>

recerca social aplicada
investigación social aplicada
applied social research
recherche sociale appliquée



Associate organisation (Portugal)

<https://www.act.gov.pt>

Authorship and acknowledgements

The ISA Final report was edited by: Iudicone, F., Zheleva, M., Antova, D., Turlan, F., Baron, B. M., Virgilio, G., Kus, J., Veloso, L., Marques, J., Sales Oliveira, C., Tache, C., and Frías, J.

Contributors of the individual chapters are as follows:

Introduction and conclusions - Feliciano Iudicone (FGB)
Country level plan: Bulgaria - Maria Zheleva, Djani Antova (BCC)
Country level plan: France - Frederic Turlan (IR Share)
Country level plan: Italy - Feliciano Iudicone (FGB), Bianca Maria Baron, Giacomo Virgilio (CNCE)
Country level plan: Poland - Jakub Kus (ZZ Budowlani)
Country level plan: Portugal - Luísa Veloso, Joana Marques, Catarina Sales Oliveira (ISCTE IUL)
Country level plan: Romania - Cristian Tache (MoLSJ)
Country level plan: Spain - Julia Frías (Notus)

The ISA project team wishes to thank all experts and stakeholders taking part in project's events and contributing to the assessment of cooperation agreements and to the discussion on policy recommendations.

Further information on the project can be found at the web-site: www.isaproject.eu



This report was produced for the ISA project, which received funding under the Call for proposals VP/2018/011 of the DG Employment, Social Affairs and Inclusion of the European Commission. The opinions hereby expressed reflect only the authors' view. The European Commission is not responsible for any use that can be made of the information contained therein.

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Introduction

The ISA – *Information Sharing Agreements* – project is promoted by the Italian Joint National Committee for Buildings Workers' Welfare Funds (Commissione Nazionale Casse Edili – CNCE) and involves as partners Fondazione Giacomo Brodolini (FGB) as scientific coordinator, along with partners from six other EU countries targeted by the action, namely: BCC (Bulgaria), IR Share and UCF (France)¹, ZZ Budowlani (Poland), ISCTE-IUL (Portugal), MoLSJ (Romania) and Notus (Spain). The consortium also includes AEIP as a European-level partner, and a key institutional stakeholder, ACT (Portugal)², as an associate organisation.

ISA addresses transnational cooperation in the field of posting of workers, acknowledging its key role for guaranteeing the proper application and enforcement of EU rules on posting.

Throughout the life span of the project (January 2019 – March 2021), partners implemented a process designed to improve existing practices by: gaining relevant contextual information; selecting and assessing existing agreements for transnational information sharing; discussing early findings with public authorities, social partners, sectoral funds and other stakeholders; and identifying existing gaps and opportunities for improvement. As a result, the project delivered:

- the *Country briefing papers*, providing contextual information for each country covered;
- the *Guidelines* illustrating features of 11 selected agreements and assessing their achievements so as to guide their possible enlargement;
- two online webinars and two online workshops discussing early findings from the project³;
- *Country level plans* assessing administrative cooperation in the field of posting for each country covered by the partnership and enclosed in this Final Report.

As a core task of the project, partners selected 11 agreements, which can be categorised as per the following table.

Table 1: List of agreements analysed in the project's Guidelines

Type of agreement	Name	Geographical scope
Agreements entered into by labour inspectorates	Cross-border cooperation agreement between the Spanish and the Portuguese Labour Inspectorates	ES-PT
	Cross-border cooperation agreement between the Labour inspectorates of Spain and France	ES-FR

¹ IR Share replaced UCF in the consortium starting from December 2020 and has contributed to drafting the present report.

² More information about the partners can be found at this link: <https://www.isaproject.eu/consortium/>.

³ Extracts from the events are available on the CNCE YouTube channel: <https://www.youtube.com/channel/UCKmSXCPloO33IWJI54JTsw>

	Cooperation agreement on Cooperation and mutual exchange of information between GLI EA under the Ministry of Labour and Social Policy of the Republic of Bulgaria and the Labour Inspection Authority of the Kingdom of Norway	BG-NO
	Agreement concerning bilateral cooperation and information exchange between the National Labour Inspectorate in the Republic of Poland and the Work Environment Authority of the Kingdom of Denmark	PL-DK
Agreements promoted by Ministries of Labour	Cross-border administrative cooperation agreement between Bulgaria and France signed by the Ministry of Labour and Social Policies of the Republic of Bulgaria and the Ministry of Labour, Social Affairs, Family and Solidarity of the French Republic	BG-FR
	Administrative Cooperation Agreement between the Ministry of Labour from the French Republic and the Ministry of Labour, Solidarity and Social Security from the Portuguese Republic on the posting of workers and prevention of undeclared work	FR-PT
	Bilateral Agreement between the Authority for Working Conditions of Portugal and the Service for Control of Social Laws and the Service for Control of Well Being at Work, both from the Federal Public Service Employment, Social Work and Consultation of the Kingdom of Belgium	PT-BE
	Cooperation agreements to tackle illegal posting, breaching of legislation in the field of labour relations, working conditions, and health and safety at work signed by Romania with Greece, Hungary, Italy, Portugal and Spain	RO-EL RO-HU RO-IT RO-PT RO-ES
Agreements involving sectoral funds	Transnational bilateral agreements between the Italian CNCE and sectoral funds active in other EU countries	Various countries (Focus on IT-DE)
	Transnational bilateral agreements between the French UCF and sectoral funds active in other EU countries	Various countries (Focus on FR-DE)

	Agreement between the Social Insurance Institution (ZUS) (Poland) and SOKA-BAU (Germany)	PL-DE
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Throughout the report, references are made to the *Guidelines* and the *Country briefing papers*, all available on the web-site www.isaproject.eu. Outputs from the previous *Post-Lab* and *EU Post Lab* projects also provided a basis for the analysis⁴. Indeed, ISA represents the natural prosecution of these previous projects, the former presenting good practices and identifying existing fraud in the areas of posting and undeclared work, and the latter exploring and assessing datasets potentially useful in tackling them.

The report's main chapters are structured as *country-level plans*, exploring current achievements and possible developments of existing cooperation activities studied during the project. In particular, each country-level plan includes:

- **contextual information:** (i.e. information on the possible aspects as relevant: authorities owning or monitoring relevant information, features and position on posting and cross-border information sharing of stakeholders, features of existing initiatives in cross-border information sharing, possible legal provisions concerning cross-border information sharing, relevant flows of posted workers, presence of fraud or of obstacles to free movement);
- **'business case' for joining an existing agreement or entering into a similar agreement:** features of the agreement deemed most relevant, possible benefits of the adoption of the agreement for each stakeholder concerned;
- **obstacles to joining or setting up the agreements and how could they be addressed:** e.g.: lack of data, presence/absence of relevant provisions set by law or collective agreements;
- **drivers for joining or setting up the agreements and how could they be exploited:** e.g. presence of more detailed or reliable information than that shared under the agreement, possibility to cover a broader array of stakeholders, presence of supportive conditions.

A final section closes the report, by comparing findings of the country level plans and from previous project's outputs. Conclusions also provides some general recommendations targeting social partners and policy-makers.

⁴ Reports from EU Post Lab and Post-Lab are accessible in different languages at the following link: www.tinyurl.com/eupostlab

Country-level plan: Bulgaria

Contextual information

The main authorities owning or monitoring relevant information on posted workers in Bulgaria are:

- The National Revenue Agency (NRA);
- The General Labour Inspectorate Executive Agency (GLI EA);
- The Ministry of Labour and Social Policy (MLSP).

The National Revenue Agency is responsible for issuing the A1 forms, managing all the company data related to type of activity and revenue generated in the territory of Bulgaria and abroad, contractual aspects and compliance with the requirements for posting of workers according to the respective directive. The agency manages data including the following: type of activity of the posting company, number of employees, types of employment contracts and applicable labour law, company revenues in Bulgaria and in the host country. Should the companies fail to comply with any of the requirements, the NRA may refuse to issue an A1 form.

The Ministry of Labour and Social Policy has competence over industrial relations and labour policy implementation with the overall goal of improving the quality and safety of work by protecting the employment, welfare and social rights of workers. In the field of international relations, the ministry enters into cooperation agreements in the fields of social security and working conditions.

The General Labour Inspectorate Executive Agency, established under the Ministry of Labour and Social Policy, monitors compliance with the labour and health and safety legislation in Bulgaria. Its activities are based on the principles of publicity and prevention during labour inspections, in cooperation with institutions, social partners and NGOs. In addition, GLI EA provides technical advice and consultancy on all matters related to labour and posting of workers. The agency also maintains the official information portal for posting companies and workers posted to Bulgaria. The portal provides data regarding working conditions, minimum wages, remuneration, labour mobility, collective agreements at sectoral and national level, legal definitions, sanctions, etc. Pursuant to law, all collective agreements, signed for all sectors at national level, must be registered with the GLI EA. Furthermore, the agency provides information regarding minimum wages in the EU member states and processes complaints from citizens employed abroad.

The GLI EA controls and monitors the activities of agencies recruiting for jobs in Bulgaria and abroad and is entitled to conduct inspections, which at times are carried out in collaboration with the Ministry of the Interior, the Employment Agency and other relevant institutions. GLI EA controls the process of posting workers to EU and third countries. In 2019 the agency conducted 730 inspections on posted workers, the highest number of which were in the field of transport and construction. In 2019, the most problematic violations related to posted workers in the building sector in the EU were irregular documentation, unaccrued and unpaid remuneration, and payment of salaries lower than the statutory and/or minimum wages set in the respective foreign country⁵.

⁵ https://www.gli.government.bg/sites/default/files/upload/archive/docs/2020-08/Godisen_doklad_2019.pdf

The social partners in the construction sector are actively involved in initiatives concerning posted workers and reducing irregularities and violence throughout the process, fair work conditions and undeclared work. However, most of these initiatives are EU-funded and do not specifically involve entering into agreements for cross-border information sharing. Until recently, these activities have mainly focused on soft measures, such as information campaigns, awareness raising, research and exchange of best practices. However, in 2020 the Bulgarian Construction Chamber (BCC) launched an initiative to contribute to the improvement of the process of posting workers by exchanging best practices with other countries. In Bulgaria, there are no difficulties during the issuing of A1 forms, as this process is aligned with EU-level legislation. Nevertheless, the key problem relates to gathering information on what is happening during the posting period.

Having researched several relevant monitoring systems, BCC selected the Portuguese labour monitoring and supervision scheme for further study as a model for adjustment to the Bulgarian context. The reasons for this are firstly that Bulgaria and Portugal are among the countries that post most workers within the EU; and secondly that research shows that the practice of the Portuguese institutions regarding the collection of information on Portuguese posted workers is extremely successful in terms of cooperation at both interinstitutional and international level. Therefore, BCC contacted the Portuguese *Autoridade para as Condições do Trabalho* (ACT) to get its insights on the monitoring and supervision scheme as well as on the feedback system used to track the actual process of posting of workers from Portugal. In addition, BCC joined forces with the National Revenue Agency, which is responsible for issuing A1 forms in Bulgaria. The kick-off virtual exchange meeting was organised at the end of 2020, when the three parties expressed their expectations and pinpointed the key problems concerning the posting of workers in Bulgaria and the core areas of potential collaboration. The initiative was also covered by the newspaper *Stroitel*, an online and weekly newspaper for the construction sector⁶.

The next meeting between representatives of BCC, NRA, ACT and other relevant Portuguese institutions is planned for the first half of 2021. Some of the discussion points will be:

- Portuguese institutions engaged in collecting and analysing information on posted workers and companies working on construction projects within the EU, in terms of execution of contracts, deadlines for project implementation, volume of construction works, remuneration received by the posted workers with respect to their expertise and position, quality of the construction works, and the claims brought by the main contractors against their subcontractors;
- type of information being collected by the Portuguese institutions during the posting period;
- legal framework stipulating the process of collecting information on posted workers;
- practices to support and assist Portuguese companies and individuals performing activities abroad in the event of labour disputes, claims, etc.;
- treatment and prevention of cases of unfair competition.

As for paritarian funds, there is currently neither a fund for the construction sector, nor legislative norms in this field. Over the years there have been many discussions between the social partners on the

⁶ [Stroitel, No. 43, page 10](#)

establishment of such a fund to address bad weather and training schemes; however the negotiations have not touched upon any topics related to posted workers.

In terms of cross-border information sharing agreements in the field of posted workers, GLI EA is the institution that is entitled to enter into and implement such arrangements. A significant part of the information sharing on posted workers between the agency and other EU member states takes place through the IMI system⁷. In 2019, most of the requests concerned the legality of the process of posting as well as clarifications regarding actions of employers who are trying to circumvent labour law, including attempted labour exploitation, social dumping, fake posting, etc. During the year, the agency received 222 requests from other member states and sent 16 requests, five of which concerned the application of sanctions. France and Belgium use the system most, but the number of requests from Austria, Germany and the Netherlands is growing. As a result, in 2019 GLI EA made 95 checks, mostly on the following questions: issuance and authenticity of A1 forms, ratio of revenues of the company locally and abroad, and accuracy of payment documents. Most of the requests for information concern the construction, agriculture and transport sectors⁸.

For other types of information, which are not covered by the IMI system, GLI EA has signed agreements with more than 20 countries. These concern cooperation in the exchange of information and law enforcement on occupational safety and health, labour law and undeclared work, as well as the fight against undeclared work and cross-border social fraud. Typical activities include: joint inspections; exchange of information on wages, working conditions, irregularities, cases of undeclared work, work accidents with posted workers, labour law violations; and exchange of relevant documents and informative materials, among other matters. In addition, the signatories share best practices and carry out various training events to build capacity for better international cooperation. These agreements are not exclusively devoted to the construction sector but refer to all industries.

An interesting example of a cross-border information sharing agreement is the one signed by GLI EA with the Labour Inspection Authority of the Kingdom of Norway (LIA). This arrangement not only envisages information sharing on labour law violations, undeclared work and health and safety in companies operating in the territory of both countries, but also involves exchanges of best practices and of inspectors and training to better understand labour law in both countries.

‘Business case’ for joining an existing agreement or entering into a similar agreement

The agreement between GLI EA and LIA covers a broad range of activities and is beneficial for all stakeholders – companies, workers, institutions and social partners. It reduces the administrative burden for companies, raises awareness among workers, and provides opportunities for knowledge sharing, easier cross-border inspections and prevention of fraud. Therefore, the agreement has the potential to be expanded to other countries, as well as to be signed exclusively for the construction sector. The GLI EA statistics shows that the requests through the IMI system concerning the construction sector take the first place, which implies that there is a need to boost information sharing and fraud prevention in this sector.

⁷ IMI is a secure, multilingual online tool that facilitates the exchange of information between public authorities involved in the practical implementation of EU law. See: https://ec.europa.eu/internal_market/imi-net/about/index_en.htm

⁸ https://www.gli.government.bg/sites/default/files/upload/archive/docs/2020-08/Godisen_doklad_2019.pdf

Very useful features of this agreement are the information campaigns and the coordinated joint activities. Expanding these features exclusively in the building sector could be very beneficial for the market as a whole, the employees and the states. Promoting decent work among workers and raising awareness of their rights abroad could have a positive impact on the process of posting, as workers are usually less acquainted with these matters, due to the complexity of the topics and language barriers. If employees are better informed on labour conditions and labour law specifics in the hosting country, they would be empowered by having sufficient knowledge to prevent fraud themselves. Joint inspections, on the other hand, have the potential to reduce the exploitation of workers and the various forms of labour law violation.

Obstacles to joining or setting up agreements and how they could be addressed

One of the main obstacles to joining, implementing and developing existing agreements may be the lack of motivation and will to see closer cooperation between the actors involved – employers' organisations, trade unions and public authorities. The presence or absence of will, in particular political will, is directly related to the availability of financial instruments, which in the case of the existing agreements between the GLI EA and the Norwegian Labour Inspectorate are provided by the Norwegian Financial Mechanism⁹. Lack of funds is one of core hindrances to the implementation, strengthening and development of the existing agreements and deepening cooperation between the involved parties. Political will, however, is directly linked with the current complex, dynamic and unpredictable situation in the EU and the world as a whole, due to the travel restrictions imposed by countries and societies in their fight against the spread of COVID-19. The restrictions that have been imposed make it significantly more difficult for countries to plan long-term strategies, and consequently to implement the desired activities under the existing agreements and to conclude new ones. Travel restrictions do indeed limit the spread of the coronavirus and preserve human health; however, they also have a negative impact on cross-border cooperation in the field of labour mobility, and hinder the conduct of physical meetings between the representatives of the parties involved. The lack of face-to-face contacts, currently replaced by online conferences, to some extent limits the exchange of information and ideas and the establishment of personal contacts, which usually facilitate joint activities as well as cooperation, implementation and building upon the existing agreements.

Some of the core activities of GLI EA under the cooperation agreements with partner institutions are the conduct of joint inspections by labour inspectors from both countries, and the exchange of experience. These are currently on hold as a result of the pandemic measures¹⁰. The personal contacts between the inspectors from Bulgaria, Norway, Germany and France among others, developed during meetings and conferences before the health crisis, are very useful for their daily work, when it comes to posting of workers, exchange of information and interpretation of the applicable legislation, etc. Last but not least, another obstacle to the implementation, development and extension of the existing cooperation agreements may be the personal traits of the stakeholders involved, their motivation to be proactive as well as their competences and knowledge about the national and international legislation¹¹.

⁹ <https://www.eeagrants.bg/>

¹⁰ <https://www.gli.government.bg/bg/node/4842>

¹¹ Source: primary research with representatives of GLI EA.

Drivers for joining or setting up of agreements and how they could be exploited

The drivers for implementing and building upon existing cross-border cooperation agreements between GLI EA and its partner institutions are more or less similar to the potential obstacles – however they have a contrary effect. The political will for efficient cooperation in the field of labour mobility and posting of workers is extremely important, but nevertheless depends on various factors. These are the balance of political powers, their vision regarding Bulgarian policy, particularly in the field of labour and social affairs, as well as the awareness that cross-border cooperation is beneficial for all stakeholders. The political will of the European partners is further dependent on the balance of powers in the broader European context – in the framework of EU policy on labour mobility, which gained higher visibility through episodes such as the Mobility Package, which was not approved by all member states. In this respect, the availability of financial resources is directly dependent on political will within the EU and national governments. Additional funds facilitate the conduct of joint meetings between the stakeholders, the design of various instruments (information brochures, interactive applications, websites with information on the rights and obligations of posting companies and posted employees), the implementation of information campaigns among citizens as well as the development and maintenance of consulting centres, such as the Fair Mobility project¹². The availability of funding has the potential to offset some of the obstacles to more effective cooperation, by increasing the motivation and competences of representatives of the public authorities overseeing all matters related to posted workers. Finally, yet importantly, the control of the spread of COVID-19 and the resumption of joint meetings and conferences is very important for implementing and building upon the existing cooperation agreements between GLI EA and its partner institutions in other member states, as these lead to significant exchange of experience between the inspectors. Face-to-face contact contributes to the full exchange of ideas, proposals and information, but it also builds good relationships, which subsequently become the basis for successful implementation of joint activities and effective tackling of issues in the field of posting of workers¹³.

¹² <https://www.faire-mobilitaet.de/>

¹³ Source: primary research with representatives of GLI EA.

Country level plan: France

Contextual information

The main legislation against fraud on posting of workers was adopted in 2014¹⁴ and has been reinforced several times since then. It seems that the debt crisis was the main incentive to force the public authorities to react to the different forms of fraud that cause loss to the social security scheme and state budget. The exponential development of posting of workers – with ten times more posted workers' declarations in 2013 than in 2003 – and its impact on public opinion also spurred the public authorities to react, which they did with the support of the social partners.

The main institution in charge of monitoring and controlling the posting of workers is the Labour Inspectorate, which has concluded several cooperation agreements with other control bodies across the EU¹⁵, prefiguring cooperation that will be supported by the European Labour Authority (ELA)¹⁶. The Labour Inspectorate works in cooperation with several other control bodies: the bodies in charge of inspection of the collection of social security contributions (Urssaf, MSA), police and gendarmerie, and also tax, customs and competition services and specialised transport inspectors. For instance, in 2017, 70,000 companies were inspected, and out of this total, 35% by means of a joint inspection involving several control bodies¹⁷. The centralised body in charge of coordinating this network of control bodies is the National Anti-Fraud Delegation (*Délégation nationale à la lutte contre la fraude* – DNLF), which was created in 2008¹⁸.

In 2015, to increase its effectiveness, the Labour Inspectorate created the National Monitoring, Support and Control Group (*Groupe national de veille, d'appui et de contrôle* – GNVAC), a specialised service of the General Directorate of Labour (*Direction Générale du Travail* – DGT), and 18 specialised regional units (URACTI), representing a total of 134.5 agents (in Full-time Equivalent Employees) as of 31 December 2018. This recent organisation makes it possible to respond more effectively to complex, networked or large-scale frauds.

The social security bodies (Urssaf, MSA) manage data on social security contributions, which are transmitted by employers together with key information such as the company's sector of activity, its number of employees, remuneration, the collective agreement applied and the level of the pay scale applied.

¹⁴ The Parliament has adopted Law no. 2014-790 of 10 July 2014 to fight against unfair social competition, which is the result of several parliamentary reports that highlight many cases where cross-border posting rules are violated by companies posting workers to French territory. The objective was to transpose immediately into French law part of the Directive 2014/67/EU, which relates to the enforcement of Directive 96/71/EC concerning the posting of workers.

¹⁵ In 2016, a cooperation agreement was signed with Poland. In 2017, an operational implementation agreement was signed with Bulgaria and Portugal. This brings to 12 the number of texts defining the modalities of bilateral cooperation with ten EU member states. A first steering committee meeting was held in 2018 for each agreement and adopted a programme of joint activities. The agreement with Spain was updated on 26 April 2019.

¹⁶ The French government has actively supported the creation of the ELA.

¹⁷ Ministry of Labour (2019), Plan national de lutte contre le travail illégal, Bilan 2016-2018 et priorités 2019-2021, 8 July 2019. See :

https://www.economie.gouv.fr/files/files/directions_services/dnlf/dossier_de_presse_CNLI_8_juillet_2019.pdf

¹⁸ Préfet de la région Normandie (2019), L'organisation de la lutte contre le travail illégal, <https://normandie.direccte.gouv.fr/L-organisation-de-la-lutte-contre-le-travail-illegal>

Since 1 January 2017, the Nominative Social Declaration (*Déclaration sociale nominative* – DSN)¹⁹ has been the only method for transmitting the periodic declarations sent by employers to social protection bodies and for reporting events: illness, employer attestation for the public employment service (*Pôle emploi*), etc. By replacing the majority of social declarations, this single, monthly and dematerialised declaration enables employers to simplify and secure their social obligations and make them more reliable. For employees, it means faster processing of files, with less risk of error. All organisations receive the information concerning them directly.

In terms of posting of workers, any employer established outside France which posts employees to French territory must submit a prior declaration of posting or a certificate of posting to the Labour Inspectorate of the place where the service is to be provided, before work in France starts. This declaration is made through a web portal, SIPSI, of which a new version was launched in July 2019²⁰. The new version simplifies and clarifies the system to enable foreign companies to enter their declarations as quickly and accurately as possible. It also provides new and more effective tools for the control services. SIPSI offers multilingual access in French, English, German, Italian and Spanish.

According to the Ministry of Labour, the database contains *“more precise information and more effective tools”* that *“are made available to labour inspection officers through a work tool including new search and targeting functionalities”*. Furthermore, a solution for consulting the database is offered to other inspection bodies, with the possibility of integrating SIPSI consultation directly into inspection applications.

As concerns the construction sector specifically, sectoral funds managed by the employers’ organisations are in charge of intermediating a core set of wage elements, like holiday pay and bad weather pay. As a matter of principle, companies in the building and public works sector which are established outside French territory must join a Congés Intempéries BTP (CIBTP) fund as soon as they post employees to France, in accordance with the provisions of Articles L.1262-4 and D.3141-14 of the Labour Code. The latter states that the scheme provided for in the Labour Code section on the pay holiday fund *“also applies to undertakings not established in France”*.

The triggering event for the obligation to affiliate to the CIBTP funds, as well as the resulting obligations in terms of declaring the wages paid and paying the related contributions, is therefore the fact that the company posts employees to French territory.

This principle is accompanied by exceptions set out in Articles D. 3141-26 and D. 3141-27 of the Labour Code. It is more particularly on the basis of the latter article that the bilateral agreement in question was established. For instance, article D.3141-26 stresses that *“the companies mentioned in Article D. 3141-14, established in another Member State of the European Union or in one of the other States party to the Agreement on the European Economic Area, may be exempted from the obligations”* set out in the sub-section focusing on companies in the construction sector, *“if they can prove that their employees benefit*

¹⁹ <https://www.urssaf.fr/portail/home/employeur/declarer-et-payer/comment/la-declaration-sociale-nominativ.html>

²⁰ <https://www.sipsi.travail.gouv.fr>

from their paid leave rights for the period of secondment under conditions at least equivalent to those provided for by French legislation.”²¹

As for an example: after an extensive study, the existence of an equivalent leave entitlement scheme was recognised between France and Germany. It was in this context that an exemption agreement was concluded on 26 November 1997 between the CIPTB-UCF and the German SOKA-BAU fund.

Similar agreements were then signed with funds in Austria (BUAK), and Italy (CNCE). Thanks to these agreements, companies in the construction sector may continue to pay contributions to the fund of the sending country when sending their construction workers abroad, similarly to what happens in the field of social security.

In practice, the competent paid holiday fund, one of the 13 regional funds affiliated to the UCF (Union des caisses de France), verifies that, on the date of posting, the company is regularly affiliated and that it is up to date with contributions due in respect of all declared workers. The fund then draws up a certificate indicating that the company is up to date at the time of posting. The documents are transmitted by the fund of the sending state to the competent fund of the state of employment through the UCF. For this reason, the local funds, and their national managing body the UCF, own data on the activities and workforce of construction companies, as well as on the workers' wages and the payment of contributions covering intermediated wage elements.

Finally, France has also created an identity card in the construction sector (*Carte BTP*, BTP Card), which has been compulsory since 2017. Such a card existed on a voluntary basis before then, but it was only adopted by a small share of companies (about 10% to 15% of companies asked for it). The card is also managed by the UCF, but is not covered in the above mentioned agreements. It means that foreign companies which post workers to France have to contact their sectoral fund in the home country to provide a certificate for the French UCF, and must also contact a specific department of the UCF to apply for the ID card for each posted worker and for each posting. Between the launch of the *Carte BTP* in April 2017 and 31 March 2020, 2,529,372 cards were ordered and produced (of which 1,841,461 were valid at 31 March 2020). Since 1 November 2020, each card costs €9.80 for the posting company²².

The data contained in the ID card is different from that which the UCF collects from its member companies. There is no cross-referencing between the data which the funds collect from their members in order to carry out their tasks relating to paid leave and the data collected in the context of issuing the ID card. The UCF has been entrusted with the administrative, technical and financial management of the ID card (decree no. 2016-175 of 22 February 2016). This is a national mission, separate from the other missions statutorily devolved to the UCF or the paid leave funds. The data managed within this framework are not shared with the institutions of other EU member states. The UCF's main interlocutor on this point is its supervisory ministry, the Ministry of Labour.

As concerns posting trends, as illustrated in the country briefing paper, France is mainly a host country. The number of registered posted workers sent to France has increased from 6,455 in 2005 to 81,420 in

²¹ UCF provides on its website a leaflet with the reference texts that are applicable to the holiday fund:

https://www.cibtp.fr/media/commun/1_Documents/doc_textes-de-reference_2020-07.pdf

²² UCF (2020), *Carte BTP : baisse de la redevance à compter du 1er novembre 2020*, Press release, 16 October 2020, <https://www.cibtp.fr/actualite/-/presse/actualites/actualite/carte-btp-baisse-de-la-redevance-a-compter-du-1er-novembre-2020>

2015. Since then it increased sharply to 127,572 in 2016 and 208,515 in 2017 (+63% in comparison to 2016). In the same period, the number of posted workers recorded rose from 354,139 to 516,625 (+162,486, +46% in comparison to 2016). According to the Ministry of Labour²³, this sharp increase has three main explanations: (i) the use of the SIPSI remote declaration service, which makes it possible to record a greater number of declarations, whereas some of the returns from the previous survey were incomplete. The growth in the number of declarations and posted employees observed for 2018 is less significant, closer to that observed in previous years, of the order of +20% for declarations and +13% for posted employees compared to 2017; (ii) better compliance with regulations, thanks to better knowledge of the formalities and the SIPSI remote declaration service, but also thanks to the strengthening of controls and penalties since 2015. The criminal fine, which was almost never applied for failure to declare, has been replaced by an administrative fine (1,034 fines were issued in this area in 2017); (iii) the continued increase in the posting of employees already observed in previous years, although it is difficult to determine precisely to what extent the increase in numbers is due to better compliance and to what extent to an actual increase in postings.

Of this total, 48,207 declarations were recorded in the construction sector in 2017, and 122,739 posted workers²⁴. In addition, a large share of the temporary workers posted to France are in construction. The main sending countries in the construction sector are Portugal (32,463 posted workers), Poland (16,371), Spain (13,562), Luxembourg (12,914), Belgium (9,553), Romania (8,827), Italy (6,997), Monaco (6,809) and Germany (6,129).

In terms of industrial relations, seven trade unions and six employers' organisations are active within the construction sector. It is noteworthy that the social partners have adopted a common declaration for project managers regarding the fight against social dumping (*déclaration commune à destination des maîtres d'ouvrage publics*). The document was written by the social partners over the period from 2012 and signed in September 2014. The government and the four representative employers' organisations in the construction sector (CAPEB, FFB, FNTP and SCOP BTP) also signed a partnership agreement against illegal work in the construction sector in 23 February 2016 (Convention nationale de partenariat pour la lutte contre le travail illégal et la concurrence sociale déloyale dans le secteur du bâtiment et des travaux publics²⁵). The document stipulates the commitments of the different actors (government, administration, employers' organisations, companies) and details some cooperation between them.

'Business case' for joining an existing agreement or entering into a similar agreement

As concerns sectoral funds, the existing agreements could be extended to cover other countries where similar institutions are in place, provided the contributions as a share of the gross wage are similar. While simplifying posting, the agreements exempt companies from contributing in the host country, an exemption which is fair as long as there is not a significant gap in the levy on wages and on the resulting benefits for workers. Small differences do not constitute a barrier, insofar as companies and workers still benefit from a reduction in the administrative burden of complying with contributions in the host country

²³ Ministry of Labour (2019), Analyse des déclarations de détachement des entreprises prestataires de services en France en 2017, https://travail-emploi.gouv.fr/IMG/pdf/rapport_2017_declarations_de_detachement.pdf

²⁴ Ibidem.

²⁵ http://travail-emploi.gouv.fr/IMG/pdf/convention_nationale_de_partenariat_relative_a_la_lutte_contre_le_travail_illegal_dans_le_btp.pdf

and of recovering amounts paid in the shape of benefits. Indeed, across the countries covered, sectoral funds apply an overall levy of about 30% of the gross wage.

Obstacles to joining or setting up agreements and how they could be addressed

The absence of sectoral funds or the presence of sectoral funds intermediating a much lower or higher share of wages than the French sectoral funds are a clear obstacle to extending the practice outside the countries already covered.

Another obstacle to extending such cooperation agreements to other countries is the risk of calling into question the paid leave funds in France. Successive public reports (Court of Auditors, Senate report²⁶) have highlighted certain weaknesses in the management of holiday funds, and even cases of poor management or lack of transparency. A recent report by the Court of Auditors²⁷ calls for a change in the paid leave system. It stresses that “with regard to the paid holiday scheme, even though the service they provide is deemed satisfactory by companies and employees, the Court considers that its necessity should be questioned, as the construction sector is no longer characterised by a discontinuity of employment” that justifies the existence of the paid holiday schemes. “The satisfactory functioning and the attachment of the profession to this network do not prevent questions from being asked about its evolution”. The French system is therefore regularly called into question, which leads to a certain amount of insecurity as to its future. This climate of uncertainty may also affect the pursuit of partnerships with institutions in other member states.

In terms of combating fraud in the posting of workers, the agreements signed probably have little effect. In theory, the partner fund certifies that the company that posts employees to France contributes to the paid leave fund. However, there is no guarantee that the employer who posts employees to France declares the exact number of hours worked in France during the posting to his national fund, nor that this fund has the means to check the volume of work carried out against the volume of work declared.

Similarly, although the UCF manages the BTP card, there is no cross-referencing of information with the file of its affiliates. The two databases are not connected to each other. Finally, the BTP card is not required for French employees posted to another member state. It does not therefore facilitate checks in the host country to verify that the French employee is paid at the level required in the host country.

In addition, the employer of employees seconded to France has a twofold formality to complete: (i) obtain the certificate from his paid leave fund to prove that he is indeed contributing in the country of departure, which allows him to be exempted from affiliation to the UCF; (ii) apply to the UCF for the BTP card each time a worker is posted, even if the worker has to visit France several times a year. The agreement between the UCF and the paid leave fund of the partner country does not circumvent this double formality. Finally, the information contained in the BTP card does not allow direct access to a certain amount of data relating to the worker, such as the level of his remuneration. In order to verify the level of remuneration, the French labour inspector will have to take down the information on the identity of

²⁶ http://www.senat.fr/rap/r09-067/r09-067_mono.html

²⁷ <https://www.ccomptes.fr/fr/documents/32162>

the employer recorded on the BTP card, and then question the employer or the social security system in the country of origin to obtain an answer.

Drivers for joining or setting up agreements and how they could be exploited

According to the UCF, as concerns the extension of the sectoral agreements to other countries, the sectoral fund has received no mandate from the social partners to conclude exemption agreements with institutions performing similar functions and with similar levels of levies on wages across the EU.

It may be the employers which have most to gain from similar agreements as they are the ones which are expected to register workers in the host countries and liaise with the foreign fund, possibly in the language of the foreign country or in English, and which are therefore faced with an administrative burden in the absence of agreements like these signed by the UCF.

The cooperation provided for in these agreements between the paid leave funds is to be welcomed, but it is only one element among others to help combat posting fraud.

In addition to the international cooperation between administrations and social security bodies that France wishes to develop, particularly within the framework of the new European Labour Authority, there is still a long way to go to ensure effective cooperation between the control bodies in French territory.

Thus, while the law of 23 October 2018 on the fight against fraud has opened up access to several tax and social security databases to all agents in charge of combating illegal employment and fraud, the national plan for combating illegal employment for the period 2019-2021 contains an entire chapter on measures to be taken to strengthen cooperation between French bodies. Thus, the plan recommends: (i) pooling the various databases relating to the posting of workers in order to improve knowledge and monitoring of the phenomenon of posting, and also the targeting of companies, for example, in the event of an investigation during the inspection of a building site; (ii) opening up tax databases (national bank account file and national asset database in particular) and social databases (such as the posting declaration database, the nominative social declaration database and the A1 forms database) to all inspection bodies; (iii) obtaining data held by third parties (energy suppliers, internet and telephone operators, etc.) by enforcement officers in order to gather elements useful for the detection and proof of offences committed; (iv) informing social security contribution collection bodies of administrative fines imposed by the Labour Inspectorate, in order to help them target their inspections.

These are all useful avenues, but if we look at them in isolation, they are all actions that had not yet been implemented in 2019 and whose implementation will probably not be completed by the end of 2021, due to the pandemic. European cooperation will be all the more effective if the control bodies in France are effective.

Country level plan: Italy

Contextual information

The main authorities owning information relevant for the purposes of ensuring compliance with rules on the posting of workers are:

- the National Institute of Social Security (INPS);
- the Ministry of Labour and Social Policies;
- the National Committee for the Construction Workers' Fund (CNCE) (as far as construction workers are concerned);
- the National Labour Inspectorate (INL), and its territorial departments, involved throughout the country to monitor the regularity of employment, also concerning posted workers.

As far as data are concerned, INPS manages social security contributions' records, which are transmitted periodically by employers together with key information such as the company's sector of activity, its number of employees, their remuneration, the collective agreement applied and the level of the pay scale applied²⁸. The institute insures most employees and some categories of self-employed workers (with the exception of self-employed people insured by professional funds, like surveyors or architects), and owns relevant data on their income and paid social security contributions.

The Ministry of Labour and Social Policies receives from employers the so-called 'mandatory communications', i.e. communications concerning the beginning, variation and termination of employment relationships, and including information on the collective agreement applied, the place of work, the pay scale applied and the total remuneration, the expected working time, plus data concerning work permits in the case of third country nationals. Variations requiring submission of a mandatory communication include posting to a foreign firm. The mandatory communications are also shared with INPS, INAIL and prefectures.

Following the Enforcement Directive 2014/67/EU, a mandatory communication was introduced covering workers posted to Italy. The communication is submitted to the Ministry of Labour and Social Policies and shared with the INL, INPS, and the National Institute for the Insurance against Accidents at Work (INAIL).

To sum up, whilst INPS archives track workers' careers and remuneration on a continuous basis, mandatory communications are useful to detect flows in and out employment relationships.

As concerns the construction sector specifically, sectoral funds (established as paritarian institutions) are in charge of intermediating a core set of wage elements, like thirteenth month pay, seniority pay and holiday pay, and of providing additional benefits, such as protective individual equipment, complementary pension coverage and vocational training²⁹. For this reason, the local funds (*Casse Edili*),

²⁸ In Italy, minimum wages are set by sectorial collective agreements according to a pay scale differentiating workers according to their task and experience.

²⁹ Unlike other countries, bad weather pay is not covered by the sectoral funds, being instead administered by INPS.

and their national managing body, CNCE, own data on the activities and workforce of construction companies, as well as on the workers' wages and the payment of contributions covering intermediated wage elements.

By means of an electronic platform, INPS and INAIL jointly issue a certificate of compliance with payments for social security insurance including, only to companies in the construction sector, of compliance with payments to *Casse Edili*³⁰. The certificate (the so-called 'DURC') is necessary both to have public works contracts awarded by public administrations and to have private works authorised.

Pursuant to Decree-Law 76/2020, an additional document shall be introduced to certify that the workforce formally enrolled is reasonably in line with the workforce expected to carry out a specific activity (e.g. restoration of civil buildings or building of bridges). The certificate (so-called *Congruità*) has already been tested in some regions with promising results as a tool to discourage undeclared work. In September 2020, the Italian social partners of the construction sector have also agreed to introduce (through *Casse Edili* and CNCE) a country-wide test and to inform the Ministry of Labour about the results.

The positions of the social partners are not particularly divisive when it comes to posting. Although Italy experiences significant flows of posted workers both outwards and inwards³¹, concerns mainly address inflows from countries with lower labour costs and risks of fraud, including by companies declaring as 'posted' workers who, in fact, work and live in Italy (for further information, see the *Country Briefing Paper: Italy*³²).

A landmark experience of cross-border information sharing is the one developed by CNCE. By means of bilateral agreements signed with similar institutions in Austria, Germany, France and San Marino, companies in the construction sector may continue to pay contributions to the fund of the sending country when sending their construction workers abroad, similarly to what happens in the field of social security.

Yet, and differently from what happens with social security coverage, the fund in the sending country must certify not only actual affiliation, but also actual compliance with the payment of contributions. The verification of compliance continues during the posting period, with funds committing themselves to share information whenever irregularities are found (e.g. if more posted workers than those declared are found on the construction site in the host country or if the company fails to pay contributions to the sending country's sectoral fund).

As concerns public administrations, information sharing takes place mainly by means of IMI. Some agreements have been reached to smooth information sharing and cooperation with institutions from foreign countries, yet the information available about the actual implementation and efficacy of these agreements is poor.

³⁰ For further information see the Post-Lab Guidelines, pp. 22-24, available at: http://www.fondazionebrodolini.it/sites/default/files/guidelines_en.pdf.

³¹ Indeed, Italy is the fourth-highest EU 'net sender' member state, after Poland, Slovakia and Slovenia. Most posted workers are sent to neighbouring countries, i.e. France, Switzerland and Germany, with few concerns arising about misuse of posting despite some gaps in the level of applicable employment taxes and social security contribution rates. See: De Wispelaere, F., De Smedt, L. and Pacolet, J. (2019), *Posting of workers. Report on A1 Portable Documents issued in 2018*, European Commission, Brussels.

³² https://www.isaproject.eu/wp-content/uploads/2020/05/Country-paper_IT.pdf

The main body involved in cross-border cooperation is the National Labour Inspectorate. Depending on the scope, INPS and INAIL may also be involved, for instance concerning agreements with third countries concerning the coordination of social security.

‘Business case’ for joining an existing agreement or entering into a similar agreement

As concerns sectoral funds, the existing agreements could be extended to cover other countries where similar institutions are in place, provided the contributions as a share of gross wages is similar. While simplifying posting, the agreements exempt companies from contributing in the host country, an exemption which is fair as long as there is not a significant gap in the levy on wages and on the resulting benefits for workers. Small differences do not constitute a barrier, insofar as companies and workers still benefit from a reduction in the administrative burden of complying with contributions in the host country and of recovering amounts paid in the shape of benefits. Indeed, across the countries covered, sectoral funds apply an overall levy of about 30% of the gross wage.

In the light of the experience developed by the Polish Social Insurance Institute (ZUS) with the German and Austrian sectoral funds (SOKA BAU and BUAK³³), an agreement would be advisable to ease the recovery of benefits by workers posted to Italy from countries not covered by the exemptions.

Pursuant to the agreement, a system of information sharing is in place between the Polish social security institute and the sectoral funds ensuring workers access to benefits paid out by the sectoral funds. Whenever the worker is not employed in Austria or in Germany long enough to use these benefits, the funds reimburse a lump sum directly to ZUS, which then returns it to the worker as if it was a social security benefit.

Such an agreement would also make sure that employers do pay social security contributions in the sending country on levies for holiday pay and other wage elements applied by the sectoral funds in the host country, thus further fostering adequate social protection and fair competition.

Obstacles to joining or setting up agreements and how they could be addressed

The absence of sectoral funds or the presence of sectoral funds intermediating a much lower or higher share of wages than the Italian sectoral funds are a clear obstacle to extending the practice outside the countries already covered.

However the experience of ZUS with SOKA BAU and BUAK shows that cooperation with social security institutions could represent a valid alternative in these situations to ensure compliance concerning both posted workers’ remuneration and their social security coverage.

³³ See the related project Guidelines: Kus, J. (2021), *Guidelines – Agreement between the Social Insurance Institution (ZUS) (Poland) and SOKA-BAU (Germany)*, https://www.isaproject.eu/wp-content/uploads/2021/03/Guidelines_ZUS_SOKA_BAU.pdf

Drivers for joining or setting up agreements and how they could be exploited

As concerns the extension of the sectoral agreements to other countries, CNCE already has a mandate from the social partners to conclude exemption agreements with institutions performing similar functions and with similar levels of levies on wages.

This is further corroborated by the Ministry of Labour and Social Policies, which explicated by means of by-laws the compliance of such agreements with national and EU legislation on posting.

It may be the employers which have most to gain from similar agreements as they are the ones which are expected to register workers in the host countries and liaise with the foreign fund, possibly in the language of the foreign country or in English, and which are therefore faced with an administrative burden in the absence of agreements like these signed by CNCE.

Cooperation with public administrations, especially social security institutes, could also be improved to entitle sectoral funds to access and share other key information of interest, including compliance with social security payments in the sending country and details on the activities of the sending undertaking.

Country level plan: Poland

Contextual information

In Poland, two public institutions play a key role in the posting of workers, in terms of both data collection and monitoring. The first is the Social Insurance Institution (ZUS), which provides a comprehensive service for the posting of workers. The second is the National Labour Inspectorate (PIP), which acts as a liaison body for the posting of workers.

ZUS (Social Insurance Institution) is a state organisational unit with legal personality that carries out tasks in the field of social insurance in Poland. The scope of its activities, tasks and functioning are defined in art. 66-72 of the Act of 13 October 1998 on the social insurance system (Journal of Laws of 2020, item 266) and the statute of the Social Insurance Institution (Journal of Laws of 2011, No. 18, item 93).

As a social security institute, the most important tasks of ZUS include implementing provisions on social insurance, including collecting contributions and administering benefits, providing opinions on draft legal acts in the field of social insurance, implementing international contracts and agreements in the field of social security, monitoring the payment of contributions due and promoting knowledge about social insurance.

As regards the posting of employees, ZUS is responsible for determining the basis for insuring a posted worker and issuing the A1 certificate. ZUS is also authorised to check the compliance of the data provided by the employer with the facts and their compliance with European and national law on the posting of workers. ZUS cooperates with PIP, as well as with many European and national institutions dealing with social insurance issues.

ZUS is interested in obtaining information on the insurance of posted workers, and therefore is also potentially interested in concluding agreements on cross-border information exchange and cooperation. This is evidenced by a number of agreements concluded with European institutions with a similar profile of operation. Importantly, ZUS is also able to conclude agreements with sectoral insurance organisations (SOKA BAU, BUAK). ZUS maintains contacts and exchanges information with many European and national insurance institutions as well as with national liaison offices.

The National Labour Inspectorate (PIP) is the Polish liaison institution responsible for the posting of workers.

This authority is charged with the enforcement of compliance with provisions on the legality of employment of Polish nationals and foreigners (including third-country nationals), the posting of workers, and temporary and employment agencies. This task was entrusted to the National Labour Inspectorate in 2007.

The head of PIP is appointed by the Speaker of Parliament. The General Labour Inspector presents an annual report on its activity to the Sejm (Lower Chamber of Parliament) seeking its endorsement. The Labour Protection Council (a tripartite parliamentary body) supervises PIP's activity on behalf of Parliament.

Monitoring of matters related to the posting of workers mainly concerns:

- 1) Requests concerning the payment of social insurance premiums and the turnover of the service provider are forwarded to competent units of the Social Insurance Institution and Revenue Offices;
- 2) Urgent requests concerning the legal establishment of the service provider are handled by the liaison office, i.e. General Labour Inspectorate in Warsaw;
- 3) Requests about posting of workers are forwarded to a competent District Labour Inspectorate where a workplace inspection is conducted.

The National Labour Inspectorate cooperates with other liaison institutions, other Labour Inspectorates (as part of the Senior Labour Inspectors Committee, SLIC) as well as within bilateral agreements and contacts.

Apart from the National Labour Inspectorate and the Social Insurance Institution, the Border Guard, tax offices and the police also play a certain role in collecting and providing information on the posting of workers. However, they are not competent entities for concluding the information exchange agreements referred to in the ISA project.

With regard to posting trends, Poland issues the highest number of A1 forms in Europe. In 2017 the total was over 573,000, in 2018 over 605,000, and in 2019 almost 646,000. In addition to employees, more and more often people who run businesses and provide services under civil law contracts leave the country to work. Construction workers constitute a very large group. Naturally, in the case of employees from Poland, there are many violations of regulations, both in the host countries and in the home country.

The most common violations of regulations in Poland are:

- no basis for posting (fraud related to the lack of a real employment relationship of the posted person with the posting entity, lack of actual/sufficient economic activity of the entity in Poland);
- lack or understatement of insurance premiums paid to workers posted from Poland;
- failure to provide appropriate conditions for posted workers (salaries, social benefits).

The most common infringements in host countries are:

- failure to comply with national employment regulations with regard to posted workers and with applicable collective labour agreements;
- breaches of legislation on pay (ignoring minimum wages and other elements of remuneration);
- violation of the provisions on health and safety at work and working time;
- non-payment of holiday and social benefits provided for by labour law;
- non-payment of travel benefits and accommodation.

Both key authorities dealing with posting have entered into bilateral agreements and are open to promote cross-border information sharing.

Bilateral agreements concluded by PIP lay down the rules for the exchange of information addressing:

- employment conditions (working time and rest periods, annual leave, minimum rates of remuneration and overtime pay;
- conditions of hiring out workers by employment agencies, occupational safety and health, protection of women and adolescent workers;
- employment-related irregularities and offences against workers' rights that were identified during labour inspections.

Interestingly, ZUS gained access to information on wages paid abroad thanks to agreements with the German and Austrian sectoral funds intermediating a share of workers' wages in the construction sector³⁴. The institute looks with interest at international cooperation and data sharing, insofar as they can help it to carry out its tasks, including the proper settlement of contributions and benefits, the recording of contributions due, and the implementation of inspections and investigations in case of irregularities in the payment of contributions.

The National Labour Inspectorate (PIP) mainly relies on the exchange of information through the IMI system. Bilateral agreements and cooperation mainly concern the exchange of information at the national level.

PIP has concluded bilateral agreements covering the posting of workers with authorities from the following EU/EEA countries: Belgium, Bulgaria, Denmark, Estonia, Lithuania, Luxembourg, the Netherlands, Norway, Slovakia and Spain. They are complementary to the information exchange within IMI.

The Social Insurance Institution (ZUS) has signed a number of cooperation agreements with relevant public entities in other EU/EEA countries regarding the exchange of information on the posting of workers. From the point of view of the ISA project, the most interesting are the above-mentioned agreements concerning the construction sector, signed with the Austrian BUAK in 2013 and with the German SOKA BAU in 2018. It is important that these are agreements signed with private sectoral entities are managed on the basis of sectoral collective agreements.

'Business case' for joining an existing agreement or entering into a similar agreement

ZUS is interested in the areas of information exchange described in the agreements with BUAK and SOKA BAU regarding the area of social insurance for posted workers (described above). PIP is interested in information on violations of labour law provisions.

Indeed, the practices explored so far, both by the Social Insurance Institution and the National Labour Inspectorate, indicate the possibility of extensive cooperation. The Polish legal system allows for extensive

³⁴ See the related project Guidelines: Kus, J. (2021), *Guidelines – Agreement between the Social Insurance Institution (ZUS) (Poland) and SOKA-BAU (Germany)*, https://www.isaproject.eu/wp-content/uploads/2021/03/Guidelines_ZUS_SOKA_BAU.pdf

international cooperation with competent institutions in other EU countries in the field of PIP's and ZUS's competences.

However, while ZUS is ready to conclude agreements with sectoral funds (including in the construction industry), PIP mainly cooperates with national labour inspectorates and, due to the nature of its activity, does not provide for other types of agreements. This does not mean that it is not interested in relevant information.

Obstacles to joining or setting up agreements and how they could be addressed

Poland formally met the conditions for the implementation of the amended directive on the posting of workers in 2020. From the point of view of ZUS, there are no formal obstacles to concluding agreements. However, there are significant differences in the regulations concerning the working conditions of posted workers in Poland and many other EU countries. There is no sectoral collective labour agreement in the construction industry in Poland. There are also no equivalents of sectoral insurance funds.

In the case of Poland, there may be a problem with the lack of applicable sectoral minimum levels of pay in the construction industry and difficulties in obtaining data on the level of wages (there are large regional differences in this respect).

Drivers for joining or setting up agreements and how they could be exploited

In the case of ZUS, the current agreements with Austrian and German partners may be a factor conducive to concluding further agreements. In recent years, ZUS has carried out advanced computerisation of its activities, including the collection of relevant data on posting companies and posted workers (in the field of social insurance). The latter should foster advanced information exchange with partners in other EU countries, based on IT tools provided for in the agreements.

A factor contributing to a wider exchange of information on the Polish side is the expansion of the research tools of the public Statistical Offices, which take into account more data on the posting of workers, companies and posting agencies. Also noteworthy is the in-depth monitoring of employment agencies conducted in recent years by the National Labour Inspectorate, which increases the amount and scope of data obtained and access to them.

Country-level plan: Portugal

Contextual information

The main authorities owning or monitoring relevant information on the posting of workers in Portugal are:

- the Authority for Working Conditions (*Autoridade para as Condições de Trabalho*, ACT), to whom companies should submit declarations on workers posted to or from Portugal;
- the Social Security Institute (*Instituto da Segurança Social*), responsible for issuing the A1 portable documents³⁵.

ACT is the main Portuguese institution responsible for monitoring postings to and from Portugal. Beyond its role as the inspection authority for posted workers, it also disseminates information and promotes meetings on posting.

Beside this stakeholder, the main employers' associations – the Association of Construction and Public Works and Services Companies (AECOPS) and the Association of Construction and Public Works Industries (AICCOPN) – promote occasional information sessions to their associated companies on posting. The General Confederation of Portuguese Workers (CGTP-IN), and particularly its construction branch union, address issues raised by Portuguese posted workers and often publicly stress the need for the increased monitoring of the situation of Portuguese posted workers. The unions have carried out several awareness raising campaigns.

In the transport sector, the National Association of Public Freight Road Carriers (ANTRAM) stood out for its opposition to the revision of the Posting of Workers Directive in 2017.

As concerns the sharing of information, ACT is actively involved in cross-border information sharing, particularly through the IMI system.

According to data available on A1 portable documents³⁶, 74,109 PD A1s were issued to workers posted from Portugal in 2018, 70% under article 12 of Regulation EC 883/2004. This amounts to 51,905 postings made by 27,519 individual workers. These are relatively low numbers in absolute terms, making up only 2.9% of all postings in the EU, yet they are above average in terms of the proportion of the workforce posted abroad, with 0.6% of the entire Portuguese workforce posted in 2018, compared to an EU average of 0.4%. This is even more evident in the construction sector. In terms of workers posted to Portugal, the numbers are much lower, with 28,964 postings to Portugal in 2018. This makes Portugal a net sender, with 22,941 more workers sent than received. However, this difference is becoming smaller, with more and more workers posted to Portugal over the years, while the number of workers posted from Portugal reached an eight-year low in 2018.

³⁵ A Portable Document that each worker has to have to certify which social security legislation applies to him/her since s/he has an employment connection with more than one country.

³⁶ De Wispelaere F., De Smedt, L. and Pacolet, J. (2019) *Posting of workers: Report on A1 Portable Documents issued in 2018*. European Commission, Brussels.

‘Business case’ for joining an existing agreement or entering into a similar agreement

The growing fragmentation and flexibilisation of work in the construction sector has led to work insecurity and the erosion of workers’ protection, particularly in the case of posted workers. Interviews done with Portuguese labour inspectors and social partners highlighted a set of abusive and exploitative practices concerning the posting of Portuguese construction workers. Inspectors draw special attention to the existence of various forms of abusive practices involving Portuguese workers posted abroad, highlighting issues related to wages, organisation of working time, non-existent absences, and illicit recruitment.

Obstacles to joining or setting up agreements and how they could be addressed

ACT considers that information sharing raises issues regarding the protection of personal data. The employers’ organisation AECOPS argues that the exchange of information between public authorities from different member states would have to stay within the limits of public authorities and the public interest; such information should not be provided to third parties.

Other current obstacles include:

- delay in sharing information between member states, which affects the efficiency of the inspection and its results;
- several constraints in obtaining the necessary information because of language barriers, even using the IMI system;
- presence of two entities sharing competences in this matter: ACT and the Social Security Inspection, which hinders the process;
- the different organisation of competences regarding posted workers in member states;
- the need for a closer cooperation to ensure an efficient intervention.

Drivers for joining or setting up agreements and how they could be exploited

A basis for developing international cooperation is certainly the ‘Administrative Cooperation Agreement between the Ministry of Labour of the French Republic and the Ministry of Labour, Solidarity and Social Security of the Portuguese Republic on the posting of workers and prevention of undeclared work’ (2017).

The main outcomes of this agreement are: (i) the sharing and discussion of information; (ii) the development of joint inspection activities; (iii) the development of dissemination and awareness raising activities³⁷.

³⁷ See the related project Guidelines: Veloso, L., Marques, J., and Sales Oliveira, C. (2021), *Guidelines Bilateral Agreement: Portugal-France*. https://www.isaproject.eu/wp-content/uploads/2021/03/Guidelines_PT-FR_2021.pdf

The Portugal–France agreement is considered the most successful, mainly due to the fact that it was promoted at the ministry level and not at the inspectorate level, and therefore has a higher impact. It also permitted the inclusion of the Portuguese national Social Security Institute, which is identified as an advantage. One of the obstacles identified by ACT in the development and dissemination of information and inspectorate actions is the lack of financial support. However, it is now expected that the recently created European Labour Authority can overcome problems of this kind.

This agreement is considered by ACT as the one that can work as a guideline for the design of future measures and practices, based mainly in two outcomes:

- the establishment of a steering committee (SC) that met for the first time in 2018 and meets annually to evaluate and monitor the agreement;
- the creation of a group of ‘proximity agents’ in both countries responsible for setting up the agreements. This network is mainly composed of a group of ‘field’ inspectors in each country who work closely with each other to improve operational cooperation between France and Portugal regarding the posting of workers, in order to guarantee compliance with regulations, the rights of posted workers and a better fight against fraud. This network also aims to exchange experiences and inspection practices, in particular with regard to posted workers, and with a particular focus on the construction, temporary and industrial maintenance sector.

According to information from this institution, the transfer of activities concerning posting to the European Labour Authority (ELA) is under way and will deeply affect all the previous procedures. ACT has already collaborated in two pilot joint inspections made under the auspices of the ELA. ACT was chosen because of the existing practice of joint inspections under the Portugal-France bilateral agreement, so it believes that the work developed around this agreement will inform the ELA’s future procedures.

Country-level plan: Romania

Contextual information

The main authorities involved in posting of workers in Romania are:

- The Ministry of Labour and Social Protection (*Ministerul Muncii și Protecției Sociale*, MMPS)
- The Labour Inspectorate (*Inspekția Muncii*, IM)
- The National House of Public Pensions (*Casa Națională de Pensii Publice*, CNPP)

The Ministry of Labour and Social Protection develops, coordinates and implements strategies and policies in the area of employment rights and responsibilities, labour relations, occupational health and safety, communication and enforcement of workplace standards and social protection. A range of specialised agencies and authorities assist it in its work.

The ministry elaborated the national legislative framework for the posting of employees in the framework of the provision of transnational services on Romanian territory (Law 16/2017 on the posting of employees in the framework of the provision of transnational services).

The Labour Inspectorate is a specialised government agency, operating under the authority of the Ministry of Labour and Social Protection. Its main role is to verify that employers comply with their obligations in respect of labour relations, working conditions and health and safety standards for employees and other contributors to a labour process.

The National House of Public Pensions administers and operates the public system of pensions, as well as the accidents at work and occupational diseases scheme. The CNPP is the competent institution in determining the legislation applicable to migrant workers, in applying the European regulations on the coordination of social security and the bilateral social security agreements to which Romania is a party.

As concerns cross-border information sharing, the Labour Inspectorate is the competent authority with liaison responsibilities, and fulfils its obligation to cooperate administratively with the competent authorities of the member states and the Swiss Confederation.

The Liaison Office is organised only at the central level of the Labour Inspectorate.

The institution is also in charge of keeping watch on the general operation and proper functioning of IMI (posting of workers module) at the Romanian national level.

Through the Labour Inspectorate, Romania has participated in the exchange of information through the IMI system since its pilot phase.

The number of IMI applications received or transmitted through this system has increased from year to year, and Romania is among the top member states by number of applications.

According to the figures presented by the European Commission in the report on the implementation of Directive 2014/67/EU, in 2018 Romania was in fifth place regarding the number of requests sent through the IMI system to other member states, with a total of 173. These requests covered the exchange of information, the transmission of documents to foreign service providers, the communication of urgent issues concerning illegalities identified during checks, as well as requests for notification of reports on the application of fines for infringements or cross-border recovery requests.

Regarding the total number of requests received by the Labour Inspectorate via the IMI system, in 2018 Romania was in third place, with 482 requests, after Slovenia and Poland.

Regarding the average response time to the various requests for information received through the IMI system, Romania falls within the time limit set by Directive 2014/67/EU, with an average response time of 30 days, while the European Union average is 43 days.

According to the provisions of Law no. 16/2017, transposing the European directives on posting, the Labour Inspectorate is the competent authority for liaison, and fulfils the obligation to cooperative administratively with the competent authorities of the member states and the Swiss Confederation. The administrative cooperation provided is carried out by the Labour Inspectorate in compliance with the provisions of Regulation EU 1024/2012, exercising the role provided in Article 5 f) of this regulation.

In the context of administrative cooperation, the Labour Inspectorate responds to reasoned requests for information from the competent authorities of other member states and the Swiss Confederation, and carries out checks and control actions on cross-border postings of workers, in particular with regard to any non-compliance or abuse of the applicable rules on cross-border posting, including cross-border cases of undeclared work and of bogus self-employment in matters of posting of employees.

Where it does not have the requested information, the Labour Inspectorate obtains it from the competent national institutions.

As regards the respect of national and European regulation on personal data protection, according to the law, the Labour Inspectorate is a personal data operator registered with the National Supervisory Authority for Personal Data Processing.

The Labour Inspectorate is, by law, the institution with responsibilities for monitoring the system and collecting data and information on the number and employment conditions of posted workers.

Employers must notify the local labour inspectorate in the jurisdiction in which they conduct business, five days prior to commencement of operations, giving information regarding the posting of their employees and any subsequent changes regarding such employees.

Some geographical and sectoral patterns of posting can be identified. For instance, workers posted from Poland are mainly active in the Industry and construction sectors³⁸.

The following table shows the allocation by sector of PD A1 forms issued for posted workers by the National House of Public Pensions in 2018.

³⁸ Insights in this respect are provided by annual reports by the European Commission on the A1 forms and by reports of the European Construction Sector Observatory.

Table 2: A1 forms issued for posted workers (Art. 12 of the Regulation EC 883/2004) by Romania by sector (2018)

2018	Total	Agriculture	Industry	Trade	HoReCa	Transport, storage and distribution	Financial sector and business activities	Social services
Total PD A1s issued	69,789	413	34,012	453	42	29,734	2,986	2,149

Source: National House of Public Pensions

The main host countries as of 2018 were Germany (15,283), France (6,444), Italy (5,543), Belgium (5,244), the Netherlands (3,020) and Austria (1,232).

In comparison, on the basis of data from declarations to the Romanian local labour inspectorates, 5,200 workers were posted to the territory of Romania from other member states of the European Union in 2017.

However, it is necessary to indicate that the information collected by the member states based on national declaration tools is still tentative.

The Labour Inspectorate monitors compliance with legal provisions regarding the posting of workers. In 2019, 233 checks were performed and 40 sanctions were applied, of which four were fines and 36 warnings; 112 measures were ordered to remedy the deficiencies found. The main deficiencies found among companies posting workers to Romania concerned non-compliance with the obligation to send posting declarations, while the working conditions of posted workers have generally been complied with³⁹.

Regarding situations of non-compliance among companies sending workers from Romania, the existing data only reveal the sanctioning reports transmitted for communication through the IMI system by the competent authorities from other member states. However, the number of applicable sanctions could be higher.

As for administrative cooperation, during 2019 the Labour Inspectorate received most requests from Austria (23) and Italy (4) to communicate a decision imposing an administrative financial sanction on various Romanian employers whose employees provide transnational services.

During 2018, the results of the checks performed to verify compliance with the provisions of Law no. 16/2017 resulted in 39 sanctions applied, of which eight were fines and 41 measures to remedy the deficiencies found.

³⁹<https://www.inspectiamuncii.ro/documents/66402/187655/Raport+de+activitate+al+Inspectiei+Muncii+pentru+anul+2019.pdf/63b1590f-c84e-478e-930a-27f4a2f2c6cf>

During 2017, the results of the checks performed to verify compliance with the provisions of Law no. 16/2017 resulted in 54 sanctions applied, of which 10 were fines and 44 warnings⁴⁰.

Also, according to the implementation report on Directive 2014/67/EU, during 2017 Romania received, through the IMI system, approximately 70 requests for notification of decisions imposing financial sanctions for non-compliance by Romanian enterprises of the rules on cross-border posting of workers and approximately 10 applications for recovery of fines⁴¹.

The need to respond within a clear time frame set by Directive 2014/67/EU and by the IMI regulation 1024/2012, as well as the categories of information requested, led to an increase in targeted inspections in order to check compliance with the law, and improved the ability of the inspectors to identify abuses or irregularities in the posting of workers.

‘Business case’ for joining an existing agreement or entering into a similar agreement

The National House of Public Pensions has not concluded transnational cooperation agreements on the posting of workers with similar institutions from other EU member states, the collaboration being established within the framework of the EU regulations on the coordination of social security. The Labour Inspectorate considers it appropriate to conclude bilateral international agreements in order to improve the exchange of information so as to make the verification of working conditions for posted workers more efficient.

Romania uses the exchange of information through the IMI system with all the EU member states regardless of the existence of bilateral cooperation agreements concluded by Romania with other member states. The signatory parties use the IMI system to exchange information securely in the case of the agreements the Romanian Labour Inspectorate has signed with the labour inspectorates of IT, ES, and EL. In the case of cooperation with HU and PT, the use of the IMI system has been combined with the conventional systems for exchanging of secure information.

In general, on top of information sharing taking place through IMI, signing an agreement can also facilitate:

- carrying out special control campaigns or preparing reports on the working conditions of nationals in the other state, or other aspects of interest;
- the exchange of experiences by having delegations of labour inspectors from one country participate in inspection activities in the other country;

⁴⁰<https://www.inspectiamuncii.ro/documents/66402/187655/Raport+de+activitate+al+Inspectiei+Muncii+pentru+anul+2017.pdf/1a898dfa-6e03-4b82-bf59-8bd20e494dc5>

⁴¹ Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the application and implementation of Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation EU 1024/2012 on administrative co-operation through the Internal Market Information System ('the IMI Regulation') {SWD(2019) 337 final} <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2019:426:FIN>

- the organisation of practical training courses to be carried out in the respective countries, as well as participation in conferences, symposia and international meetings organised by the parties;
- the exchange of information not only regarding posted workers in the framework of the provision of services but also regarding the exchange of best practices and experiences concerning the implementation of the EU directives in the field.

Obstacles to joining or setting up agreements and how they could be addressed

Assessing the number of posted workers (across the EU member states) remains particularly challenging and currently only estimates are available (at European level). Delimiting the phenomenon is the first issue, as posted workers are defined differently depending on the scope.

The cross-border exchange of information is tackled differently, given the important margin of discretion granted to member states in the design of the system of declaring posted workers.

Improving data sources to allow the monitoring of posting is needed to ensure that businesses are competing fairly across member states and that the labour and social rights of posted workers are recognised. Accurate statistics on the number of posted workers, their characteristics and working conditions are not available.

The data based on the A1 forms will continue to be the main source of information on postings as it covers all member states and as it is the only source providing fully comparable data. Nevertheless, it is now possible to complement the data based on the PD A1 forms with data concerning the posting declarations under Article 9 of the Enforcement Directive.

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

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

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

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

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

This law regulates the conditions under which treaties or agreements may be concluded, at both government and department levels, and establishes all the procedures to be followed from the moment of approval of the initiation of negotiations until the signing of treaties/agreements.

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

The publication in Romania's Official Journal and the entry into force of agreements adopted by government decision may be delayed until the completion of approval procedures by a number of public institutions/authorities and the consultation of social partners.

The prioritisation of specific agreements should mitigate delays. These prioritisations should be an objective process and take into account the size of the diaspora and the number of posting situations. After the analysis is completed by the competent parties, the negotiating party could ask the subordinate agencies to act with due diligence. This is not as easy when the agreement is signed at government level and a large number of actors (ministries and agencies) have to sign off on it.

Drivers for joining or setting up agreements and how they could be exploited

The main concerns that may be drivers for joining or setting up an agreement are illegal posting and breaching of legislation on working conditions and safety and health at work with regard to the citizens of a state who work on the territory of the other state.

A very important feature of the agreements is the mapping of common areas of interest. Depending on the signature parties this could vary considerably. For example, a state which receives a large number of posted workers might wish to prioritise the action, while a state that has a large diaspora might emphasise the importance of information and occupational safety and health measures. All these priority areas should be identified and laid down in the final text and their prioritisation should be agreed upon by the signing parties.

As an example, the protocols of cooperation concluded with Italy and Spain were signed because of the large number of Romanians working/being posted to Italy/Spain. These documents aim to ensure that the Romanian workers benefit from the same working conditions as the local workers.

Institutions that are parties in an agreement benefit from a strengthening of bilateral cooperation activities, meaning that they also improve their ability to inform workers about their right and obligations and to protect workers' rights.

Country-level plan: Spain

Contextual information

The most relevant authority in Spain in guaranteeing compliance with Directive 96/71 is the State Agency for Labour Inspection and Social Security (Organismo Estatal Inspección de Trabajo y Seguridad Social – ITSS). The administrative powers attributed to this body empower it, within its sphere of competence and through the bodies that make up its structure, to monitor compliance with the rules of social order, impose sanctions, as well as to provide advice, conciliation, mediation and arbitration in such matters.

These social regulations include those relating to labour matters, occupational risk prevention, social security and social protection, employment, vocational training for employment and unemployment protection, social economy, emigration, migratory movements and work of foreigners, equal treatment and opportunities and non-discrimination in employment.

ITSS is the body responsible for monitoring and ensuring compliance with the rules for workers posted under the transnational provision of services through companies within the European Union, in accordance with Directive 96/71 EC. It is also the body responsible for the surveillance and monitoring of the flow of workers from other EU member states under the free movement of workers, recruited directly by companies, and of non-EU nationals from third countries outside the EU.

It works closely with the social security offices and with the state security forces, which are required for certain actions.

ITSS is also the competent authority for the signing of information exchange and collaboration agreements, through its Subdirectorate General for Institutional Relations and Technical Assistance. At present, this Subdirectorate General is entrusted with monitoring the collaboration agreements signed with Portugal and France.

The posting of workers is not a widely discussed topic in the Spanish context. At policy level, the Spanish government position has varied to some extent in the last 20 years. When Spain entered the EU, it was a lower-labour cost member state. Accordingly, it was not one of the countries pressuring for higher restrictions on workers' internal mobility. Since 2006, when other member states with comparatively lower labour costs became part of the EU (Romania, etc.), Spain was among the countries that demanded the implementation of a number of restrictions regarding the domains and the number of possible posted workers from those countries (Wagner, 2015). In this context, it is worth noting that the Spanish government has worked on improving transnational cooperation aiming to enforce regulation on posting through international agreements. As a result, the Spanish Labour and Social Security Inspectorate has concluded bilateral cooperation agreements with both higher-labour cost member states (France) and lower-labour costs member states (Portugal, Poland and Romania) (Labour and Social Security Inspectorate, 2018).

Among the social partners, the Spanish Confederation of Employers' Organisations (CEOE) has not published any official positions on the topic. They mainly claim that governments should provide accurate and updated information on the applicable rules to facilitate companies in complying with current regulations. On the employee side, trade unions welcome the new directive. Their position is the same as

that expressed by European trade unions, which as Riesco-Sanz et al. summarise, welcome the directive because “it explicitly recognises the aim to provide legal protection for posted workers, rather than just serving as a mechanism for the transnational provision of services by companies within the single market”⁴².

As concerns the sharing of information, the labour and social security inspectors are actively involved in cross-border information sharing, particularly through IMI. However, Spain has also signed cooperation and information exchange agreements with other countries such as France, Portugal, Romania and Poland, with different results.

The labour inspectorate cooperates with different organisations such as the Social Security Treasury and the National Institute of Occupational Safety and Health to address the different situations that occur in the posting of workers when it is necessary to make joint interventions. However, the labour inspectorate is competent to monitor compliance with the rules of social order and to enforce them.

Regarding the flow of workers, Spain was traditionally a ‘net receiving country’ in terms of posted workers. However, this situation changed with the financial crisis. Since 2011, Spain qualifies as a ‘net sender country’ which issues more Portable Document (PD) A1s than it receives.

When looking at the PD A1s received by Spain, it appears that it was the seventh EU country per number of received posted workers in 2017, with 60,488 workers posted to Spain (3% were self-employed persons). The sectors where most workers are displaced are transport, industry and construction.

With regard to the number of Spanish workers posted to other European countries, Spain was the third EU country in terms of sending posted workers in 2017 (101,868).

The number of PD A1s issued by Spain has increased annually since 2010. This number increased by 10.4% from 2016 to 2017 and by 151% from 2010 to 2017.

Overall, qualitative research focused on both workers posted to Spain and workers posted from Spain shows results similar to other European countries. They reflect that posted workers are generally exposed to poorer working conditions than native workers.

The main problems faced by posted workers are related to circumvention of equal pay and working time rules (longer hours, etc.) as well as problems related to the poor quality of the accommodations offered.

‘Business case’ for joining an existing agreement or entering into a similar agreement

In the case of Spain, an agreement that has met with significant success in cross-border cooperation has been the agreement signed between the labour authorities of Spain and Portugal. A declaration of intent was signed in 1998, and in 2002 it was followed by a collaboration agreement that is still in force today. The main features of this agreement are that it is an administrative agreement, focusing on the exchange

⁴² Riesco-Sanz, A., García, J. and Maria, M.M. (2019), The posting of workers in the European road transport industry: An approach based on the discourses of social and institutional stakeholders, *European Journal of Industrial Relations*, p. 7.

of information between the labour inspection authorities of Spain and Portugal and based on the need for cooperation between both countries.

The agreement has made it possible to maintain a stable framework of collaboration in the following areas:

1. occupational health and safety;
2. work accidents: reports of accidents at work, and immediate notification of the accident report;
3. work permits for non-EU citizens;
4. verification actions with companies domiciled in the neighbouring country: a) citations, requests for documentation, and identification of the legal representative; b) notification of infraction records;
5. Exchange of information on the flow of workers;
6. Cooperation and assistance derived from Directive 96/71 /EC in the field of information sharing.

The agreement has made it possible to improve the knowledge of the two countries at various levels: political, legal and operational.

It entails very simple management tools that have been respected by all parties, even given the changes of government that have occurred over the years. A similar model could be used to establish other cooperation agreements between Spain and different countries.

Cooperation agreements with these characteristics make it possible to speed up the information and data exchange processes, which has a positive impact on both workers and companies and on the management systems of the different administrations.

Obstacles to joining or setting up agreements and how they could be addressed

One of the possible deficiencies of the cooperation agreements is that the social partners are not present in their monitoring committees. Their involvement would be beneficial, as both the trade unions and the employers' organisations also monitor the situation of posted workers, being interested in utmost transparency and in eliminating fraud in this type of transnational service provision. This could take place while mechanisms ensuring protection and security of personal data.

Drivers for joining or setting up agreements and how they could be exploited

The new structures created by the European Commission and the European Labour Authority (ELA) could be an important driver in ensuring legal certainty in the exchange of information and in establishing frameworks for permanent collaboration between countries to carry out joint work plans to improve the conditions of posted workers.

Conclusions

During the project, a total of 11 agreements were assessed and discussed, in the framework of a wider comparison and debate among countries, summarised in this Final Report.

This analysis, further enriched by four online events presenting and discussing the agreements, highlights some recurrent concerns and limits in the current practices of administrative cooperation across the countries covered, as well as some possible ways forward to address them.

Overall, it is interesting to remark that all the agreements entered into by labour inspectorates and ministries identified the topic of accidents at work as a common concern, with regard to both preventing accidents and ensuring the administration of fines and access to benefits. This reminds that rules on posting, like those in other fields having to do with workers at risk of exploitation, should prioritise social and health protection goals, especially in sectors particularly exposed to risks, such as construction.

For what concerns more specifically concerns about information sharing and cooperation, as stressed especially in the Bulgarian and Portuguese country level plans, the improvement of administrative cooperation needs to be backed by a strong political will, coupled with the consequent allocation of adequate financial resources to foster the related actions.

Most of the agreements signed by public authorities which the study has covered entail not only a commitment to share data or information, possibly requiring extra effort in terms of human resources, but also joint knowledge sharing, training, inspection or awareness raising activities, which may be difficult to implement in the absence of adequate resources, e.g. to attend a training course or to implement a joint inspection abroad. Indeed, these activities are key to properly equipping inspectors and officials with relevant knowledge of legislation in other countries, which is in turn necessary to smooth cross-border cooperation. In fact, as is the case for the agreements signed by Bulgaria with France and Norway, cooperation may go beyond what is strictly necessary to tackle fraud and ease the application of existing legislation, and extend to sharing good practices between the bodies involved, thus proactively contributing to improving the national legislative framework and enforcement activities.

Among recurrent concerns and limits to cooperation, which had already emerged in the previous Post-Lab and EU Post Lab projects, there also appears to be the role of ‘personal contacts and relationships’. In a way, as long as activities of international cooperation are not embedded as tasks of the authorities involved, rather becoming the results of the activities and goodwill of certain officials, the replacement of these officials may threaten cooperation itself. In order to transform personal relationships from a threat to a strength, the selected agreements usually entail a proper governance system.

Usually, as is the case for the agreement between Bulgaria and Norway and also for the agreements sampled in Spain and Portugal, annual meetings of a steering committee are planned. This means that the parties have to appoint a responsible person, replace him/her if necessary, and regularly report to each other on progress made in the agreed fields for cooperation and in the concrete measures which they mutually commit to implement.

As is the case of the agreement between Portugal and Spain, governance may also entail the appointment of local reference persons, as inspectors working in local branches may be the ones who discover infringements and who need quick cooperation to address possible infringements before infringers

disappear. Such an approach may be particularly informative for other countries as well, like Poland, where the data and the competences of labour inspectorates are highly decentralised.

Another key concern, stressed especially in France, Portugal, Poland and Romania, is the possible ramification of competences, and therefore of data, across different institutions, not necessarily distributed in the same way in all EU member states. This issue, mainly related to the different scope and competences of labour inspectorates and social security institutions, was addressed in Portugal and Romania by involving both these institutions in the bilateral cooperation frameworks. On the one hand, the multiplication of actors involved may slow down the governance and the process of cooperation. On the other hand, beyond limits affecting international cooperation, national authorities themselves may suffer from limits in accessing relevant data from other institutions in their country.

In this respect, as already stressed in the EU Post Lab Final report, it is essential to smooth and simplify the process of data sharing at the national level, at least as regards key information necessary to verify compliance with labour law, health and safety and social security provisions.

An interesting experience is the Italian DURC, which enables the Italian social security institutions and sectoral funds to access information via a platform on the compliance or not of a given company with the payment of both social security contributions and payments to sectoral funds active in the construction sector. Similar tools could be devised in other countries to support regularity of employment, possibly also enabling companies to access key information necessary to verify employment conditions along the subcontracting chain.

As concerns the involvement of social partners and sectoral funds, the Bulgarian and French country level plans provide examples of the involvement of the former. In the light of their relationships with companies and workers, employers' organisations and unions may be allies in spreading information on provisions and terms of employment to be respected as well as in improving compliance and providing inputs for campaigns and actions to be implemented.

The agreements entered into by sectoral funds in Italy and France show instead the capability of the funds to simplify posting while monitoring compliance with the payment of contributions due for the intermediated wage elements. These agreements could be extended to other countries provided: (i) similar bodies are in place; (ii) contributions constitute a similar share of wages; (iii) the fund is mandated to do so by law and by its administrators (employers' organisations in the case of France and social partners jointly in Italy).

The comparison that was made during the project's events showed that cooperation between public authorities and sectoral funds could also help to ensure compliance in the payment of wages and social security contributions.

For instance, pursuant to law, the German SOKA BAU fund has access to the preventive declarations on posting, enabling it to meet its legitimate objective of making sure that companies posting workers in the construction sector do enrol workers in the SOKA BAU holiday pay scheme.

In Italy, instead, thanks to the DURC Certificate, CNCE can make sure construction companies do not evade contributions to the sectoral funds. The forthcoming extension to the national level of the *Congruità*, i.e. a certificate issued if the number of workers enrolled is in line with the expected workforce necessary to

carry out a given construction job, shall further contribute to discourage undeclared work, including via irregular posting of workers.

Finally, the agreement between the Polish ZUS and SOKA BAU provides another possible line for cooperation. By connecting a social security institute with a sectoral fund, it enables the former to make sure social security contributions are paid on wage elements intermediated abroad for Polish workers sent to Germany, which also eases access to related benefits once the posting ends.

Overall, the comparative findings and suggestions from the research as well as the country level inputs explored in the previous sections may prove particularly relevant for the activities of the newly established European Labour Authority, which may build on the experience and knowledge developed to support new paths for cooperation between member states, both in terms of knowledge sharing and mutual learning, and of access to data and information relevant for ensuring compliance with posting rules.

ABOUT

The objectives of the ISA Project are to promote and reinforce transnational cooperation between authorities and stakeholders, including social partners and sectoral funds, supporting the establishment of information sharing agreements meant to monitor and ease the posting of workers.

The project brings together partners from seven European countries inheriting results of the previous Post-Lab and EU Post Lab, which identified obstacles to cross-border cooperation as well as promising practices involving enforcement bodies and social partners.

In order to overcome the existing limits, ISA selects and assesses a set of agreements, exploring their achievements and limits while proposing possible ways forward.

www.isaproject.eu



The project is carried out with the financial support of the European Commission.

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