

# EU POST LAB

**Developing experiences of administrative cooperation and enhanced access to information  
in the framework of the posting of workers**



## ASSESSMENT REPORT

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This report was produced for the EU Post Lab project, which received funding under the call for proposals VP/2016/006 of the DG Employment, Social Affairs and Inclusion of the European Commission. The opinions expressed in this report 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

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The EU Post Lab project, co-funded by the DG Employment, Social Affairs and Inclusion of the European Commission, is aimed at supporting administrative cooperation and information exchange at transnational level in the field of posting of workers in the construction sector.

The project stems from the findings of the Post-Lab project, which assessed a set of practices capable of easing compliance with rules concerning the posting of workers, as well as for detecting fraud. The results of Post-Lab, which suggest pathways for improving cooperation and data sharing in the field of posting of workers in the construction sector, are detailed in the related Guidelines and Final Report<sup>1</sup>.

EU Post Lab focuses on the role administrative data play in the identification of fraud in relation to the posting of workers, and entails the creation of a prototype database for strategic data sharing at transnational level.

To this aim, the project brings together a network of stakeholders from 10 EU Member States.

Kicked off in October 2016, the project is expected to run for 24 months; its core activities can be summarised as follows:

- during the initial phases, the project partners implement desk and field research activities to analyse existing national databases relevant to Directive 96/71/EC (Posting of Workers Directive) and to Directive 2014/67/EU (Enforcement Directive) in all the addressed countries, their contents and features, the authorities managing them (monitoring and enforcement bodies or other authorities), and how they fare in reflecting the actual conditions of employment, as well as in identifying abuses and circumvention of the abovementioned directive;
- afterwards, the partners define and implement a prototype database to allow for digital information sharing between relevant authorities and stakeholders, with a focus on sectoral funds of the construction sector. In fact, in many EU countries, these funds intermediate wage elements to be adjusted according to the host country's applicable provisions, like the holiday pay. The database shall be built in such a way as to share key information in the posting of workers area, such as: the establishment of the posting company in the sending country, the existence of the employment relationship with the posted worker in the sending country, and the regular payment of the wage elements intermediated by the funds. It will be linked with web modules in order to allow employers to easily declare the posting of workers to the relevant funds, as well as with sources of information on terms and conditions of employment in the covered countries. The creation of this tool benefits from information produced by desk and field research, covering features of existing information-sharing experiences and providing a picture of the authorities possibly interested in sharing information; and
- as a final step, the project partners elaborate and disseminate – in all the languages of the project – a set of recommendations explaining how to make the most of the database, and what further cooperation, monitoring, and enforcement measures could support the goal of avoiding misuse or circumvention of the Posting of Workers Directive while easing the posting of workers.

## 1 SCOPE OF THE ANALYSIS

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The analysis departs from the EU Post Lab Preliminary Report to describe evidence of non-compliance with wages and other conditions of employment, as well as the use of administrative data to detect such cases in

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<sup>1</sup> See: <http://www.fondazionebrodolini.it/en/projects/post-lab> .

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a set of EU countries, including: Belgium, Bulgaria, France, Germany, Italy, Poland, Portugal, Romania, and Spain.

By building on desk research and national interviews with stakeholders, the report specifies how provisions on minimum wage are disrespected or fraudulently eluded in a country. As far as these practices may affect both workers posted from a country, and workers being hosted by that country, this information is meant to help in understanding: (i) to what extent information available from databases may fail to reflect the actual employment conditions; and (ii) what kind of information or data shall be checked in order to counteract possible forms of fraud. Occasional references are made to issues around the applicability or not of some wage elements to posted workers. In this respect, it is worth to remark that following amendments to the Posting of Workers Directive entered by Directive 2018/957/EU, relevant national legislations may widen the range of wage elements a posted worker is entitled to.

The report also assesses how administrative data are already used or matched to detect fraud, and whether any peculiar way of sharing data at transnational level is found.

In particular, the research departed mainly from provisions set by the Enforcement Directive and by Regulation (EC) No 883/2004 on the coordination of social security systems to set out a list of variables necessary to verify whether the establishment of an undertaking in a country is genuine, and whether workers are posted for a temporary period (see the Preliminary Report for further details).

As to social security, this information shall be certified by means of the A1 portable document, released by the authorities of the sending country. This means these authorities, before releasing the A1 form, shall check the existence of the conditions in order for a posting from their country to lawfully take place; in case of a request submitted by the authorities of the host country, they shall reassess the situation of the sending undertaking and of the posted worker. In fact, in case fraud is found, the payment of social security contributions in the host country shall be imposed only after the A1 form has been declared invalid in the sending country.

The different level of information and detail provided for each country reflects differences in terms of use of databases for monitoring and enforcement purposes, as well as the social and academic debate on the covered topics and on the accessibility of relevant information.

In order to suggest what kinds of fraud are more common across the selected countries, a section of the report illustrates the results of an *ad hoc* survey developed by the project partners.

Finally, the report concludes by summarising key findings, and suggesting possible options for a better use of administrative data to combat the irregular posting of workers.

The conclusions take stock also of the findings dealt with in the Preliminary Report, especially concerning the features of administrative databases. For this reason, it is suggested to read the EU Post Lab Preliminary Report before the Assessment Report.

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## 2 EVIDENCE OF NON-COMPLIANCE AND RELEVANCE FOR INSPECTIONS IN THE AREA OF POSTING

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### 2.1 BELGIUM

Fraudulent posting of workers is one of the main forms of circumvention of labour law in the construction sector.

This includes non-compliance with the minimum rates of pay, non-payment of social security contributions in the sending country, or other violations in the field of working time.

The National Employment Office, for instance, reported about a sophisticated form of fraud concerning suspension of employment. In case of lack of orders or bad weather, an employer can suspend work performances without terminating the contract. However, there are employers – often letterbox companies – that abuse this system, ‘seconding’ their workers on temporary employment at a certain construction site to another site.

These forms of fraud may hide also the setup, by the subcontracting company established in Belgium, of letterbox companies in countries with lower labour costs.

Another recurrent fraud pertains to bogus self-employment, also in combination with the posting of workers.

The abuse of the self-employment status enables companies to save on labour costs, as they are not bound to minimum rates of pay set for employees.

As to workers posted to Belgium, there were also cases of foreign companies paying a portion of the salary in the form of non-taxable allowances (such as the ones aimed at covering accommodation or food expenses). These allowances are often not subject to the social security contributions of the sending Member State. This entails concrete disadvantages for the (future) financing of social security benefits employees are entitled to (leading to a decrease in the amount of social benefits).

#### **Use of administrative data**

With a view to tackling social fraud, Belgian authorities have entered into protocols with institutions from sending countries, aimed at sharing relevant data. Interviews also reported Belgian authorities can convert most databases into an Excel file, which makes it easy to share and consult them at transnational level.

At the same time, Belgium has been developing national data-matching tools to make full use of administrative data to identify social fraud.

With regard to the issuing of A1 forms for the posting of employees from Belgium, the National Social Security Office (NSSO) uses the ‘WABRO’ application to process requests. By means of WABRO, databases such as the national register (including demographic data on Belgium citizens and on foreign citizens residing in Belgium), the register of employees, and the mandatory declarations to the Belgian social security institutions are systematically consulted in order to assess compliance with posting conditions. If the automatic assessment reveals any anomaly whatsoever, the request is handled manually by a clerk. For instance, regarding the condition of carrying out a substantial activity in the sending Member State, any request submitted by an undertaking that started its activities in Belgium less than four months before must be handled by a clerk. In this case, for instance, a comparison is made between the number of posted workers and the number of workers employed in Belgium. If an employer active in Belgium for more than four months is bankrupt, the request for the A1 portable document is also handled manually.

Inspectors use also data from the Crossroads Bank for Enterprises (CBE), to identify any letterbox companies.

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When the inspection services identify a letterbox company during a field inspection, data matching based on the data of workers and the responsible persons is used to verify whether there is another letterbox company set up after the field inspection.

Cross-referencing two or more databases, and statistical analysis make it possible to select those files that represent a fairly high risk of irregularity or fraud. In this way, the inspectors, when working on the field, need less time to find out people or firms to be checked.

For instance, the so-called 'Dolsis' IT application<sup>2</sup> allows all inspection services at federal, community, regional, and local levels (such as the Welfare Centres – CPAS-OCMW – or the police) to consult – in real time and in a secure way – NSSO data and match them as needed with their own databases. Beforehand, when the inspection services requested data from NSSO, they received them in raw form, and had to develop their own interface in order to use them. Thanks to the Dolsis database, these data can be consulted in real time, and are directly exploitable in their own computer system. Social inspectors also have direct access through Dolsis to different online applications such as the LIMOSA declaration, Ccheckinetwork, Gotot OUT, etc. Therefore, they can check all relevant databases before conducting investigations.

A specific programme for strategic data mining, called 'The Data Mentalist'<sup>3</sup>, was initiated in 2014, inheriting knowledge from previous similar practices. It merges a number of databases with a view to identifying companies with higher 'risks of fraud', influenced by factors such as the misalignment between turnover and headcount, as well as the sudden decrease in the headcount. The programme also draws from companies' past behaviour and from inspection reports, using these data to predict risk factors.

## 2.2 BULGARIA

Bulgaria is increasingly involved in international and EU-level research addressing the undeclared economy, which allows for cross-national comparisons. According to estimations, the undeclared economy in Bulgaria accounted for around 31% of GDP in 2013, which is the highest estimated value in the EU-28. According to the World Bank Enterprise Survey 2009, 54% of firms assert that they compete against firms operating in the undeclared economy, whereas 28% of firms state that the practices of undeclared sector competitors represent a major constraint. This is a high share compared with the other 27 EU Member States. Recent surveys indicate that, although the undeclared economy appears to be shrinking over time, there is an increasing involvement in some types of undeclared work due to the economic crisis. This means that, although the overall trend is decreasing, not all forms of undeclared work are shrinking.

Looking at the supply and demand sides of undeclared employment, the Eurobarometer survey shows that, in 2007, the majority of undeclared workers were involved in construction, industry, and agriculture, while in 2013 the largest share of undeclared work was repair and renovation, followed by 'other goods and services'. Men aged between 40 and 54 years, the unemployed/those who are temporarily not working, as well as those from small and middle-sized towns and rural areas are more likely to engage in undeclared work<sup>4</sup>.

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<sup>2</sup> See: [https://www.socialsecurity.be/site\\_fr/inspection/Applics/dolsis/documents/pdf/manuel\\_utilisateurs\\_dolsis\\_F.pdf](https://www.socialsecurity.be/site_fr/inspection/Applics/dolsis/documents/pdf/manuel_utilisateurs_dolsis_F.pdf)

<sup>3</sup> See: <https://assets.socialsecurity.belgium.be/datamentalist/>

<sup>4</sup> Eurofound (2013), Joint effective control on undeclared work, Bulgaria, available at: <https://www.eurofound.europa.eu/data/tackling-undeclared-work-in-europe/database/joint-effective-control-on-undeclared-work-bulgaria>.

**Table 1: Prevalence of different types of undeclared work by sector according to employers (share of employers that believe undeclared activities occur often and very often in their respective sector)**

| Type of undeclared work  | 60% and above of respondents                          | 50-60% of respondents  | 40%-50% of respondents   |
|--|---|--|--|
| <b>Work without contract</b>   | Real estate   | Construction   | Retail and repair  |
| <b>Underreported remuneration</b>  | Construction<br>Real estate                           | Transport and telecommunications   | Hotels and restaurants<br>Financial and insurance services<br>Agriculture and forestry |
| <b>Social security insurance calculated and paid on a lower salary than the actual one</b> | Construction<br>Hotels and restaurants<br>Real estate | Trade and repair<br>Administrative activities<br>Transport and telecommunications              |  |
| <b>Underreported turnover</b>  | Administrative activities<br>Real estate              | Hotels and restaurants<br>Financial and insurance services<br>Construction<br>Trade and repair | Agriculture and forestry<br>Manufacturing  |
| <b>Underreported profit</b>  | Administrative activities<br>Real estate              | Hotels and restaurants<br>Construction<br>Trade and repair                                     | Financial and insurance services<br>Manufacturing                                      |
| <b>Cash payments preferred</b>   | Administrative activities<br>Real estate              | Trade and repair<br>Hotels and restaurants<br>Construction                                     | Manufacturing<br>Transport and telecommunications                                      |

Source: adapted from Bulgarian Industrial Capital Association, 2011, Survey of the employers.

Examining the nature of undeclared work, national representative surveys indicate that underreporting remuneration is more widespread than the lack of formal contracts, and has in fact increased since the beginning of the economic crisis. While primary work without contract is occurring less and less frequently (between 4% and 10% of employees, according to the surveys), non-declaration of additional employment is a more serious problem (between 28% and 32% of all employees with a second job). The economic crisis has forced employers to resort to underreporting wages and to registering workers as part-timers.

Among some of the most common informalities being detected in the labour market are:

- hiring employees without contract, with the most strongly affected sectors being those traditionally exposed to undeclared work, such as agriculture and construction (including seasonal and temporary work);
- employees receiving so-called 'envelope wages', i.e. only a share of the wage is actually declared and taxed;
- evasion of social security contributions by hiding actual remuneration.

Non-compliance by employers poses a greater challenge than non-reporting by households or self-employed workers.

Bulgarian monitoring bodies encounter several difficulties when implementing measures against undeclared work. There is a widespread culture of tolerance that accepts undeclared work: the financial interests of both

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actors involved in undeclared employment relationships are very strong. Moreover, such practice finds a breeding ground in the country's low living standards and in the opportunity for higher income that the undeclared labour economy provides. An additional hindering factor is the low level of trust in institutions and social systems. A major problem is that, during inspections, workers do not always cooperate and even lie about the real situation (contract and wage)<sup>5</sup>.

### **Use of administrative data**

There is no single body in Bulgaria that is responsible for tackling the phenomenon of undeclared work. Although the policy response is focused on labour, in recent years the tax authorities have played an increasingly important role, as improved tax and revenue collection has become a top political priority. The Ministry of Labour and Social Policy plays a key role in devising and implementing policies and measures to reduce undeclared work. Tax evasion and violations of fiscal legislation by both individuals and firms fall within the realm of the Ministry of Finance.

Since the early 2000s, there have been two major waves of policy reforms in Bulgaria, which led to the adoption of specific measures to tackle undeclared work. Both reform waves featured a focus on increased control and enforcement, which had an initial positive effect on the formalisation of shadow economic activities; this effect was however not retained in the long run. The past few years have been characterised by an ongoing focus of the government on improved tax collection (mainly VAT) and on tackling undeclared import and export of excise goods.

Overall, the key issues concerning the existing measures aimed at tackling the undeclared economy in Bulgaria are:

- lack of systematic evaluations and cost-benefit assessments of measures;
- misalignment between economic and administrative control measures;
- measures not tailored to the specific features of the national economy; and
- non-integrated approach (lack of a system coordinating a large number of measures).

As to the use of data in the framework of cross-border cooperation, in case of requests concerning suspect letterbox companies, the Labour Inspectorate avails itself of data from the Trade Register and from the Register of Labour Contracts of the National Revenue Agency. In addition, information from the findings of previous labour inspections, including the number and types of violations perpetrated, can be useful to the monitoring activities.

Yet, as far as letterbox companies exist generally for a short time span before they close down and a new letterbox company takes over the workforce, these checks may not be effective.

## **2.3 FRANCE**

The main source of information on evidence of non-compliance is the National Committee against Illegal Work, which is managed by the Ministry of Labour. The committee adopted the National Plan against Illegal Work 2016-2018 in 2015<sup>6</sup>, and provides an annual assessment of the plan and of the monitoring activities carried out in the priority sectors.

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<sup>5</sup> Dzhekova, R. & Williams, C. (2014), Tackling the Undeclared Economy in Bulgaria, Sheffield University Management School, 2014 GREY Working Paper No.1, available at: <https://www.researchgate.net/publication/319289041/download> ; Williams, C. & Yang, J. (2018), Evaluating competing perspectives towards undeclared work: some lessons from Bulgaria, Journal of Contemporary Central and Eastern Europe, available at: <https://www.tandfonline.com/doi/full/10.1080/25739638.2018.1511112?scroll=top&needAccess=true&> .

<sup>6</sup> The plan is available at: [https://travail-emploi.gouv.fr/IMG/pdf/le\\_pnlتي\\_2016-2018.pdf](https://travail-emploi.gouv.fr/IMG/pdf/le_pnlتي_2016-2018.pdf) .

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In July 2015, the Ministry of Labour set a specific goal for the Labour Inspectorate: the implementation of 1,000 checks per month of international service providers, as mentioned in the National Plan against Illegal Work 2016-2018. Posting of workers in the framework of international services has considerably increased in the construction sector since 2005, from 20,932 postings in 2006, to 93,940 in 2015 (+11% as against 2014). On average, in the second semester of 2015, the number of monthly checks rose to 1,303. Twenty per cent of checks focused on frauds linked to the posting of workers. Seventy-six per cent of checks were recorded for the construction sector only.

In February 2015, public authorities planned to monitor 500 construction sites (see Fiche 1 in the National Plan against Illegal Work 2016-2018). According to the Annual Assessment of Inspections Conducted in the Priority Sectors<sup>7</sup> as per the National Plan against Illegal Work of 2015, the number of inspections in the construction sector increased by about 40% between 2014 and 2015, from 21,757 to 30,818. The share of companies found non-compliant reached 16.3%. The main infringements are: concealed work (72%) and illegal supply of labour and illegal subcontracting (17%), followed far behind by employment of third-country nationals without a work permit (6%) and by unlawful status (e.g. bogus self-employment) (4%). In 2015, 44% of the monitored companies were active in the construction sector (as against 38% in 2014).

Another important source is represented by the annual reports of the Labour Inspectorate.

In the construction sector, according to the Annual Report of the Labour Inspectorate 2013<sup>8</sup>, it is mentioned that the Labour Inspectorate launched a large-scale monitoring operation on 25 and 26 June 2013, involving 300 construction sites across the country. Over 3,000 agents from the different administrations in charge of fighting against illegal work participated in this operation. Over 1,800 companies were screened, and the working conditions of more than 6,000 employees were assessed. According to the findings, 84% of companies turned out to be compliant. However, inspectors imposed 247 sanctions for illegal work, 160 for illegal supply of labour and illegal subcontracting, and 41 for employment of foreign workers without work permit. They also recorded 42 'misuses' of status (trainees working as volunteers, and bogus self-employed workers/entrepreneurs), which led to action against employers in order to recover the social security contributions related to the 'real' employment relationship. The Labour Inspectorate called on the relevant public authorities (the Prefect) to dismantle seven companies. The public authorities also refused some employment-related state subsidies to 14 companies, or called upon them to give back the subsidies already received.

As concerns workers posted to France, there are two main categories of fraud: (i) the posting of workers is illegal by nature: the company avails itself of the secondment scheme while carrying out a stable and habitual activity in France; it should furthermore declare its profits there, in addition to paying social security contributions for its employees in that country; and (ii) the posting takes place on a temporary basis and generally in compliance with French and EU legislation, but the conditions of implementation do not comply with the 'hard core' of the French labour law, which shall be respected by service providers during the provision of the service (e.g. provisions on minimum wage, health and safety, rest periods, and maximum working hours). In this regard, it must be noticed that, in the construction sector, it is sometimes unclear for employers whether some 'complementary' wage elements (to compensate workers for commuting time between home and the construction site) should be considered as included in the 'minimum rates of pay' due to posted workers or not. Furthermore, it often happens that posted workers are paid the minimum wage, with the employer (unlawfully) deducting costs linked to, among other things, transport (from the

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<sup>7</sup> Direction Générale du Travail (2016), Bilan des contrôles dans les secteurs prioritaires identifiés par le plan national de lutte contre le travail illégal en 2015, available at: [https://travail-emploi.gouv.fr/IMG/pdf/controle\\_des\\_secteurs\\_prioritaires\\_en\\_2015.pdf](https://travail-emploi.gouv.fr/IMG/pdf/controle_des_secteurs_prioritaires_en_2015.pdf).

<sup>8</sup> Direction générale du travail (2014), L'inspection du travail en France en 2013, available at: [https://travail-emploi.gouv.fr/IMG/pdf/Rapport\\_IT\\_2013\\_Web.pdf](https://travail-emploi.gouv.fr/IMG/pdf/Rapport_IT_2013_Web.pdf).

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country of origin to the construction site), accommodation, and food. These deductions will, in fact, reduce the overall final payment, bringing the hourly wage below the minimum wage.

Some cases are recorded in the Annual Report of the Labour Inspectorate 2013. The report mentions cases of posted workers receiving wages that were far below the French minimum wage; among them: a group of Latin American workers employed by a Spanish company on a construction site in southern France, who received a 'low wage'; and a group of workers from Romania that were paid € 700 per month for over 40 hours of work per week within a construction site in Auvergne. Many other examples are provided in the 2014 and 2015 reports.

### **Use of administrative data**

Administrative data are used to detect undeclared work. Yet, it seems that the monitoring authorities mainly used desk research with information and documents obtained from the concerned companies (payrolls, payslips, timesheets, accounting documents, etc.), as well as from other services at regional level, and also from a support unit at national level (the National Monitoring, Support, and Supervision Group, GNVAC).

## **2.4 GERMANY**

Undeclared work, under-declared work, and bogus self-employment are common forms of fraud throughout the German construction industry.

### **Undeclared work and under-declared work**

As concerns workers posted to Germany, there are employers that do not submit a declaration (pursuant to Article 18 of the Posted Workers Act) to the Central Customs Authorities prior to the posting, and they do not register with the SOKA-BAU sectoral fund (e.g. they do not submit monthly reports, and do not pay their contributions into SOKA-BAU). It is also possible that:

- they submit a declaration to the Central Customs Authorities, but do not register with SOKA-BAU;
- they register with SOKA-BAU, but do not submit a declaration to the Central Customs Authorities; or
- they submit a declaration and register with SOKA-BAU, without however declaring all of their workers but only some of them, so as to avoid paying the minimum wage and SOKA-BAU contributions for all of their workers.

With regard to under-declared work, it happens very often that employers report wrong periods of posting, declare a lower number of working hours, or assign their workers to another wage group (e.g. workers are assigned to Wage Group 1 although their qualifications and experience would require them to be placed in Wage Group 2). Employers therefore pay lower wages and contributions (SOKA-BAU contributions are calculated on the total gross wage of each worker). Similarly, failure to report work on weekends is a way not to pay supplementary wage benefits or overtime. From the information received (e.g. phone calls from workers, inspection reports, and seized business documents), SOKA-BAU has reason to assume that some employers negotiate with their workers a fixed wage instead of paying them for the total number of working hours. In this context, it should also be mentioned that the hourly wage on which the fixed wage is based seems to be significantly lower than the minimum wage in the construction industry. Furthermore, SOKA-BAU knows about cases in which workers received the proper amount of wage according to payroll documents but, once they were back in their country of origin, they paid back a part of their wage to their employer. Another common practice for employers is to pretend they have granted and paid leave to their workers, and to consequently claim reimbursement of such leave pay from SOKA-BAU. Issues with work permits have also emerged: for instance, a work permit was issued for a skilled worker (Wage Group 2) who was supposed to start in April, but the employer started reporting the posting as late as in May or June, and paid a wage corresponding to Wage Group 1.

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## **Bogus self-employment**

Bogus self-employment is an issue that is widespread throughout German construction sites. It applies to local/German workers and posted workers. Bogus self-employment describes a person who is registered as self-employed worker, and thus obtains a trade licence and, in case of posting, an A1 document (which confirms that the person concerned is a self-employed worker in their home country). Once the self-employed workers have obtained the necessary documents, they enter into a service contract with a German principal. In Germany, bogus self-employment is particularly prevalent in the field of tiling. In general, it is very lucrative for a principal to conclude a service contract with a self-employed person (rather than hiring/employing workers) inasmuch as it is possible to circumvent the provisions on minimum wage and working conditions, as well as to avoid paying contributions into SOKA-BAU and tax authorities. However, these conditions are mandatory and must be met by all employers/principals that employ workers on their construction sites in Germany. In case of local/German workers, the employer shall participate in the relevant social scheme, which is comprised of paid holiday, vocational training, and occupational pension. SOKA-BAU contributions are due on a monthly basis. In case of posted workers, the employer shall participate only in the paid holiday scheme (in this case, too, contributions are due on a monthly basis). SOKA-BAU noticed that there are several local and posted self-employed people who are working for the same principal or on the same construction site. However, each self-employed person performs tasks (e.g. placing of iron and concrete) that are usually performed by a group of workers who are supposed to comply with specific instructions; moreover, such tasks – from a technical point of view – cannot be accomplished independently by one person. Therefore, it seems more likely that such workers are ‘employees’ rather than self-employed workers, as they do not perform their work independently (it is questionable whether they can decide what tasks to carry out, and when, where, or how to perform them). Another issue is represented by temporary work agencies, which hire out temporary and self-employed workers. There are cases in which the self-employed person gives their pay directly to the agency, or the borrower (user) pays the ‘wage’ directly to the agency. In this context, there is also much confusion in relation to declarations submitted pursuant to Article 18 of the Posted Workers Act. Borrowers (users) that post one or more workers from a supplier domiciled outside Germany to carry out an activity or to perform services in the German construction industry, in which minimum working conditions and the payment of contributions into the holiday fund shall be complied with, are required to submit a written assurance of the supplier. This only requires a notification by the borrower (user), and not a notification by the supplier at the same time. When borrowers (users) make use of the wrong document (they use the document intended for regular employers instead of the one intended for suppliers), it is difficult for SOKA-BAU to verify the scope of application. This information, however, is very important to determine which set of rules applies.

## **Use of administrative data**

The administrative data (e.g. information on monthly reports) from SOKA-BAU and the information/documents (e.g. declarations, inspection reports, and business documents) provided by the Central Customs Authorities can help to detect undeclared work and frauds.

Undeclared work and under-declared work are mostly detected by the Central Customs Authorities when they conduct inspections on the construction site. They interview workers and can seize business documents (e.g. payroll documents, records of working hours, site activity logs, and work contracts). They review and evaluate these documents, and share them with SOKA-BAU when they have a reasonable suspicion that the relevant legal provisions (minimum wages and working conditions, and minimum paid annual holidays) have been breached, or when they initiate investigations.

SOKA-BAU is legally allowed to cooperate with the Central Customs Authorities during the inspection procedure and to crosscheck information in order to find out whether there are any discrepancies between, on the one side, the information/documents provided to the Central Customs Authorities and, on the other,

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the monthly reports submitted to SOKA-BAU. If there are any discrepancies (e.g. in terms of duration of posting, number of posted workers, and different gross wages), SOKA-BAU shares such information with the Central Customs Authorities, as incoherent information is an indication that the employer may have committed fraud.

Information available at SOKA-BAU, complemented with other business documents, can also be used to calculate damages once an employer has been found guilty. Yet, administrative data are not sufficient per se, and should always be combined with field inspections.

SOKA-BAU also uses external administrative data such as trade registers to confirm a company's activity or to find out what activity a company is performing. Once the activity is known, it can be determined whether the company is legally obliged to participate in the paid holiday scheme, and whether it shall register with, and pay contributions into SOKA-BAU but has not done so yet.

SOKA-BAU's administrative data are used also by the Federal Employment Agency for companies/employers that come from countries not covered by the freedom to provide services under EU legislation, and that want to access the German labour market. If a company wants to access the German labour market to execute a service contract, it shall prove it has a proper registration and payment history with SOKA-BAU. The Federal Employment Agency contacts SOKA-BAU before making a decision, in order to find out whether the company/employer was previously registered with SOKA-BAU, whether the monthly reports were submitted properly, and whether relevant payments were made on time. Furthermore, in cases in which access to the German labour market has been granted but payments to SOKA-BAU have become delayed or overdue, the permission will be withdrawn by the Federal Employment Agency.

As to other databases, some German interviewees remarked the presence of obstacles to data exchange in view of different IT structures and technical standards.

In terms of overall cooperation between authorities, pursuant to the Act on Registration of Commercial Activities, the authorities responsible for receiving such registration have been obliged since 2015 to check the business registration with a view to identifying any evidence of bogus self-employment or illicit work, and to report suspect cases to the Central Customs Authorities.

## 2.5 ITALY

Two main cases of fraud are most relevant in relation to the construction sector: bogus self-employment and under-declared/fully undeclared work<sup>9</sup>.

### **Bogus self-employment**

Bogus self-employment concerns self-employed workers hired as contractors for low-skilled jobs who actually work under the surveillance and direction of the 'client', i.e. the actual employer. In this way, the employer: (i) does not have to comply with the payment of the minimum wage; (ii) is not bound by the obligations entailed by a subordinate employment relationship, including those concerning protection against dismissal, working time and, to a large extent, health and safety at work; and (iii) is charged lower

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<sup>9</sup> See: Ispettorato Nazionale del Lavoro (2017), Rapporto annuale di vigilanza in materia di lavoro e legislazione sociale, Anno 2016, available at: <http://www.ispettorato.gov.it/it-it/studiestatistiche/Documents/Rapporti%20annuali/rapporto%20annuale%202016.pdf> ;

Galossi, E., Ferrucci, G. (2015), Gli immigrati nei comparti delle costruzioni e della logistica: caratteristiche, criticità e scenari, in: IDOS (ed.), Dossier Statistico Immigrazione 2015, Roma, pp. 293-298.

Demaio, G., Bonifazi, P. (2013), I lavoratori immigrati nel settore edile, in: INPS, Diversità culturale, identità di tutela. III Rapporto su immigrati e previdenza negli archivi INPS, pp. 213-225. Ministry of labour (2012), Communication of 4 July 2012 of the Ministry of Labour, available at: [http://www.lavoro.gov.it/documenti-e-norme/normative/Documents/2012/Circolare\\_4\\_luglio\\_2012\\_n16.pdf#search=circolare%204%20luglio%202012](http://www.lavoro.gov.it/documenti-e-norme/normative/Documents/2012/Circolare_4_luglio_2012_n16.pdf#search=circolare%204%20luglio%202012) .

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social security contributions. From an administrative point of view, the worker is registered as an individual entrepreneur.

### **Under-declared/Fully undeclared work**

Such form of fraud concerns workers employed for a higher amount of hours than those declared to public authorities and the sectoral fund (the Casse Edili); sometimes, working hours are not even registered. The former case is much less common also thanks to collective bargaining provisions allowing the use of part-time work only for a limited number of employees. The latter case often takes place also in conjunction with gang-mastering practices, under which a gang-master (the so-called 'caporale') intermediates employment relationships, having wide discretion as to the selection of (daily) labourers. The gang-master can benefit from their position by imposing 'levies' on workers' wage, for instance for transport services, or by harassing them. Fully undeclared work – i.e. workers are hired without any employment contract – is also a major issue, which is not detected by administrative databases.

Undeclared posting of workers may be seen as a sophistication of these forms of fraud insofar as workers are not registered with the compulsory sectoral fund (the Casse Edili), and they might be recruited by means of intermediaries implementing fraudulent or illicit practices.

From a wider perspective, it should be stressed that all the abovementioned illicit practices might take place also in long subcontracting chains, with companies at the top of the chain trying to make a profit by subcontracting work for very low prices.

### **Use of administrative data**

Some experimental initiatives were implemented to use administrative data to tackle undeclared work. In particular, information on the size of construction sites to be opened and on the kind of work was used to calculate an expected amount of work input (e.g. in terms of hours worked or of the ratio of labour costs to the total cost of the work to be performed). Whenever this expected amount of work input was significantly higher than the work input calculated according to the declarations submitted by the company to the Casse Edili, the latter ask for clarifications. In Umbria, data collected according to the procedure described above are also used for steering inspection activities.

As a common practice, whenever the Labour Inspectorate inspects a construction site, it requires the Casse Edili to verify that both the company and all the workers are registered. If this is not the case, the Labour Inspectorate applies sanctions on the company concerned for non-payment of the contributions due. From their part, the Casse Edili have no inspection functions.

Data from the Casse Edili may also be shared for other monitoring activities, e.g. to combat money laundering, criminal activities, and usury.

At transnational level, bilateral agreements for data sharing between the Casse Edili and similar foreign funds are in place. These initiatives are aimed at simplifying posting procedures while making sure workers are covered in relation to the intermediated wage elements (holiday pay, 13<sup>th</sup> month pay, seniority pay, etc.).

In fact, these bodies intermediate in their home countries those wage elements that are considered to be part of the pay rates posted workers shall be entitled to as per the host country's provisions, like bad weather pay, holiday pay, and the 13<sup>th</sup> month pay.

This means that, in compliance with the Posting of Workers Directive, undertakings sending their workers abroad shall register with the relevant fund in the host country, suspend the payment in the sending country in relation to the workers posted abroad, and pay contributions into the sectoral fund of the host country for the period of posting.

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At the same time, workers shall contact the fund in the host country in order to get back the intermediated wage elements they are entitled to, such as a share of holiday pay or the 13<sup>th</sup> month pay.

On the basis of mutual recognition of the similarity of minimum rates of pay and of the level of contribution rates applied by sectoral funds, the agreements provide for an exemption procedure. They entitle employers to continue paying contributions in the sending country, provided they are in compliance with the payments due and they declare the names of the workers to be posted, the period of posting, and the place where the construction site is located.

In turn, thanks to close cooperation between the involved institutions, whenever employers do not pay contributions into the sectoral fund in the sending country during the period of posting, or the number of workers they posted does not match with those declared in the sending country, such cases are quickly detected in the host country.

Yet, the National Paritarian Commission for the Casse Edili (CNCE) also remarked there may be privacy-related hurdles to making its data directly accessible to foreign authorities.

In the area of social security, the National Institute of Social Security (INPS) shares data with the Tax Revenue Agency. In this way, it can check whether very small-sized companies requiring an A1 form report a sudden and suspect increase in turnover, or whether, following further inspections, the turnover appears to take place mainly abroad. Yet, whereas such cases may suggest the presence of letterbox companies, field checks remain necessary. For instance, as remarked by the experts interviewed, a company may have a large share of turnover abroad simply because it manufactures machineries which are sold and installed abroad.

## 2.6 POLAND

The most debated forms of elusion in the area of employment relationships in the Polish construction sector concern bogus self-employment and temporary contracts. For what concerns specifically posting, authorities and social partners also recall non-compliance with terms and conditions of employment entailed in the host Member State and the phenomenon of letterbox companies.

### **Bogus self-employment (civil law contracts)**

Much political and academic debate in Poland focused on the abuse of civil law contracts. Eurostat data shows self-employment in the sector has increased by more than 30% over the last 10 years, justifying suspicions about the genuine increase in self-entrepreneurship in the sector. The construction sector alone accounts for more than 1 million workers in the country (7.2% of total employment as of 2016).

### **Abuse of temporary contracts**

The abuse of temporary contracts is also an issue, although the impact on wage may be more limited than fraud based on civil law contracts. Infringements regarding temporary contracts mainly concern the conclusion of a larger number of subsequent temporary contracts than permitted by law.

### **Circumvention of the Posting of Workers Directive**

The interviewed experts reported posted workers from other EU countries are very few and come generally from Member States with higher labour standards (except for Romania and Bulgaria). Yet, non-compliance with rules on posting and with the Polish minimum wage may affect Third Country Nationals working in Poland.

At the same time, there is awareness of fraud concerning workers posted from Poland.

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This may take place by failing to raise the pay to the minimum level entailed in the host country and/or through different forms of elusion of the due minimum rates of pay, like by understating qualification of the employee, not paying transport and accommodation costs or deducting 'organisational costs' from the payslip. The expert interviewed from ZUS stated this is less frequent for workers posted to Germany thanks to a good functioning of monitoring activities.

The case of letterbox companies was raised by interviewed social partners, remarking the presence of 'false' enterprises or temporary work agencies posting from Poland and lowering labour standards.

They stressed the detection of letterbox companies is very difficult due to the availability and confidentiality of data. Checks on the presence of conditions allowing for posting are deemed even more unlikely if the company abides to the payment of social security contributions.

### **Use of administrative data**

As concerns the use of administrative data, data records from inspections are taken into account for the drafting of the Annual Inspection Programme, as well as for labour reforms. For instance, the social security coverage of civil law contracts has been extended. Indeed, data from the National Social Security Institution (ZUS) could prove very useful for the detection of undeclared work. However, they are not made available to a sufficient extent to other public bodies, including the liaison body (the National Labour Inspectorate).

In addition, the interviews highlighted difficulties in ensuring the monitoring of sending undertakings, especially a multitude of micro-enterprises and temporary work agencies, also due to the low number of inspectors.

At international level, ZUS data are shared in case a specific request for an inspection is submitted through the liaison office.

In addition, some experts pointed out there are technical and privacy problems hampering data sharing. In general, administrative databases are decentralised and may be incomplete; therefore, whenever the liaison office receives a request from a foreign authority, the process for acquiring the necessary information from the different public institutions involved could be particularly lengthy.

As to privacy, doubts about the possibility of data sharing arise primarily for personal data, but limits concern also data regarding significant areas of business operations.

## **2.7 PORTUGAL**

Evidence (such as recurring news releases and reports from labour inspectors) suggests the existence of various forms of abusive and fraudulent employment practices in the construction sector, as reported below.

### **Over-reporting of allowances**

Most information exchange between EU inspection authorities within the Internal Market Information System (IMI) focuses on wages. According to Portuguese labour inspectors, Portuguese employers posting workers to other EU countries pay the minimum wage applicable in the host country, but they try to find out different ways to pay the same amount while avoiding taxation, for instance by reimbursing cost allowances. However, the Finance Authority has introduced a rule according to which any wage element that exceeds the cost allowances of the public administration should be taxed, so the trend has decreased. From some news releases (no systematic analysis has been conducted though), it has emerged that the General Confederation

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of Portuguese Workers (CGTP) has reported various situations of abuse among Portuguese posted workers, often subject to lower wages, longer working hours, and worse health and safety conditions, particularly in countries like France, Spain, and the United Kingdom.

Instead, as concerns specifically workers posted to Portugal in the construction sector, Portuguese labour inspectors report that, in the majority of cases, they are highly qualified employees that serve under the more favourable terms and conditions of employment of their home countries, where fraud is not an issue. Only in other sectors, particularly in agriculture, situations of fraud affecting workers posted to Portugal have been reported: they mostly concern Asian workers who experience poor working conditions, long working hours, and low wages (in some cases, they are actually subjected to slavery).

### **Working time organisation**

A common strategy for circumventing minimum wages is through excessively long working periods, with reports of workers working over 50 or 60 hours per week. This also relates to the practice of paying supplementary hours, which varies from country to country.

### **Non-existent absences**

Another reported issue relates to the periods of bad weather, which in Portugal are not subject to special allowances from mutual funds as is the case with other EU countries. Portuguese labour inspectors have noticed a high volume of declared absences during such periods: this is a strategy adopted by the company to avoid paying wages and related social security contributions.

### **Undeclared activity and undeclared work**

Most labour inspectors state undeclared work and bogus self-employment are not an issue affecting Portuguese companies as they are subject to frequent inspections and harsh penalties, and Portugal has mechanisms in place to verify whether a working relationship can be considered as self-employment. However, some inspectors state that there are companies that have no formal economic activity and are not included in any database. ‘The dark side of the economic activity is not within companies, it is in-between them, it’s the non-declared part that we cannot capture...’ – Portuguese Deputy Chief Labour Inspector (interviewed on 13 April 2017). According to a report on the Portuguese construction sector between 1990 and 2010<sup>10</sup>, a large part of the recruitment of unqualified or semi-qualified employees, especially by small and medium-sized enterprises (SMEs), is carried out on the informal market, which features higher salaries but lower or no social contributions, thus being attractive to both national and migrant workers (mostly from the Portuguese-speaking African countries and eastern European countries). There are also informal reports of rotational posting of Portuguese workers who are alternatively recruited to carry out the same job, without leading to a permanent employment relationship with the company where the posting takes place; this is however an issue that goes beyond posting.

### **Letterbox companies**

Portuguese labour inspectors report the issue of letterbox companies with caution. The fact that a company – especially small-sized companies – posts workers abroad without carrying out a substantial activity in Portugal does not necessarily mean that it is a letterbox company. It often relates to economic circumstances and to the opportunities generated by the European single market. ‘Through the website of the Finance Authority, we can easily find out when a company was founded; however, for instance, if a company was created in the last month and is already posting workers, it doesn’t mean that it’s a letterbox company; many further aspects need to be investigated. This cannot be an obstacle to the free provision of services. There

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<sup>10</sup> Baganha, M. I., Góis, P., Marques, J. C. (2002), *O Sector da Construção Civil e Obras Públicas em Portugal: 1990-2000*, Coimbra: Centro de Estudos Sociais.

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are no criteria for companies. We cannot say: “Only companies in place for more than three years can post”; that’s not possible. The fact that a company has been set up today and starts posting to France, Belgium, or any other country in the next days doesn’t mean that it’s a “letterbox” company. It’s rather a business opportunity, and that’s why we have an open market.’ – labour inspector (interviewed on 26 October 2017)

In 2007, the Portuguese Trade Union of Construction Workers reported that seven out of 10 workers were sent to work illegally in Spain through letterbox companies, and were repeatedly subject to overdue salaries and non-payment of social security contributions<sup>11</sup>.

### **Gang-masters / Illicit recruitment**

Illicit recruitment is indeed an issue in Portugal, but is not related to posting by itself, but to the informal recruitment agencies that operate in the country. “Posting is one of the ways through which mobility takes place; another that has been very difficult for us to monitor is gang-mastering. [...] Temporary work is a provision of services that involves workers with a certain qualification; the same applies to gang-masters, they will provide a service, however such service ends up here. So, this situation of illegality ends up in the national territory, it’s limited to recruiting. The worker arrives there and has the normal obligations [...]” – Portuguese Deputy Chief Labour Inspector (interviewed on 13 April 2017). A report from 2011<sup>12</sup> also revealed the suspicion that criminal organisations are involved in sending irregular workers from Portugal to Spain and elsewhere. The same report provides an example from the construction sector in the United Kingdom, where a Portuguese company was subcontracted, and workers were paid a wage below the UK minimum wage.

### **Use of administrative data**

In the context of national and EU-level cooperation patterns, an exchange of administrative data takes place between the Labour Inspectorate, tax authorities, and social security administrations, contributing to detect undeclared work and fraud.

Regarding the Portuguese Labour Inspection System (ACT), all inspection data are recorded in a computer system (called ‘SINAI’) that allows for reading and cross-checking of information. Compliance with legislation is ascertained through some result indicators taken from SINAI, including the number of first and second visits to establishments (carried out in the framework of different interventions), the number of final information documents, the number of notifications, the number of official news documents, and the number of warnings and reports.

SINAI was also developed in order to enable information exchange between ACT’s regional and central services at any time, the coordinated application of sanctions, and the establishment of similar procedures by all branches. This database is also the source of information when it comes to addressing the information requests within IMI. According to data from the IMI-based electronic information exchange in the posting of workers area, Portugal is the country that has received the highest number of requests in this regard<sup>13</sup>.

ACT provides intranet services for inspectors – with information regarding: guidelines for inspection actions (with flowcharts for the majority of situations); procedure templates; specific instructions on preventive and inspection actions; checklists; electronic publications; collective bargaining agreements; and national and international legislation regarding industrial relations and occupational health and safety. The inspectors also have access to the social security database in relation to employees (but not in relation to companies), as well as to the databases of tax authorities, the National Companies and Commercial Register, the Institute of

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<sup>11</sup> Correio da Manhã (2007), ‘Portugueses trabalham ilegalmente em Espanha’, 7 July 2007, available at: <https://www.cmjornal.pt/portugal/detalhe/portugueses-trabalham-ilegalmente-em-espanha>.

<sup>12</sup> Cremers, J. (2011), *A la recherche de main-d’œuvre bon marché en Europe – Conditions de travail et de vie des travailleurs détachés*, Brussels: European Institute for Construction Labour Research.

<sup>13</sup> See: [http://ec.europa.eu/internal\\_market/imi-net/statistics/index\\_en.htm#0\\_4](http://ec.europa.eu/internal_market/imi-net/statistics/index_en.htm#0_4).

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Financial Management and Infrastructure of the Justice, Foreigners, and Borders Service (SEF), and the Authority for the Supervision of Insurance and Pension Funds (ASF).

ACT's work is evaluated against the Common Principles for Labour Inspectorates in Relation to Inspections concerning Health and Safety in the Workplace of the Committee of Senior Labour Inspectors (SLIC), with a view to reviewing the capability of the labour inspection system in the host country in terms of implementation and enforcement of EU directives on health and safety at work<sup>14</sup>. One of the issues raised in SLIC's report is that, although labour inspectors in Portugal have access to different databases run by ACT and other public entities, containing information on existing and operating enterprises, these databases do not guarantee labour inspectors direct and real-time information on newly established companies, which might facilitate the planning of inspections. Nevertheless, SLIC's evaluation team has noticed that sharing experiences among labour inspectors was of utmost importance for the correct and effective performance of inspection and enforcement activities.

Partnerships have been developed with other organisations in relation to inspection visits and sectoral actions involving, among other bodies, technological centres aimed at training inspectors and at providing technical support (such as the Professional Training Centre of the Civil Construction and Public Works Industry of the South, CENFIC, as concerns actions carried out within construction sites).

## 2.8 ROMANIA

Non-compliance with terms and conditions of employment takes different forms in Romania.

As far as employees are concerned, companies may fail to comply with the minimum wage, to pay the related social security contributions, to guarantee paid holidays and time-offs, or to remunerate overtime.

As concerns posting of workers, interviewees report cases of posting taking place from Romania without meeting the conditions set forth by EU legislation. At the same time, employers may fail to guarantee workers posted from Romania even the standards set out by the Romanian employment contract they are bound to.

Fully undeclared work is another common problem.

Over the 2015-2016 period, the Labour Inspectorate carried out about 131,000 checks at national level, of which 73,000 in the industrial relations field. More than 70,900 checks were implemented in relation to undeclared work. Labour inspectors discovered some 11,000 undeclared workers, imposing penalties for over RON 47,000,000 (€ 10,057,107).

### Use of administrative data

In terms of use of data to tackle undeclared work, crosschecking between data owned by the Labour Inspectorate, and data provided by the Agency for Fiscal Administration (ANAF) and the National Pension Fund is limited. However, in recent years, ANAF has become highly efficient in collecting taxes; therefore, its tools could be potentially useful when matched with the Register of Employees in Romania (Revisal).

At present, thanks to protocols concluded by the Labour Inspectorate with other public institutions and authorities (the National Trade Register Office, the National Agency for Payments and Social Inspection,

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<sup>14</sup> SLIC (2015), Report of the Senior Labour Inspectors Committee (SLIC) – Evaluation of the Portuguese System of Labour Inspection, available at:

[www.act.gov.pt/\(pt-PT\)/SobreACT/DocumentosOrientadores/Relat6rios%20de%20avalia7c3o%20da%20ACT%20realizados%20pelo%20SLIC/Documents/Relat6rio%20de%20avalia7c3o%20da%20ACT%20realizado%20pelo%20SLIC%20em%202016.pdf](http://www.act.gov.pt/(pt-PT)/SobreACT/DocumentosOrientadores/Relat6rios%20de%20avalia7c3o%20da%20ACT%20realizados%20pelo%20SLIC/Documents/Relat6rio%20de%20avalia7c3o%20da%20ACT%20realizado%20pelo%20SLIC%20em%202016.pdf).

ANPIS, etc.), inspectors can query each of the databases made available, although they are not interconnected.

As far as data from Revisal are concerned, the ReGes software makes it possible to easily match information resulting from field inspections, with declarations submitted to Revisal. During inspections, labour inspectors, using tablets or other electronic devices provided by the Labour Inspectorate, can match information provided by employers, with data submitted by the latter to Revisal. This allows for quick identification of misconduct and information gaps.

## 2.9 SPAIN

Construction has been a crucial sector within the Spanish economy. Before the economic and financial crisis in 2008-2009, employment in construction accounted for around 12% of total employment, as against an average of 8% in the EU. With the crisis, it began to decline quite dramatically until around 2014. In that year, employment recovered somewhat, but it has not yet reached pre-crisis levels.

**Table 2: Construction (NACE F) employment as a proportion of total employment (people aged between 15 and 64)**

|              | 2008  | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 |
|--------------|-------|------|------|------|------|------|------|------|
| <b>EU-28</b> | 8.43  | 8.00 | 7.68 | 7.42 | 7.18 | 6.95 | 6.84 | 6.77 |
| <b>Spain</b> | 12.07 | 9.94 | 8.86 | 7.66 | 6.60 | 6.03 | 5.75 | 6.03 |

Source: Eurostat European Labour Force Survey

As it occurs in most EU countries, the construction sector in Spain faces a number of structural problems and challenges that make it particularly exposed to fraudulent practices and undeclared work. Firstly, construction is a highly labour-intensive sector, which does not allow for the transfer of work to other countries. Accordingly, fraudulent employment and contracting forms represent common competitiveness strategies used in the construction industry to save costs.

Secondly, the temporary nature of construction works, according to which the end of a project usually means the end of employment relationships, has favoured externalisation approaches, thus leading to the extension of subcontracting chains and multilevel contracting practices. As a result (see Table 3), temporary employment in the construction sector is higher than the national average.

**Table 3: Temporary construction (NACE F) employees as a proportion of total construction employees (aged between 15 and 64), compared with the national average**

|                           | 2008 | 2010 | 2015 |
|---------------------------|------|------|------|
| <b>Spain total</b>        | 27.2 | 21.9 | 23.2 |
| <b>Spain construction</b> | 48.7 | 41.1 | 41.3 |

Source: Eurostat European Labour Force Survey

Externalisation is also associated with the prevalent use of self-employment. In this regard, attention should be paid to the high proportion of self-employed workers without employees, observed in the sector. Moreover, it is worth noting that the absolute number of self-employed workers without employees has decreased since 2008, albeit to a smaller extent than total sectoral employment (see Table 4). In addition, as reflected in Table 5, the percentage of self-employed workers without employees among the total number of self-employed workers in the construction sector increased from 59.3% in 2008 to 7.19% in 2015.

**Table 4: Change in self-employed workers without employees (own-account workers) as against change in total employment in construction (NACE F) (people aged between 15 and 64, 2008 data)**

|              | 2008 | Change in total employment (2008-2015) | Change in self-employed workers without employees (2008-2015) |
|--------------|------|--|---|
| <b>Spain</b> | 100% | -56.46%                                | -21.57%   |

Source: Eurostat European Labour Force Survey

**Table 5: Self-employed workers without employees (own-account workers) in construction (NACE F) (aged between 15 and 64) on the total number of self-employed workers**

|              | 2008 | 2010 | 2015 |
|--------------|------|------|------|
| <b>Spain</b> | 59.3 | 62.5 | 71.9 |

Source: Eurostat European Labour Force Survey

Thus, atypical work is a relatively widespread practice, non-standard employment being significantly higher than in most other economic sectors. Many workers in the construction sector are on fixed-term or temporary employment contracts, or work as self-employed without employees. Although atypical work cannot be directly associated with undeclared work or fraudulent practices, the extent of complex and varied employment relationships has been detected as a factor that explains the prevalence of undeclared and fraudulent contractual practices<sup>15</sup>.

Thirdly, there are some supply-side factors, associated with the existence of groups of workers that are more exposed to precarious work and, as a result, face a higher risk of being fraudulently contracted (also through lawfully paid activities). In this sense, a particularly vulnerable group of workers is comprised of migrants: this is due to several reasons such as the lack of knowledge about existing regulations or a precarious economic situation, which leads them to avoid reporting irregular cases<sup>16</sup>. The boom of the construction sector attracted a high proportion of migrants, and in particular undocumented migrants, who were strongly exposed to undeclared work.

The most common fraudulent practices – identified in the few studies that have researched the topic in relation to the construction sector in Spain, as well as during the fieldwork conducted – are:

- bogus self-employment;
- subcontracting chains and multilevel contracting;
- workers not registered with the social security system;
- disguising permanent standard contracts;
- irregular ascription to collective agreements; and
- circumvention of the Posting of Workers Directive.

### **Bogus self-employment**

Bogus self-employment is associated with workers who are declared as self-employed simply to reduce social security, labour law, and collective bargaining liabilities. According to some authors<sup>17</sup>, this fraud may arise as a result of problems encountered in distinguishing self-employment and bogus self-employment according to existing criteria, while trade unions usually point to the lack of resources available to Labour Inspectorates to enforce existing regulations<sup>18</sup>.

<sup>15</sup> Eurofound (2016): Inequalities in working conditions: Exploring fraudulent forms of contracting work and of self-employment in the European Union. Luxembourg: Publications Office of the European Union.

<sup>16</sup> Rocha, F. (2011): El trabajo no declarado en España, Fundación 1º de Mayo.

<sup>17</sup> Perez, M. G. (2008), Self-Employment and Bogus Self-Employment in the European Construction Industry. Country Report Spain, EFBWW, FIEC, Brussels, available at: <http://www.efbww.org/pdfs/Final%20report%20Spain.pdf>.

<sup>18</sup> Eurofound (2017), Fraudulent contracting of work: Bogus self-employment (Czech Republic, Spain and UK), Dublin, available at: [https://www.eurofound.europa.eu/sites/default/files/ef\\_publication/field\\_ef\\_document/ef1717en1\\_0.pdf](https://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef1717en1_0.pdf).

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A recent report by the Construction Labour Foundation of Asturias (FLC)<sup>19</sup> has highlighted the existence of bogus self-employment in the construction sector, resulting from employers' strategies aiming to save costs. The same report identified corrosive effects on health and safety, associated with these fraudulent practices, as those workers are forced to work longer working days and are not covered by health and safety protection mechanisms.

### **Subcontracting chains and multilevel contracting**

The effects associated with subcontracting chains and multilevel contracting represented an issue extensively discussed before the economic crisis. Subcontracting with long chains brings about a displacement of risks from the largest companies to the weakest ones. Principal contractors pressure subcontractors to save costs; the latter are thus encouraged to restore irregular practices. In this sense, the high incidence of labour accidents in the construction sector was associated with long subcontracting chains where subcontractors were not complying with health and safety regulations. Fraud was also associated with the use of letterbox companies or intermediary agencies without real construction activities or productive infrastructure. To tackle this situation, a new act was approved in 2006 (Law no. 32/2006): among other things, it sets out new conditions for companies willing to take part in subcontracting chains; such conditions concern quality and company solvency (e.g. having a real activity and productive infrastructure in place, taking on risks and liabilities, etc.), health and safety (being enrolled in the Register of Accredited Enterprises, REA; see the related description in the Preliminary Report), and the percentage of workers hired under open-ended contracts (at least 30% of the entire workforce). Moreover, the new law established limits on long subcontracting chains, forbidding third-level subcontractors from subcontracting work, and requiring subcontracting companies to fill in a so-called 'subcontracting book' to keep track of several aspects associated with the subcontracting chain<sup>20</sup>.

A recent report by FLC<sup>21</sup> however points to non-compliance with Law no. 32/2006 in relation to subcontracting associated with:

- companies failing to update the information provided to REA;
- companies not complying with the 30% mandatory quota concerning the hiring under open-ended employment contracts; and
- companies failing to keep the subcontracting book.

### **Workers unregistered with the social security, and irregular migrants**

This fraud occurs when companies do not register workers with the social security system. It has also been associated with irregular migrants, especially prior to the economic crisis, when it was estimated that a relevant proportion of undocumented migrants were employed in the construction sector<sup>22</sup>.

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<sup>19</sup> Fundación Laboral Asturias (2015), Informe de situación del sector de la construcción del Principado de Asturias, available at: <http://www.flc.es/documents/14001/e1789bc2-c18a-41c2-b41f-9d88a61448b5>.

<sup>20</sup> de la Iglesia, V. M. (2008), Comentarios a la ley sobre subcontratación en el sector de la construcción, *Revista de Dirección y Administración de Empresas*, 15, pp. 119-143.

<sup>21</sup> Fundación Laboral Asturias (2015), Informe de situación del sector de la construcción del Principado de Asturias, available at: <http://www.flc.es/documents/14001/e1789bc2-c18a-41c2-b41f-9d88a61448b5>; see also: Fundación Laboral (2006), Trabajo no declarado en el sector de la construcción., available at: <http://trabajoenconstruccion.com/resources/subirarchivos/00066184archivo.pdf>.

<sup>22</sup> Meardi, G., Martín Artiles, A. & Lozano, M. (2012), Constructing Uncertainty: Unions and Migrant Labour in Construction in Spain and the UK, *Journal of Industrial Relations*, 54(1), pp. 5-21.

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## Disguising permanent standard contracts

Currently, there are three main types of fixed-term contract: (i) 'contract for specific jobs or services' (*contrato de obra y servicio*), which can last up to a maximum of three years; (ii) 'contract based on productive needs' (*contrato eventual por circunstancias de la producción*), which can last up to a maximum of six months; and (iii) 'replacement contract' (*contrato de interinidad*). According to the Spanish Workers' Legal Statute, these three types of fixed-term contract can be used, respectively: (i) when carrying out a very specific project or providing a very specific service; (ii) as a consequence of the specific conditions of the market/sector and/or of temporary excessive workload; and (iii) when a new worker is hired in order to replace another one on leave who has the right to return to their post. The Spanish legislation establishes that, if a fixed-term contract has not been entered into under one of the conditions specified above, it represents a fraudulent form of contracting work. Recent research has found that the most common fraud occurs in relation to the misuse of the causality link associated with the 'contracts for specific jobs or services'<sup>23</sup>. As a result of the flexible definition of causality associated with this type of contract, it is relatively easy for employers to include generic jobs or services.

## Irregular ascription to collective agreements

FLC has reported the existence of companies that irregularly classify their activity with the aim of being covered by other sectoral collective agreements and, as result, eluding the stricter regulations – in terms of health and safety and of vocational training – set out in the collective agreement of the construction sector<sup>24</sup>.

In addition, an interviewee from the General Workers' Union (UGT) informed that a number of cases had been found in which companies registered their headquarters in one of those provinces where the applicable collective agreement establishes lower wages and less favourable working conditions, while continuing to operate in a different province.

## Circumvention of the Posting of Workers Directive

Spain ranks eight among EU countries as to the number of received posted workers (a total of 54,037), showing, however, a decline of almost 15% since 2010 (due to the economic crisis). On the other hand, it ranks five among EU countries in terms of posted workers sent abroad (over 125,000), with an increase of almost 107% since 2010. The main country of destination of workers posted from Spain in 2015 was France (31.8%), and the main countries of origin of workers posted to Spain in 2015 were France (23.1%), Germany (21.9%), and Portugal (19%). Almost one third of those workers posted to Spain were employed in the industry sector (excluding construction), followed by the construction sector (28.1%).

Before the economic crisis, the Labour Foundation paritarian institution (2006) found cases of Portuguese construction companies posting workers to Spain, which were not applying the minimum wage as per the applicable collective bargaining agreement. In 2007, the Federation of the Construction, Timber, and Allied Trades of the Workers' Commissions (FECOMA-CCOO) launched an initiative aimed at dealing with forms of fraud related to Portuguese workers posted by transnational companies to building sites in Spain. FECOMA-CCOO carried out an awareness-raising campaign within building sites, disseminating information in Spanish and Portuguese about workers' rights, which stressed the importance of reporting all violations to the Labour Inspectorate. The union maintained that, in many cases, the applicable legislation was not respected, and

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<sup>23</sup> Eurofound (2017), Fraudulent contracting of work: Fixed-term contracts (Belgium, Estonia and Spain), Dublin, available at: <https://www.eurofound.europa.eu/publications/information-sheet/2017/fraudulent-contracting-of-work-abusing-fixed-term-contracts-belgium-estonia-and-spain> .

<sup>24</sup> Fundación Laboral Asturias (2015), Informe de situación del sector de la construcción del Principado de Asturias, available at: <http://www.flc.es/documents/14001/e1789bc2-c18a-41c2-b41f-9d88a61448b5> . See also: Fundación Laboral (2006): Trabajo no declarado en el sector de la construcción, available at: <http://trabajoenconstruccion.com/resources/subirarchivos/00066184archivo.pdf>

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called upon employers to check their subcontractors and to demand compliance with the law. Nevertheless, the social partners and FLC representatives interviewed consider that fraud associated with the circumvention of the rules on the posting of workers is not a major issue in Spain, and practically does not exist in case of Spanish workers posted to foreign countries, bearing in mind that most of them are highly qualified workers.

Finally, it is worth mentioning a fraud recently detected by the Labour Inspectorate. The representative interviewed informed that this fraud is perpetrated as follows: a foreign company takes part in a tendering procedure in Spain, and is eventually awarded. Then, the company informs the client that it will post workers from its country, who will be covered by the social security regulations in force in the sending country. However, workers are not actually posted: the employer rather contacts and employs workers from the formal 'sending country' who actually live in Spain and fails to ensure social security coverage both in Spain and in the sending country.

The representative from the Labour Inspectorate informed that, in order to verify these situations, it would be necessary to activate a system of cooperation between, on the one hand, the different administrative departments of Spain and, on the other, the countries where the employer is perpetrating the fraud. However, such system can be activated only when the Directorate General of the Labour Inspectorate approves the request, following a complex and expensive procedure.

These forms of fraud have been found in Madrid, and affect workers from Portugal and Romania.

### **Use of administrative data**

The most relevant administrative data used to detect fraud are associated with two initiatives explained in the preliminary report: REA and the Professional Training Card (TPC).

With regard to REA, it keeps track of the national and foreign companies willing to be contracted or subcontracted to carry out a project in the construction sector. Registration certifies that the company complies with the requirements for the prevention of risks in the workplace, as per Royal Decree no. 1109/2007.

The presence of REA and of joint liability provisions work also as an incentive for large companies to control their contractors and subcontractors. Yet, the register does not contain information on wages actually paid by contractors. Therefore, clients may end up being liable for debts towards (posted) workers they were not aware about.

For this reason, many large clients voluntarily adhere to the so-called 'Document Management Online Platforms on Labour Risk Prevention' (Coordinación de Actividades empresariales, CAE) and require subcontractors to upload all the information there. The information requested includes training on health and safety, labour contracts of workers, and contributions paid into the social security system under each contract, with a view to checking not only that workers are registered with the social security system, but also the hours they are actually working. This is crucial insofar as under-declaration of working time is a very common form of fraud. Since the documents that contain information on the contributions paid into the social security system feature a delay of two months, clients also require workers hired by the subcontractor to sign a document stating that they have received the last two monthly wages.

Delays in uploading documents on the platform may suggest the presence of irregularities.

As far as TPC is concerned, it has contributed to preventing fraud associated with health and safety regulations, by encouraging workers to have a personal training card where they have to enter the data on the health and safety training they have completed. Fraud is avoided because construction workers, when applying for TPC, are required to submit all official documentation attesting to the training they completed,

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the centres where they participated in such activities, contents, duration, etc. This information is to be validated by the Labour Foundation. A list of approved centres for health and safety training and for other training activities in the sector is made available. This measure was prompted by some concerns about the authenticity of the certificates attesting to workers' attendance of training courses on these topics. For this reason, a number of centres were accredited, and all workers are obliged to attend training activities in these centres. FLC keeps track of these centres to maintain their accreditation.

Overall, the information obtained during fieldwork confirmed that existing databases cannot be used to prevent or tackle fraud associated with posted workers, as they do not contain personal information on working or employment conditions.

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## 3 WAGES AND WORKING CONDITIONS OF POSTED WORKERS: SOME INSIGHTS FROM THE EU POST LAB SURVEY

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### 3.1 METHODOLOGICAL INTRODUCTION

As part of the activities envisaged in the framework of the project, the partners complemented inputs from desk research and field interviews with stakeholders, with a survey targeting posted workers themselves.

A web-survey tool was created to this aim and made available in 11 languages online (English, Bulgarian, Czech, French, German, Hungarian, Italian, Polish, Portuguese, Romanian, and Spanish). The partners could also print questionnaires to administer them in paper form, and then entered them into the online tool. The English version of the survey is available in the annex.

The survey covered some basic demographic information, as well as information on the sending and host countries, and investigated breaches in the following areas: compliance with the payment of minimum wage; compliance with the payment of holiday pay; compliance with compensation for overtime; compliance with maximum working time; and compliance with job classification. It was launched in October 2017 and closed in January 2018. Results were then exported for statistical analysis through the SPSS software application. Twelve answers were eliminated as workers reported having been sent from and to the same country, or they were sent to countries not covered by the EU legislation on the posting of workers.

Some variables were recoded or created *ad hoc* for the purposes of the analysis.

With a view to reaching out to workers, the partners activated their contacts mainly through: (i) member companies; (ii) affiliated unions; (iii) unionists active on the field; and (iv) inspectorates.

For instance, both SOKA-BAU and CNCE reported having contacted both companies having posted workers abroad / hosted posted workers, and unions/inspectorates active on the field, although the former channel was predominant. In particular, SOKA-BAU reported that the majority of contacts were made through information from SOKA-BAU's database on mandatory declarations submitted by foreign companies that post or posted workers to Germany. Workers were randomly selected among those for whom a phone number and/or email address was available. However, some of the workers were randomly interviewed when they called SOKA-BAU or were called by SOKA-BAU for other issues. In addition, the partners from the 'Fair Mobility' project that are members of the IG BAU union contacted about 10 posted workers by phone.

The 'Fair Mobility' project provides support in the enforcement of fair wages and working conditions for migrant workers from central and eastern European countries in the German labour market. The project lies within the political responsibility of the Executive Board of the Deutscher Gewerkschaftsbund (DGB) union. It is sponsored by the German Federal Ministry of Labour and the German Federal Ministry for Economic Affairs and Energy.

The Bulgarian partner (the Bulgarian Construction Chamber, BCC), which runs the Central Professional Register of Builders, made a list of companies that post workers from Bulgaria, and then contacted all of them. Those willing to participate, mainly SMEs, answered the online survey by themselves or provided contacts of posted workers to be interviewed by phone.

In Portugal, the main channels to reach out to workers were the Portuguese Inspection Authority and unions. They are not allowed to share workers' contact information, thus they took responsibility for disseminating the survey through their mailing list. In addition, the Portuguese partner also shared the survey in social media groups of Portuguese workers abroad, although few interviewees accessed the survey from social media.

In France, the project partners reached out to workers engaged in legal disputes against the companies where they were posted, which were allegedly in breach of the rules on the posting of workers.

All in all, the approach adopted allows us to have a clear picture of developments occurring in the ‘surroundings’ of the partners’ organisations, sometimes biased in reason of a self-selection of companies (as in Bulgaria) or because the sample consisted of workers subjected to abuse of EU rules (as in France).

For this reason, the results cannot be considered as representative of the conditions of posted workers in the selected countries. Nevertheless, they provide some interesting inputs on the main problems, including the aspects that are expected to be more problematic among the companies/workers the partners’ organisations have contact with.

### 3.2 RESULTS OF THE SURVEY

The final sample used for the analysis was composed of 211 interviewees.

The composition of the sample by gender shows an overwhelming presence of men (95.7%), which reflects a gender segregation deeply rooted in the sector. In the light of the very marginal presence of women, any disaggregation of the analysis by gender was not significant.

The average age of the sample is 42 years, with values featuring a normal distribution across the median value (41).

**Figure 1: Distribution of the sample by age**



Most interviewees attained a secondary educational level (55%), with a further 21% holding a post-secondary diploma, whereas 10% have a tertiary degree, and 14% completed only primary school or have a lower educational level.

Germany is the main destination of the posted workers interviewed, accounting for 57% of answers, followed by Belgium, France, and Italy, all between 5% and 10%.

In terms of sending countries, Bulgaria represents the majority of answers (32%), followed by Romania (17%), Portugal (12%), Hungary (10%), and Italy (9%).

The table below provides a snapshot of the main flows of posted workers covered by the analysis.

**Table 6: Distribution of the sample by sending and host country**

| From     | To      | Percentage |
|----------|---------|------------|
| Bulgaria | Germany | 12.8%      |
| Romania  | Germany | 11.4%      |
| Hungary  | Germany | 10%        |
| Bulgaria | Belgium | 6.6%       |
| Portugal | Germany | 5.7%       |

Although the majority of workers report having been posted for less than 24 months (72%), a relevant share (28%) are posted for a longer period. This can be considered quite a large share if we take into consideration that official data from A1 forms indicate six months as the average duration of posting. Yet, this may be due to the interviewees combining several subsequent periods of posting when answering the question.

The survey inquired the presence of breaches in some areas that are particularly relevant for pay and working conditions. The idea was to investigate: (i) those aspects that are most at risk of elusion, and need particular attention by unions and inspectorates; and (ii) the cases in which administrative data alone may hide formal, yet not actual compliance with workers' rights in terms of pay.

The inquired areas are detailed in the table below.

**Table 7: Share of respondents reporting breach, or ignoring whether their employment conditions are lawful (according to different areas of observation)**

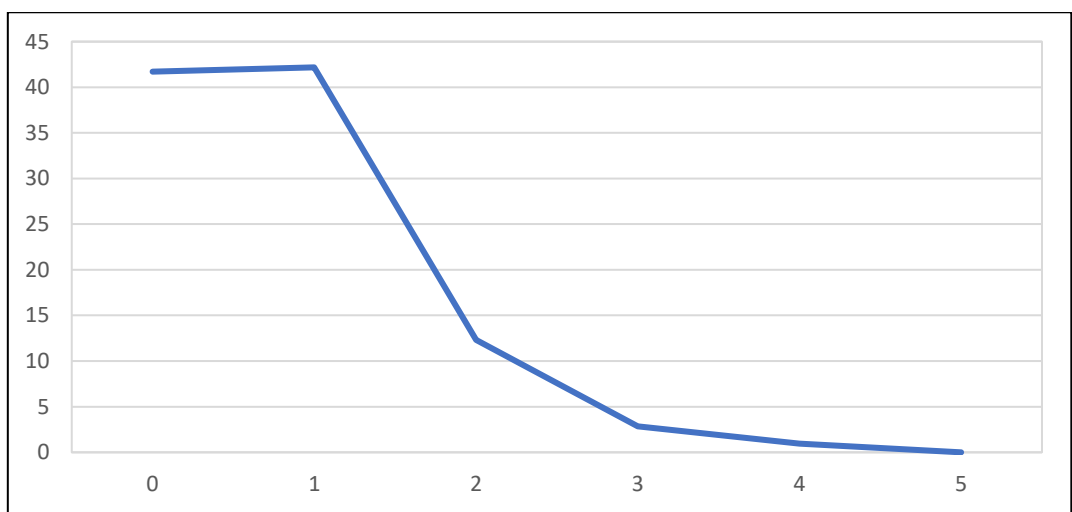
| Area   | Breach | Don't know        |
|--|--------|-------------------|
| <b>Minimum pay:</b> as the minimum pay is supposed to be in line with the minimum level set by law or collective bargaining in the host country, a question addressed whether this was the case, or whether the amount was higher in the sending country. Whenever both situations did not occur, a breach was reported.   | 12%    | 18%               |
| <b>Minimum pay (2):</b> this sub-question, targeting only those reporting a pay level lower than minimum pay, outlined whether the actual pay accounted for 70% or less of minimum pay.  | 5%     | 3%                |
| <b>Holiday pay:</b> this pay, granting workers a period of paid annual leave, is usually a core element of workers' pay, which is to be aligned with the host country's legislation. Whereas in some countries holiday pay is paid directly by the employer, in others it is intermediated by a sectoral fund. The question outlined whether holiday pay was paid, or whether workers were denied such wage element. | 35%    | 19%               |
| <b>Overtime:</b> 'overtime rates' are expressly deemed to be part of the minimum rates of pay to be aligned with the host country's legislation. Yet, in many cases, the law or the applicable collective agreements allow for compensation of overtime with time-offs. Workers who work overtime and do not receive payment or compensation are deemed to be subject to a breach.                                   | 12%    | N/A <sup>25</sup> |

<sup>25</sup> This question did not include 'I don't know' among the available answer categories.

|   |     |     |
|---|-----|-----|
| <p><b>Maximum working time:</b> provisions on working time shall also be aligned with provisions in force in the host country. Although, in line with the limit set at EU level, the maximum amount is usually 48 hours a week, rules may differ from country to country. Therefore, the survey investigated the presence of violations by asking workers whether they work on average 30% longer hours than those envisaged by national provisions.</p>  | 21% | 25% |
| <p><b>Job classification:</b> although job classification is not mentioned in the Posting of Workers Directive, minimum pay is usually adjusted according to workers' qualification and skills. Therefore, if workers are assigned a less qualified job classification than the one actually corresponding to their tasks, this may also result in applying a wage level lower than the one they are entitled to. The opposite may also happen, i.e. the work performance is ascribed to an occupation entailing more qualified tasks. Yet, although this case too was investigated by the survey, it was not considered a breach, as it implies the payment of a higher wage than the one applicable to the workers' actual occupation<sup>26</sup>.</p> | 10% | 8%  |

The share of respondents reporting breaches ranges from 10% to 35% depending on the field. All in all, 58% of respondents reported breaches in at least one of the covered fields. Yet, the majority of them reported breaches only in one of the covered areas.

**Figure 2: Share of workers (percentage) per number of breaches\***



\* Dimensions covered: pay, holiday pay, maximum working time, overtime, and job classification

Failure to guarantee paid holidays is the most frequent breach (35%).

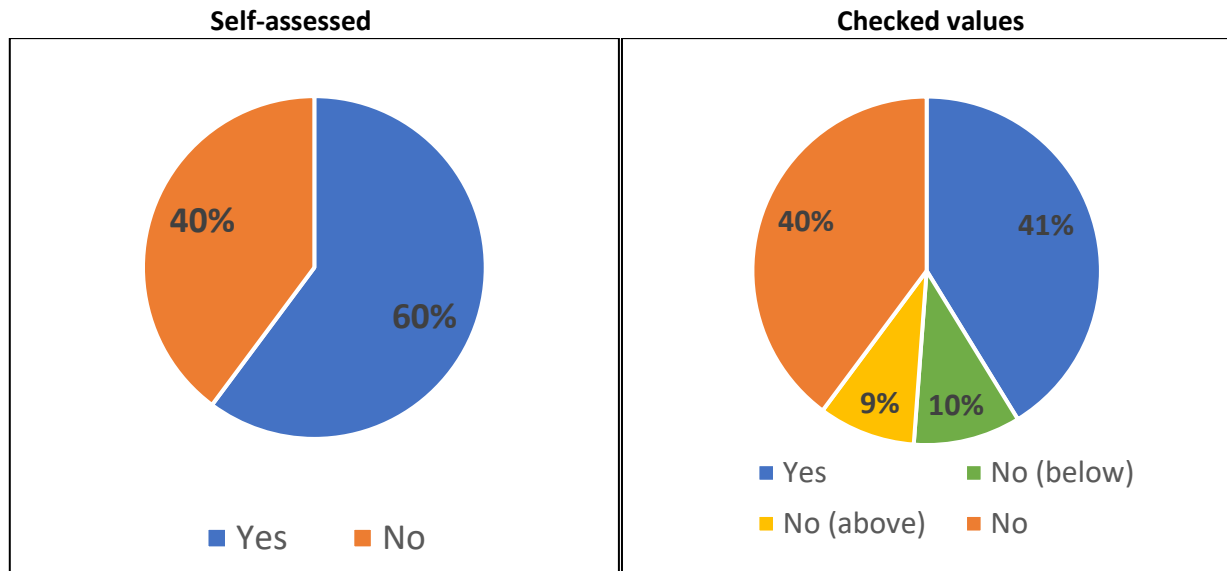
Results highlight also the presence of a significant share of workers ignoring their rights in terms of pay (18% as to minimum wage, and 19% as to holiday pay).

In the area of working time, a filter question was used in order to verify whether workers claiming to know the standard working time envisaged in their country actually knew how many hours a week they were

<sup>26</sup> This may be the case of *de facto* 'demoted workers', i.e. workers whose actual tasks have been downgraded without a consequent change in the pay scale. This practice may encounter restrictions depending on the country. Demotion may also be an unfair practice depending on the applicable legislation and on the circumstances under which it is perpetrated, for instance in case it entails mobbing.

supposed to work. This allowed us to outline that, in addition to a 40% share of workers who did not know the standard working time envisaged in the host country, a further 19% could not say the correct amount.

**Figure 3: Share of respondents according to the question: ‘Do you know which is the standard weekly working time entailed for your job in the host country?’**



In order to identify differences between subgroups, inferential analysis was implemented for a set of subgroups.

In particular, the sample was divided in reason of the number of reported breaches. After a first division in three subgroups (none, one, and more than one) had not entailed significant differences, the sample was divided between those not reporting any breach (42%) and those reporting one or more breaches (58%).

Differences were not significant when controlling for the educational level, duration of posting, and sending and host countries. Yet, when it comes to age, the analysis yielded significant results, highlighting that workers reporting breaches are more likely to be younger (41 being their average age, as against 44 among those not reporting any breach).

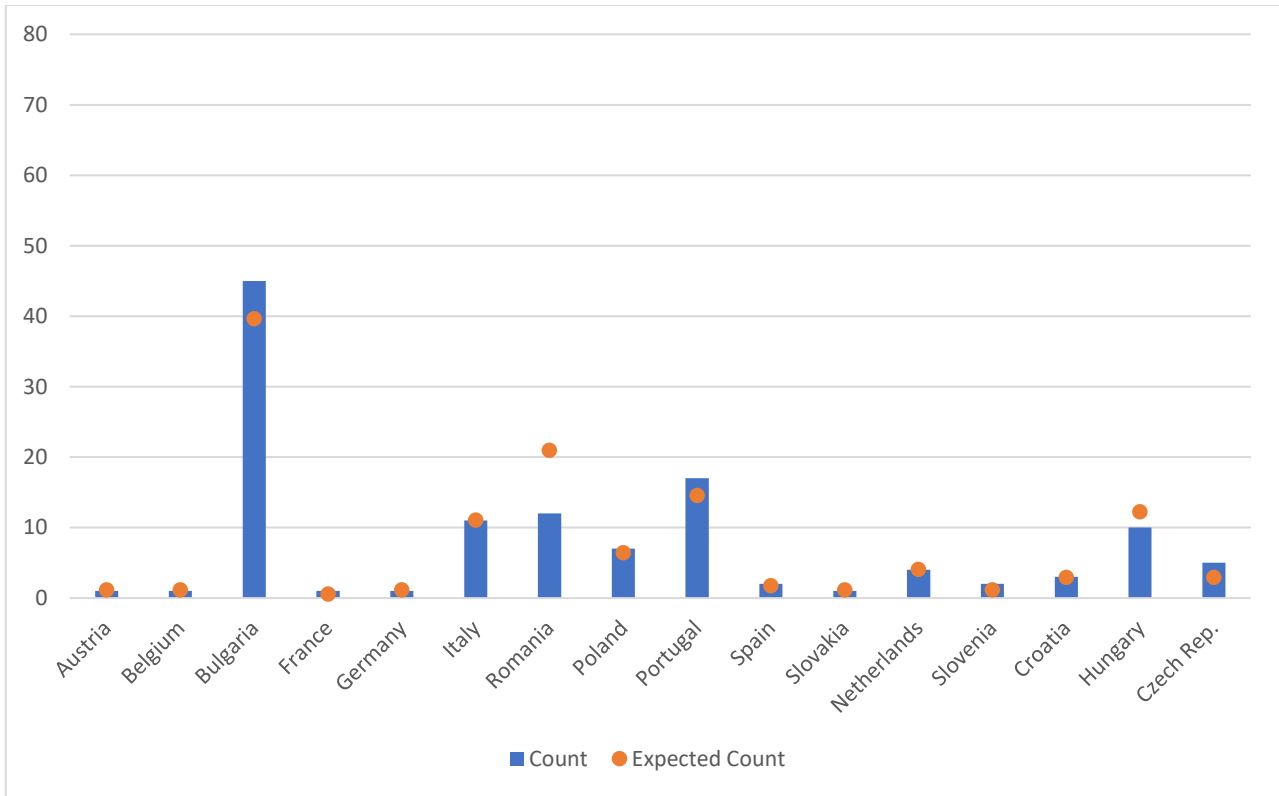
**Table 8: Results of the inferential analysis**

| Variable/Groups          | Three groups (number of breaches: zero, one, and two or more) | Two groups (number of breaches: zero and one or more) |
|--------------------------|---|---|
| <b>Educational level</b> | $\chi^2=7.864$ $p=0.248$                                      | $\chi^2=3.931$ $p=0.269$                              |
| <b>Length of posting</b> | $\chi^2=0.604$ $p=0.739$                                      | $\chi^2=0.091$ $p=0.763$                              |
| <b>Age</b>               | $F=2.286$ $p=0.104$   | $F=4.438$ $t=2.107$ $p=0.036$                         |

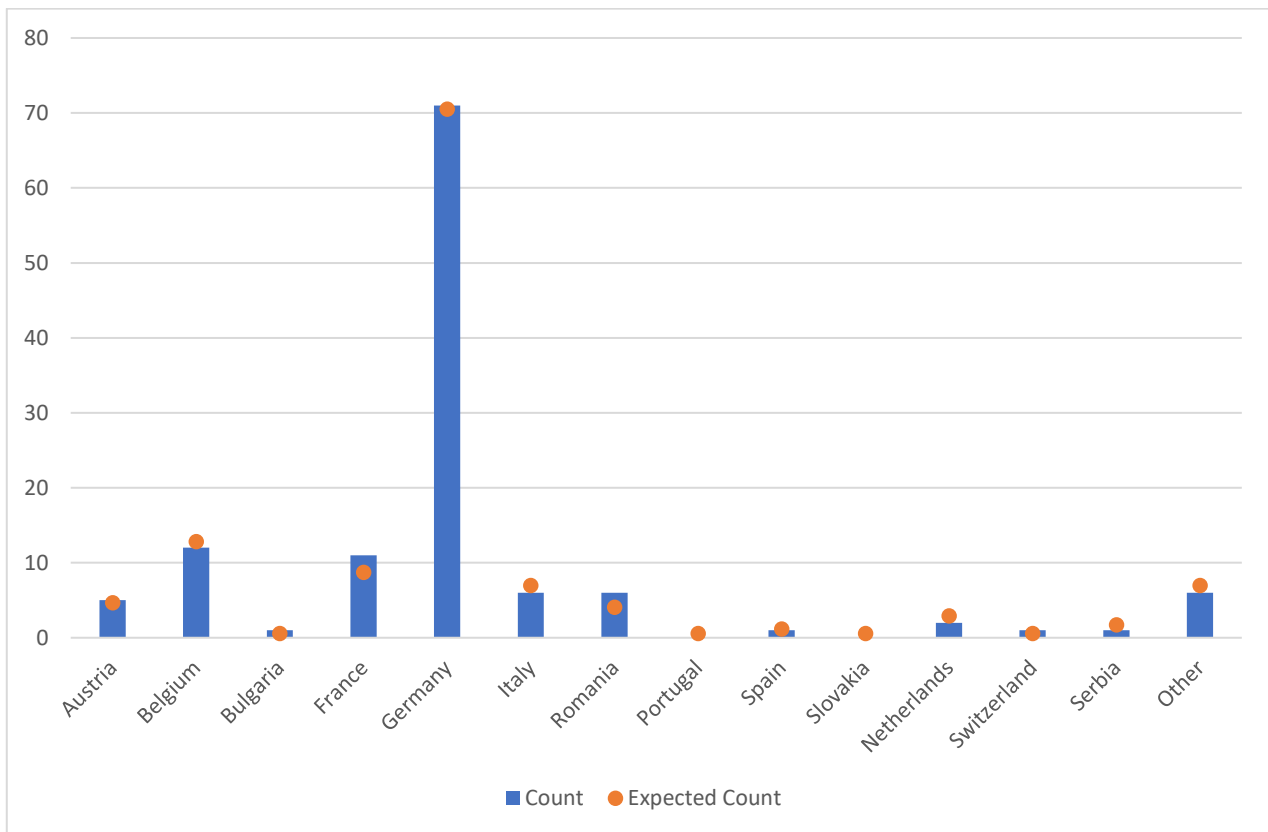
The comparison of theoretical and observed values of workers reporting at least one breach per sending and host country identified Bulgaria and Portugal as the sending countries that report the highest number of breaches, while Romania and Hungary are those that perform the best. Yet, differences are not significant.

Differences are even more nuanced when workers are classified according to the host country.

**Figure 4: Number of workers reporting one or more breaches per sending country**



**Figure 5: Number of workers reporting one or more breaches per host country**



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## 4 CONCLUSIONS

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The experiment conducted by the partners attempts to identify: (i) where relevant administrative information in the posting of workers area is to be found at national level; (ii) to what extent administrative datasets are used to detect irregularities, also in the framework of cross-border cooperation; and (iii) what kind of fraud may hide behind administrative records.

As to the first aspect, business registers are certainly the main source of information. These registers can help in identifying relevant contacts in the sending country of undertakings, their headcount, as well as whether they have only recently been established in the sending country.

Indeed, in this respect, the EU has already made significant steps. National registers are becoming available to a greater extent through a single EU web portal (e-Justice), where also information from some national registers on insolvency proceedings can be accessed.

The other main source is represented by social security contribution records, which can help to verify workers' career and the payment of contributions.

In the light of the possibility of tackling the phenomenon of letterbox companies by holding their clients liable towards the workers concerned, it is interesting to highlight the presence in Spain of a register meant to track companies meeting law requirements to work as a contractor or subcontractor in construction. The register, together with a mechanism of Joint liability implying the obligation for the client to keep a 'subcontracting book' and further limits on contracting out works, has pushed client companies into adopting their own management systems to make sure workers are paid the due wages and social security contributions by their employers.

Although a number of other sources are reported, they are hardly interconnected with each other, with much potential data sharing, even at national level, remaining untapped.

Therefore, while, on the one hand, in most countries there is more than one source where relevant information can be crosschecked or found, strategic data crosschecking and mining often suffer from a lack of coordination between the different bodies, or from other technical problems, for instance incomplete or outdated data. In this respect, the country where experiences of data crosschecking and mining appear to be more advanced is certainly Belgium.

At cross-border level, instead, it is interesting to highlight the experience of the Italian and German sectoral funds (CNCE and SOKA-BAU), which put in place a structured system of information sharing on the posting of workers. This helps enterprises post workers abroad easily, while allowing for quick detection of any cases of underreporting of posted workers, thus promoting fair competition in the internal market.

As concerns fraud hidden behind administrative data, the report suggests much can be done.

The most alarming reported forms of fraud affecting wage can be summarised as follows:

- bogus self-employment (i.e. workers perform their working activities as employees but are registered as self-employed with a view to saving on labour costs);
- bogus part-time contracts (i.e. workers whose hours worked are declared only in part);
- over-reporting of allowances not subject to social security contributions (i.e. meals or rent allowances);
- fully undeclared work (workers without any formal employment contract)<sup>27</sup>;

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<sup>27</sup> It is worth remarking that the case of undeclared workers sent abroad would not be sanctioned as bogus posting of workers as they could not claim to be posted workers, unless a fake A1 form is produced.

- repayment of a share of wage (payslips are correctly filled in, but workers pay back a share of their wage to the employer or are unduly deducted costs for transport and lodging);
- underreported overtime/weekend work (as is the case with bogus part time, workers are pushed to work overtime hours or during weekends without this being accounted for in the payslip); and
- over-reporting of absences (a higher number of absences is fraudulently reported in order to reduce workers' wage).

The table below provides a cross-country comparison of such forms of fraud, summarising where they are relevant.

**Table 9: Type of reported fraud (per covered country) affecting the payment of wage**

| Country  | Bogus self-empl. | Bogus part-time contracts | Over-rep. of allow. | Fully undecl. work | Repaym. of a share of wage | Underrep. overtime/weekend work | Over-rep. of absences |
|----------|------------------|---------------------------|---------------------|--------------------|----------------------------|---------------------------------|-----------------------|
| Belgium  |                  |                           |                     |                    |                            |                                 |                       |
| Bulgaria |                  |                           |                     |                    |                            |                                 |                       |
| France   |                  |                           |                     |                    |                            |                                 |                       |
| Germany  |                  |                           |                     |                    |                            |                                 |                       |
| Italy    |                  |                           |                     |                    |                            |                                 |                       |
| Poland   |                  |                           |                     |                    |                            |                                 |                       |
| Portugal |                  |                           |                     |                    |                            |                                 |                       |
| Romania  |                  |                           |                     |                    |                            |                                 |                       |
| Spain    |                  |                           |                     |                    |                            |                                 |                       |

Other relevant cases, which do not relate directly to wages, are: (i) misuse of fixed-term contracts (Spain and Poland); and (ii) bogus subcontracting and illicit intermediation of labour (France, Italy, Portugal, and Spain). Whereas administrative data certainly fail to spot fraud at first sight, they may help to identify where it can be found.

Without taking into consideration the potential for highly innovative solutions, such as those being implemented in Belgium, it is sufficient to recall that entering specific queries, possibly creating *ad hoc* variables, may help in identifying companies that feature a risk of fraud.

For instance, measuring the share of part-time workers on the headcount or the per capita amount of meal and rent allowances per company can prove useful for detecting risks of bogus part time or over-reporting of allowances. As reported by Belgian and Italian interviewees, also observing a company's employment trends may help in detecting fraud, e.g. whenever there is a sudden reduction in the headcount before hosting posted workers, or a sudden increase before applying for the release of A1 forms and, therefore, sending workers abroad.

Other forms of fraud may be more difficult to spot. Yet, the usefulness of some indicators may be tested. For instance, a very low ratio of the number of employees to a company's turnover or of the number of employees to the value of a construction site may suggest the presence of undeclared work/bogus self-employment.

Interestingly, the case of Portugal and Belgium also shows a proactive interaction between, on the one hand, administrative data-based systems for detecting cases of fraud and, on the other, inputs from inspectors. As long as inspectors enter their inspection reports into the database, the machine can help or even learn how to identify suspect cases.

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Finally, the practice of asking employees to pay back a share of their wage may be particularly challenging to address for administrative data alone, unless an efficient system of data matching with companies' turnover or, in case of suspicion, with workers' bank account is in place.

This reminds us that proper field inspections and unions' field activities remain crucial complementary aspects in order for enforcement activities to function properly.