

# POST-LAB

Developing experiences of administrative cooperation  
in the framework of posting of workers



**GUIDELINES**

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## Developing experiences of administrative cooperation in the framework of posting of workers

*The authors of the Guidelines are: Barbara De Micheli, Michele Faioli, Feliciano Iudicone (FGB); Giacomo Virgilio (CNCE); Frederic Turlan (Ir Share); Dan Cristescu (Latina); Julia Frías, Pablo Sanz (Notus).*



notus



LATINA



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# 1. INTRODUCTION

## 1.1 THE POST-LAB PROJECT AIMS AND ACTIVITIES

Post-Lab (Developing experiences of administrative cooperation in the framework of the posting of workers) is a EU-funded transnational project, aiming at fostering administrative cooperation between public authorities and social partners in the field of posting of workers in the construction sector.

Unlike workers moving abroad, covered by the law applicable in the place where they work on an equal basis with nationals of that state, posted workers are covered only by a core nucleus of terms and conditions of employment entailed by the labour law of the Member State they are posted to (the host country). As to social security, instead, they remain insured in the Member State where they normally work (the sending country).

Albeit there is not complete information on the actual number of posted workers, administrative data suggests posting is a growing phenomenon across Europe, with about 1,5 million cases reported in 2015, about 40% thereof in the construction sector<sup>1</sup>.

These figures and the transnational dimension of posting call more and more for a structured and quick cross-border cooperation to avoid posing unnecessary administrative burden while ensuring compliance with relevant provisions.

In fact, on the one side, provisions on posting ease free movement of workers and the freedom to provide services within EU, avoiding fragmentation of social security records across EU and defining a set of employment protections to be observed across EU. On the other side, gaps in wage levels and social security contribution rates among Member States may trigger competition on the ground of labour cost by means of posting, with negative consequences on fair competition and working conditions.

As emerged from EU wide research developed by Eurofound, abuse of posting provisions is reported in most EU countries, and is particularly significant in the construction sector<sup>2</sup>.

This is especially the case of companies formally established and hiring workers in the sending country without performing any substantial activity there (i.e. letterbox companies). This way, they can fraudulently apply favourable law provisions of that country instead of those of the country where workers are bogusly posted and normally employed.

In addition, gaps in cross-border information sharing leave room for inobservance of rules concerning posting, like the payment of minimum rates of pay entailed in the host country, limits on the duration of posting, and the regular and correct payment of social security contributions in the sending country.

In a view to contribute fighting such abuses, the Post-Lab project addresses administrative cooperation and information sharing as the key to ease **compliance** with rules on posting in the construction sector. This includes not only dissuasive measures, such as those easing the detection of frauds and the enforcement of posted workers' rights, but also preventive actions, such as those simplifying posting procedures for companies or making relevant information easily accessible to them.

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1 Pacolet, J., De Wispelaere, F. (2016), *Posting of workers, Report on A1 portable documents issued in 2015*, European Commission, Brussels.

2 Eurofound (2016), *Exploring the fraudulent contracting of work in the European Union*, Publications Office of the European Union, Luxembourg; see also: Eurofound (2017), *Fraudulent contracting of work: Abusing the posting of workers (Belgium, Finland and Italy)*, Eurofound, Dublin.

In particular, the project has envisaged the selection and assessment of relevant practices developed at national and transnational level in France, Italy, Romania and Spain.

This is done by means of three main research phases deployed starting from December 2015 and due to end in January 2018, namely:

- the preliminary analysis, identifying and describing the features of selected practices by means of desk research and interviews to the involved bodies;
- the 'Cooperation Labs' phase, where such measures have been presented and thoroughly assessed by means of transnational workshops with experts and stakeholders;
- the concluding analysis, summing up evidence of the project in: (i) guidelines suggesting pathways to enforce posted workers' rights while, possibly, reducing administrative burden on employers. (ii) a final report, to be published by the end of the project, describing Post-Lab methodology and findings to ease the take-up of similar initiatives.

## 1.2 THE ORGANISATIONS INVOLVED IN POST-LAB

The project is implemented by a group of 5 organisations (social partners, paritarian institutions and EU research centres) in 4 EU countries.

The lead applicant of the project, the CNCE, is the coordinating body of the Italian historical paritarian institutions of the construction sector, the Casse Edili. These institutions, jointly established by social partners at local level, intermediate several wage elements of construction workers, preventing casual and temporary employment to preclude seniority-based pay increases, or the payment of statutory wage elements, such as the holiday pay and the thirteen month pay. For several years, CNCE cooperates with organisations managing sectoral funds active in neighbour countries (Austria, France and Germany). Over the last years, CNCE also signed transnational bilateral agreements with these organisations in the field of posting which have been assessed as part of project's activities.

The project is implemented with the support of organisations active in the covered countries, namely: IR Share in France, Fondazione Giacomo Brodolini (FGB) in Italy, Latina in Romania, and Notus in Spain.

**IR Share** (FR) is a research and training centre working closely with social partners at national and EU level. IR Share regularly organizes workshops and provides information and training to managers and employees' representatives on industrial relations and employment law issues. IR Share is the national correspondent of Eurofound for France since 2010.

**FGB** is a research and cultural centre performing research and policy evaluation activities on working conditions, industrial relations and social policies at local, national and European level.

FGB regularly takes part in technical assistance and capacity building activities targeting public authorities, and support policy-making in the covered fields.

**Latina** (RO) is an association born in 2007 to tackle the socio-professional and economic problems of the Italian citizens in Romania and of the Romanian citizens in Italy, residents or only working in these countries, posted workers included. Latina works very closely with Italian and Romanian national institutions for social security, and provides day by day technical, legal and administrative assistance to workers moving from/to Romania.

**Notus** (ES) is a research centre created and founded by Spanish experts with a long career in the fields of the analysis of employment and labour market policies. Notus main services include the development of studies and reports as well as technical assistance services for the evaluation of policies and programmes. Notus cooperates with social partners on an ongoing basis.

## 1.3 AIMS AND TARGETS OF THE GUIDELINES

These Guidelines sum up evidences from the Post-Lab project, presenting a set of practices relevant in the field of posting, including an assessment on how they help or could help to ease compliance with rules on posting, and suggesting possible pathways to stakeholders on possible strategies in this respect.

The presentation of the practices follows a scheme allowing to easily identify: (i) the type of stakeholders involved; (ii) the main feature, including which kind of information is created and/or shared and to what aim; (iii) the process of adoption, including the main concerns that led to the adoption of the practice and information on how it was initially planned and developed; (iv) criticalities, including a concluding outlook on the practice and on difficulties encountered in its implementation.

The assessment built upon the contribution each practice plays or can play on identifying a set or information relevant in the case concerning posting, as stemming from EU laws.

The relevant EU law provisions have also been summarised and are presented in the next chapter with the aims of: (i) providing overall guidance to stakeholders in identifying boundaries between legal and irregular practices in the field of posting; (ii) supporting readers in making an own assessment of the presented practices.

The Guidelines address all the stakeholders with relevant tasks concerning posting or having relevant information on both administrative and factual elements characterising the employment relationship.

In particular, the Guidelines address primarily the following groups:

- **liaison offices and authorities:** these bodies are officially in charge of sharing relevant data at transnational level when a request by a competent authority from a foreign Member State is implemented for issues covered by the Directive 96/71/EC. They have also the task of making information on posting easily accessible to authorities of other Member States, workers and companies;
- **social security institutions:** those bodies release the A1 form, intended to certify which legislation remains applicable for social security purposes in case of posting. The A1 form covers also information on the nature of the employment relationship (subordinate/ self-employed). In case of doubt on the correctness of this information, social security institutions shall check the nature of employment relationship and if the conditions for applying their national social security system apply;
- **labour inspectorates:** these bodies shall monitor and check, also by means of field inspections, the nature of employment relationships for labour law and social security purposes, sanctioning cases of undeclared posting, posting of bogus self-employed, non-compliance with terms and conditions entailed by rules on posting of workers. The activity of the inspectorates may as well require transnational cooperation, for instance to access payslips or previous employment records, as well as to verify the correctness of information contained in the A1 form, the correct classification of workers for social security purposes, and the regular payment of social security contributions in the sending country;
- **sectoral funds:** in a number of countries sectoral funds intermediate wage elements intended to cover elements of pay posted workers are entitled to, like the holiday pay. In addition, in the light of their role, the authorities managing these funds, generally set up by social partners on a paritarian basis, may have information relevant to check if frauds occurred, such as information concerning previous employment records of the employee or activity of the undertaking;
- **social partners:** these organisations may complement administrative information with their practical knowledge on how and where frauds take place or are likely to take place, thanks to their relations with members or companies/workers seeking for advice or support. In addition, they may provide relevant information on the applicable rates of pay, as far as this task is demanded to collective bargaining in the country at stake.

## 2. POSTING OF WORKERS: THE EU LEGAL FRAMEWORK

This chapter briefly summarises relevant EU rules on posting which have been used as a benchmark to identify and assess the practices presented in these Guidelines, and that shall guide the assessment of compliance with rules on posting.

With this regard, the main pieces of law to be considered are (i) the Directive 96/71/EC, setting out terms and conditions of employment concerning the posting of workers in the framework of the transnational provision of services, and (ii) Article 12 of the Regulation (EC) 883/2004, setting out rules concerning the coordination of social security in case of cross-border posting.

The Directive 96/71/EC shall be read in the light of the recently enacted Directive 2014/67/EU, providing for rules aimed at enforcing the Directive 96/71/EC, including the interpretation of key concepts contained therein. Pursuant to the EU Treaties, directives are not directly applicable. Instead, they are binding for the results to be achieved, staying with Member States the duty of transposing them into national legislation.

As a result, the definitions, rules and criteria contained in these Directives may not fully reflect national provisions transposing them.

The interpretation of rules contained in the Regulation (EC) 883/2004 is provided by Regulation (EC) 987/2009, and by Decisions of the Administrative Commission for the Coordination of Social Security Systems. This is a body, composed by representatives of all EU Member States, tasked of dealing with administrative questions and fostering cooperation in the field of social security coordination.

Whereas regulations are directly applicable in the EU Member States, the decisions of the Administrative Commission are not legally binding, but they provide notable guidance to national authorities on how to interpret EU rules. This is the case, as regards posting, of the Administrative Commission Decision A2.

For what concerns specifically cross-border cooperation, it is worthy to remark, pursuant to Directive 96/71/EC, each Member State shall appoint a Liaison Office or other competent authorities, intended as a contact point for foreign authorities, workers and employers on posting issues. In addition, Liaison Offices and other authorised authorities can communicate among them at transnational level through the Internal Market Information System ([IMI](#)) web platform, where a set of pre-translated questions and answers concerning employment conditions of posted workers is available.

Workers and companies can find information on relevant applicable national provisions and on contact points throughout EU on the [Your Europe web-page](#) of the European Union.

## 2.1 POSTING OF WORKERS UNDER THE DIRECTIVE 96/71/EC

According to the Directive 96/71/EC, a 'posted worker' is

*'a **worker** who, for a **limited period**, carries out his work in the territory of a Member State other than the State in which he **normally works**.'*

Posted workers shall be guaranteed a core set of employment rights in line with the provisions entailed in the host country. These provisions cover:

- (a) maximum work periods and minimum rest periods;
- (b) minimum paid annual holidays;
- (c) the minimum rates of pay, including overtime rates; this point does not apply to supplementary occupational retirement pension schemes;
- (d) the conditions of hiring-out of workers, in particular the supply of workers by temporary employment undertakings;
- (e) health, safety and hygiene at work;
- (f) protective measures with regard to the terms and conditions of employment of pregnant women or women who have recently given birth, of children and of young people;
- (g) equality of treatment between men and women and other provisions on non-discrimination.

Provisions of the host country apply only as far as workers are not already granted higher degree of protection in the sending country (principle of preferential treatment).

Member States may also extend the degree of employment protection 'in case of public policy provisions' and by requiring the application of terms and conditions of employment set out in universally applicable collective agreements. Yet, the actual reach of these provisions has been severely restricted by the Court of Justice, adopting a narrow interpretation of the meaning of 'universally applicable', and of 'public policy provisions'.

As to matters not covered by Directive 96/71/EC, the labour law of the sending State continues to apply.

In order to ease and make more uniform control measures, the Directive 2014/67/EU introduced an advance declaration to be sent by undertakings wishing to post a worker abroad to authorities of the host country. The declaration shall cover relevant information for monitoring and enforcement bodies, including: the identity of the employer, the period and place of posting, the number of workers involved and the nature of service justifying the posting.

Undertakings posting their workers abroad shall also designate: (i) a contact person in the host country to liaise with national authorities; (ii) a representative through whom unions in the host country may seek to engage in collective bargaining.

## 2.2 POSTING OF WORKERS UNDER THE REGULATION (EC) 883/2004

As far as social security is concerned, pursuant to Article 12 of Regulation (EC) 883/2004, a 'posted worker' is:

*'a person who pursues an activity as an employed person in a Member State **on behalf of an employer that normally carries out its activities there**, and who is posted by that employer to another Member State to **perform work on that employer's behalf**.'*

Posted workers can remain covered by the social security system of the sending Member State for a maximum period of 24 months, provided they are not replacing another person.

Unlike the Directive 96/71/EC, Regulation (EC) 883/2004 also applies to 'self-employed' posted workers, stating they shall remain subject to the social security system of the Member State 'where they **normally pursue their activity**', provided they intend to carry out their activity in another Member State for a maximum period of 24 months.

Pursuant to provisions on the coordination of social security, employers or self-employed posted workers should also inform 'whenever possible in advance' social security institutions of the sending country when they pursue an activity in another Member State.

To this aim, they can ask the designed national authority in the sending country to release the A1 form/portable document (PD) certifying which national legislation applies to them.

### Compliance with rules on the posting of workers

EU rules on posting do provide additional guidance necessary to establish whether posting is lawfully implemented. These rules help to identify, primarily, whether the employer and the worker perform genuine activities in the sending State.

So far, the EU rules only partially address other relevant problems that may arise in case of posting, such as non-compliance with minimum rates of pay entailed in the host country, or with payment of social security due in the sending country. On the other hand, these aspects are covered by the proposals of revision of Directive 96/71/EC and of Regulation (EC) 883/2004 currently under discussion at EU level.

The next sections provide a description of the information relevant to establish whether posting is in line with EU rules, according to the two main kinds of abuses covered by the Post-lab project, namely: use of letter-box companies, and inobservance of rules on payment of minimum rates of pay and social security contributions. It goes without saying that these two kinds of abuses may overlap in practice, whenever a letterbox company, in addition to escaping the full application of the labour law entailed in the alleged 'host country', avoids to pay social security contributions in the alleged sending country and/or does not comply with minimum rates of pay due to posted workers.

## 2.3 RELEVANT INFORMATION TO IDENTIFY LETTERBOX COMPANIES

For posting rules to apply in case of subordinate employment: (i) the employer should carry out a substantial activity in the 'sending state', (ii) the worker should normally work there; (iii) the worker should be sent on the employer's behalf, existing therefore a direct employment relationship with the employer that posted him/her and continuing this relationship to exist during the posting period. Whenever this is not the case, the attachment to the social security system of the sending country and the limited application of labour law of the host country may be deemed unlawful.

Companies not in line with the above mentioned conditions may actually be 'letterbox companies', i.e. companies formally established in a country only to benefit from the law applicable there.

Criteria adopted to identify whether the employer and the worker do not perform activities in the sending Member State are specified by Directive 96/71/EC for labour law purposes and by Regulation (EC) 883/2004 for social security purposes as further detailed below.

### The place of work

In order to avoid abuses, the Directive 96/71/EC requires workers to carry out work for a **'limited period'** in a State other than the one where the person **'normally work'**. These requisites are not subject to any time limit or threshold. Instead, according to Directive 2014/67/EU, all factual elements characterising such work and the situation of the worker shall be examined in this regard. Aspects to be taken into consideration may include in particular:

- (a) the work is carried out for a limited period of time in another Member State;
- (b) the date on which the posting starts;
- (c) the posting takes place to a Member State other than the one in or from which the posted worker habitually carries out his or her work according to Regulation (EC) No 593/2008 (Rome I) and/or to the Rome Convention;
- (d) the posted worker returns to or is expected to resume working in the Member State from which he or she is posted after completion of the work;
- (e) the nature of activities;
- (f) travel, board and lodging or accommodation is provided or reimbursed by the employer who posts the worker and, if so, how this is provided or which is the method of reimbursement;
- (g) any previous periods during which the post was filled by the same or by another (posted) worker.

Instead, as to social security, the requisite to normally work in the sending State stays with the following criteria:

- (a) the expected duration of posting, or the actual length thereof shall not exceed 24 months;
- (b) the posted worker shall be subject to the legislation of the sending country at least immediately before the posting started or, in case of self-employment, he shall carry out habitually substantial activities in the sending country, where requirements for the pursuit of the activities shall continue to be fulfilled in a view to resume them after the posting period.

As to prevent frauds, the Regulation (EC) 883/2004 also requires posted workers not to replace another person for posting rules to apply. This means that, for instance, a worker sent abroad to perform the same task of a colleague that ended his or her period of posting, shall be insured with the social security institutions of the host country, regardless of the length of the previous posting. This does not prevent the worker to be a 'posted worker' for labour law purposes, in line with Directive 96/71/EC.

Decision A2 of the Administrative Commission provided further guidance on criteria concerning posting for social security purposes by stating that:

- (a) whenever the posting involves the same worker, the same undertakings and the same Member State, a new period of posting shall not be authorised before a period of at least 2 months has elapsed from the ending of the previous posting,<sup>3</sup> and

<sup>3</sup> This shall also be intended as allowing consecutive periods of posting involving work performed by the same posted

- (b) the worker shall be covered by the social security system of the sending Member State for at least one month before a posting from that country can take place.

Under shorter periods, discretion is left to national authorities to determine the situation on a case by case basis and taking into consideration all the other factors involved.

The Decision A2 also excludes cases of 'triangulation' from the coverage of social security rules on posting.

This includes whether the worker posted to an undertaking of a Member State is placed at disposal of a third party in the same or in another Member State, or whether the worker is recruited in a Member State by an employer situated in a second Member State to be posted in a third Member State.

### **The place of establishment**

As a further and essential conditions for Directive 96/71/EC to apply, the undertaking posting the worker must be **established** in a Member State.

Directive 2014/67/EU also set forth that to determine whether an undertaking genuinely performs substantial activities, other than purely internal management and/or administrative activities, in a Member State, the competent authorities shall make an overall assessment of all factual elements characterising those activities, including:

- (a) the place where the undertaking has its registered office and administration, uses office space, pays taxes and social security contributions and, where applicable, in accordance with national law has a professional licence or is registered with the chambers of commerce or professional bodies;
- (b) the place where posted workers are recruited and from which they are posted;
- (c) the law applicable to the contracts concluded by the undertaking with its workers, on the one hand, and with its clients, on the other;
- (d) the place where the undertaking performs its substantial business activity and where it employs administrative staff;
- (e) the number of contracts performed and/or the size of the turnover realised in the Member State of establishment, taking into account the specific situation of, inter alia, newly established undertakings and SMEs.

These elements resemble and integrate those already set forth for the same aim in the field of social security.

## **2.4 RELEVANT INFORMATION TO MONITOR PAYMENT OF WAGES AND SOCIAL SECURITY CONTRIBUTIONS**

As anticipated, in case of posting, wages should be aligned with minimum rates of pay entailed in the host country, as far as this is more favourable to the worker.

The applicable pay includes also rates for overtime, payment of meals, lodging and transport costs, and other minimum pay elements having general efficacy.

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worker but for different undertakings or in different host countries.

Nevertheless, the actual definition of which pay elements fall within the notion of 'minimum rates of pay' is contentious, especially after the so-called 'Laval quartet'. These four judgements of the Court of Justice substantially reduced the room for applying the host country labour law and collective bargaining provisions beyond the standards set by the Directive 96/71/EC, remarking the legal basis of the Directive 96/71/EC is the 'freedom to provide services' enshrined in EU Treaties and measures capable of posing a burden on service providers shall be assessed in this respect.

Depending on the country level practices, minimum rates of pay may be set by law or by collective bargaining. Pursuant to Directive 2014/67/EU, Member States should make information on minimum rates of pay easily available on a national website, intended as a single official source of information on posting. Yet, pay scales and elements may not always be easy to understand and apply, and further support and guidance to companies may be needed.

For instance, in some European countries, due to the uncertain and temporary nature of employment in the construction sector, sectoral funds, usually established jointly by social partners, intermediate a number of wage elements considered as part of the minimum rates of pay by national legislation, like: the holiday pay, the thirteen month pay or the bad weather pay, the latter compensating working days lost due to bad weather conditions.

This means, as a rule, the employer shall register in the fund abroad and pay the related contributions for the worker posted in the relevant country. In the absence of cooperation between the funds and of proper access to information by the employer, there is the risk the worker is not paid contributions or the employer pay them both in the sending and in the host country.

In addition, when it comes to monitoring and enforcing the compliance with minimum rates of pay, a number of elements shall be examined.

First of all, evidences of payments and working time are necessary in order to crosscheck whether the pay is adequate to the number of hours worked and if the declared hours worked match with those actually worked.

In addition, the minimum rates of pay may range depending on the skills of the worker, therefore information on seniority at work, formally acquired competences or job classification may be necessary to ascertain whether the worker is applied the correct minimum rates of pay.

This information is not necessarily accessible in the host country. The Directive 2014/67/EU made a mild step forward in this regards by envisaging documents such as pay slips, proofs of wage payment, and time sheets shall be kept or made available in the host country.

Cooperation with administrative bodies in the sending countries remains therefore crucial to obtain relevant information when missing.

This is even more important when it comes to social security. In fact, competent authorities in the host State are not in the position to check if social security contributions are paid in the sending country, unless a request is filed to the relevant authority of the sending state.

The application of minimum rates of pay and the proper payment of social security contributions may also be circumvented by means of posting bogus self-employed workers.

In this case, the terms and conditions of employment envisaged in the host state can be enforced only if labour inspectors in the host country prove the posted self-employed actually performs work in a subordinate way pursuant to the State of employment labour law. Yet, the competence to qualify the employment relationship as a subordinate one for social security purposes stays with the sending country.

Should doubts arise, authorities of the host country shall file a request for information to the authority that released the A1 form asking it to reassess the decision and, in case, withdraw or amend the A1 certificate.

## 3. FRANCE

### 3.1 CGT NETWORK - RÉSEAU EUROPÉEN POUR UN DÉTACHEMENT ÉQUITABLE ET RESPONSIBLE - EUROPEAN NETWORK FOR FAIR AND RESPONSIBLE POSTING OF WORKERS (REDER)

#### Stakeholders involved

Fédération nationale des salariés de la construction, Confédération générale du travail (FNSCBA-CGT) - France: Trade union

Confederazione Generale Italiana del Lavoro CGIL – Italy: Trade union

General Labour Directorate – France: Government

Confederación Sindical de Comisiones Obreras (CCOO) – Spain: Trade union

Labour Inspectorate – Spain: Labour Inspectorate

Federazione Italiana dei Lavoratori del Legno, dell’Edilizia, delle industrie Affini ed estrattive (FILLEA CGIL) – Italy: Trade Union

Territorio Europa Lavoro (TELA) – Italy: NGO

Confédération des syndicats chrétiens- Bâtiment Industrie Energie – Belgium: Trade union

Federale Overheidsdienst Werkgelegenheid, Arbeid en Sociaal Overleg – Belgium: Trade Union

Confederation of Independent Trade Unions of Bulgaria (CITUB) – Bulgaria: Trade union

General Labour Inspectorate Executive Agency – Bulgaria: Labour Inspectorate

Związek Zawodowy “Budowlani” (ZZ Budowlani) – Poland: Trade Union

Labour Inspectorate – Poland: Labour Inspectorate

Authority for working conditions – Portugal: Labour Inspectorate

Confederação Geral dos Trabalhadores Portugueses, Federação Portuguesa dos Sindicatos da Construção, Cerâmica e Vidro (CGTP-FEVICCOM) – Portugal: Trade union

Federația Generală a Sindicatelor Familia (FGS Familia) – Romania: Trade union

Labour Inspectorate - Romania: Labour Inspectorate

Bischofliches Ordinariat Rottenburg – Germany: Diocese

## Main features

The practice started as a network of cooperation involving unionists and labour inspectorates across seven Member States (Belgium, Bulgaria, France, Italy, Poland, Portugal, Spain). In this framework, joint initiatives have been developed, including activities of cooperation, exchange of good practices, organisations of joint visits, and simulations on already solved cases of abuse of posting rules. Notably, contacts made between participants proved useful to increase their competences and to create channels of communication helpful to tackle cases of exploitation of posted workers.

In particular, the most relevant example was the close cooperation between the French union of construction workers FNSCBA-CGT and the Italian union confederation CGIL, concerning [14 Romanian workers posted by an Italian company in Dunkirk \(France\)](#) to build a large methane terminal for the French energy group EDF in consortium with Total and Fluxys.

In 2013, local French unionists warned that some of these workers were being exploited, working up to 60 hours per week and receiving about €600 per month, far below the applicable French minimum rates of pay (€1,430.22 per month in 2013).

The Reder network found the support of a Romanian unionist from CGIL, who eased the communication with workers and checked through the Italian union's structures if the sending company was in compliance with social security payments in Italy. Moreover, the FNSCBA received legal advice from the University of Strasbourg to adequately support workers. Thanks to the information obtained in the framework of the REDER network, the FNSCBA-CGT was able to send a file to the labour inspectorate. At the same time, as the management in France refused to answer queries from CGT, the CGIL contacted the Italian company in Italy. This increased the pressure on the company as the CGT threatened to proceed with a legal dispute before a French court. Eventually, to avoid a too long trial, the FNSCBA-CGT proposed and agreed a transaction with the sending company, allowing workers to receive retroactively the part of their salary they were entitled to.

The practice raised interest in the light of the skills it supplied to unionists in the field of posting and of the transnational knowledge sharing it entailed between unions and other stakeholders for the purpose of tackling frauds. The representative from FNSCBA-CGT presenting the practice in the Cooperation Labs also stressed that, in some cases, the sharing of information about single cases of posting by letterbox companies brought about cascade effects allowing to identify other frauds implemented by the same company in other countries.

The network also promoted awareness raising on workers' right. This was done by means of communication tools, like [brochures](#), that reached about 40,000 posted workers with information activities on their rights. The brochures addressing workers used QR codes allowing to access further details on line on the applicable wage level per occupation.

The practice did not create data so far. Yet, the network is currently working on an app for smartphones with 20 standard questions to be used by unionists to collect information on the employment conditions applied to posted workers.

## Process of the adoption of the practice

Back in 2012, the FNSCBA-CGT realised that unionists had little information and knowledge on procedures and rules concerning posting. For this reason, the union asked the Strasbourg University (Institut du Travail) to provide ad-hoc training sessions on the topic targeting its unionists. Each sessions of training entailed a five-day programme covering:

- lessons on European labour law framework, the different cases of unlawful posting of workers and other frauds;
- workshops on practical cases;
- mutual sharing of experiences among the unionists.

Following this positive experience, FNSCBA-CGT applied for EU funding in order to setup a wider project of cooperation and mutual learning involving relevant stakeholders from both net sending and net hosting countries.

## Criticalities and suggestions for improvement

Overall, the practice contributed under three main fields concerning posting.

- **Fight letterbox companies:** The project improved informal cooperation at the transnational level, creating the conditions for unions to get information on relevant companies' activities abroad and to help each other in the detection of irregularities in cross-border cases.
- **Compliance with the minimum rates of pay:** The action led by the FNSCBA-CGT in cooperation with CGIL to contest irregularities in wage payment proved successful in respect of its ability to reach out and communicate with workers, obtain relevant information available in the sending country, draft an accurate file to the labour inspectorate, gain contractual power vis-à-vis the sending company.
- **Payment of social contributions:** The action led by the CGIL in Italy related to the Dunkirk case allowed to quickly inform FNSCBA-CGT on whether social security contributions were regularly paid in the sending country. Beyond proving useful for the dispute, this information also allowed to communicate workers whether they gain entitlement to unemployment benefits under the Italian law.

However, the practice also experienced some drawbacks.

Even though the Dunkirk case highlighted the key role the activity of unions on the ground can play, in some cases unionists may have little interest about posted workers. Beyond difficulties in dealing with cross-border situations, they may have other priorities, as far as their members are not posted workers and may not consider the protection of posted workers as a relevant goal.

As for the quality of the network collaboration, there were problems of information sharing from the labour inspectorate due to their duty of discretion when they open a criminal proceeding. For this reason, information sharing was rather one-sided, i.e. from the unions to the Inspectorate.

As to the future outlook, albeit the network did not manage to obtain further EU funding, the organisations involved are trying to keep it alive. Indeed, as far as the creation of transnational network seems to smooth cooperation and information sharing, similar initiatives could be implemented also in the framework of the European Platform on undeclared work.

## 3.2 NATIONAL AGREEMENT TO FIGHT SOCIAL DUMPING IN THE CONSTRUCTION SECTOR

### Stakeholders involved

Ministry of Labour – France: Government

Ministry of Finance and Public Accounts – France: Government

Confédération de l'artisanat et des petites entreprises du bâtiment (CAPEB) – France: Employers' organisation

Fédération française du bâtiment (FFB) – France: Employers' organisation

Fédération nationale des travaux publics (FNTP) – France: Employers' organisation

Fédération des Sociétés Coopératives et Participatives du Bâtiment et des Travaux Publics Fédération (SCOP BTP) – France: Employers' organisation

### Main features

On 23 February 2016, the French government and the four national representative employers' organisations of the construction sector (FNTP, FFB, SCOP BTP, CAPEB) signed an agreement to fight undeclared work ([Convention nationale de partenariat du 23 février 2016 relative à la lutte contre le travail illégal dans le BTP](#)).

The agreement set forth checks of labour inspectorates should be organised in a way to ease the detection of irregularities and of undeclared work. To this aim, it is foreseen that labour inspections may occur during the week-ends or outside the scheduled working time (evening, week-end) instead of during the day or within the week, as this should help to detect irregularities.

The national authorities are invited, on the national and local level, to launch communication and awareness campaigns on undeclared work and fraudulent practices targeting employers and clients of construction works (mainly public local authorities). The State also takes the commitment to increase the capacities of control agents, to inform the judicial authorities about the importance to fight illegal work and fraudulent forms of posting of workers and to reinforce the coordination between the different control services (labour inspectorates, police and customs' agents).

As to employers' organisations, they take over commitments on communication and awareness campaigns to invite their members to apply correctly the current legislation.

This include informing employers they have the duty to make sure their contractors comply with law provisions on the posting of workers, like the duty to register workers in the social security system of the sending country, the obligation to declare posted workers to French authorities, by means of the preventive on-line declaration, and the obligation to ask for an ID card that construction workers active in France shall wear (see the practice under 3.3).

Indeed, the information contained in the declaration allows control bodies, including labour inspectorates, to carry out their work more efficiently and to quickly ask employers based outside France further information and documents if doubts arise.

Branches and members of employers' organisations at local level are also invited to inform the local authorities and the labour inspectorates about suspect irregularities concerning undeclared work.

In addition, the signatory parties declared their availability to carry out, on a voluntary basis, an experimentation on selected sites for improving cooperation and strengthening control activities.

The agreement does not entail itself specific activities of data creation or sharing. Actually, the 2016-2018 National plan against illegal work, which the statement refers to, encourages the different control bodies to share information. Yet, sharing of data between private companies and control bodies is not envisaged, mainly due to the duty of discretion that control bodies must respect.

### Process of the adoption of the practice

The agreement follows local partnership agreements whereby employers' organisations and local or regional authorities agreed to take action against undeclared work.

On the government's side, it also follows a reorganisation of control activities by the Ministry of Labour, that set up a National task-force for identifying complex forms of frauds and created regional units specialised in the fighting of illegal work and fraudulent posting of workers.

For what concerns employers' organisations, they share the intention of reinforcing controls to fight illegal work and frauds on posting of workers and undeclared work. They already took action in line with the target of promoting application of existing rules and provisions to fight irregularities as the correct way forward to ensure fair competition. In 2014, the same employers' organisations signed with unions an agreement to fight social dumping in the execution of public contracts, whereby signatory parties committed to raising awareness on legal aspects concerning subcontracting and responsibilities of contracting authorities.

### Criticalities and suggestions for improvement

The agreement and the implementation of measures envisaged therein have contributed in three main areas concerning posting.

- **Fighting letterbox companies:** The agreement invites employers and contractors to check if the subcontractors are not letterbox companies, that they are in compliance with law obligations entailed in the sending country, especially concerning social security payments, and that they correctly declare the posting to French Authorities. This goes hand in hand with sanctions applying to the client in case the contractor is found not to comply with obligations concerning declarations about workers posted to France ([Article L.1262-4-3 of the Labour code](#)).
- **Compliance with the minimum rates of pay and other terms and conditions of employment:** By reinforcing the control, the agreement aims also to check if the national rules applicable to posted workers are respected.
- **Payment of social security contributions:** The agreement invites employers and clients to check if the subcontractors have provided the requested document to prove that posted workers are regularly affiliated to their national social security system.

During the Cooperation Labs, it was highlighted, alongside awareness raising and improved monitoring and control activities, stronger sanctions have been recently introduced in France to tackle undeclared work and irregular posting of working. As deterrents against frauds in subcontracting chains, a new specific crime addressing the 'conspiracy to commit fraud' sanctions clients for misconduct of subcontractors. In addition, beside clauses on joint solidarity between the client and the contractor, inspectors can even rule a stoppage of the activities if rules on posting are not complied with.

All in all, the practice helped to increase strategic cooperation between public authorities and employers' organisations. However, as it is based on non-compulsory instruments, its implementation depends on the good willingness of each actor and on the level of trust between them, therefore the outcomes may depend from area to area, as such agreements exist also on territorial level in some regions, depending on the engagement of local actors. So far, no official assessment of results was implemented even if such assessment was forecasted within the agreement after two years of implementation.

### 3.3 INTRODUCTION OF A COMPULSORY ID CARD IN THE CONSTRUCTION SECTOR

#### Stakeholders involved

Union des caisses de France (UCF) – France: Coordinating body of sectoral funds

Ministry of Labour – France: Government

Labour and social inspectorate – France: Labour inspectorate

#### Main features

In a view to tackle undeclared work, pursuant to the Macron law ([Décret n° 2016-175 of 22 February 2016](#)), construction workers will have to wear an ID card when at work. The duty covers posted workers, temporary agency workers, and posted temporary agency workers as well.

UCF is in charge of managing the ID card, which is currently being rolled out at national level. UCF is the body in charge of managing the sectoral bad weather funds (the Congés intempéries, BTP) for the civil engineering, the construction and the cooperatives of the construction sector. Before the entry into force of the Macron Law, it already deployed a card for construction workers on a voluntary basis.

The ID card contains:

- the name, surname and sex of the employee;
- relevant employment status in case of: 'posted workers', 'temporary agency workers' or 'posted temporary agency workers';
- photo of the employee;
- the name and identification number of the employer.
- the delivery date and the ID number;
- an electronic code to have access to employment information (type of employment contract, copy of the permit of residence);
- the address of the sectoral fund of the constructor sector managing the ID card scheme;

All employers based outside France with the intention of providing services in France must ask for an ID Card through the Website [www.cartetbtp.fr](http://www.cartetbtp.fr). Immediately after registering, they receive a provisional certificate that employees can show in case controls occur before they receive their ID card. All information is fulfilled on-line on the website managed by UCF and appear through the QR code printed on the card. It has to be underlined that employers must pay quite a low fee for each ID card (the announced cost is € 10.80).

As for the employers based outside France with the intention of providing services in France, a prior on-line declaration on workers to be posted must be submitted to the labour inspectorate branch of the place where the service is to be provided.

The declaration must include:

- **Information about the foreign company:** address, legal status, contact details, registration number, main activity, name(s) of body/bodies collecting social security contributions, identity of the company's director and contact details, identity of representative in France for the period of the service and contact details.
- **Information about the principal, the co-contractor and the client:** contact details, main activity, ID number as SIRET if it is a French company, place(s) of service performance in France, full address(es) of the site or company, date of start of service in France, foreseeable end date of service and use of dangerous materials or procedures.
- **Information about working and living conditions:** information about working hours and time off, collective lodging, amount of travel costs, meal expenses and lodging and information on whether these costs are directly paid by the employer, reimbursed to the worker, or paid back to the worker as a lump-sum.
- **Information about the posted workers:** identity, address, date of signature of the employment contract, starting and ending dates of posting, job held in France, sector of activity, professional qualification, gross monthly salary in France.

The information contained in the declaration allows the control bodies to be more efficient and to possibly ask the employers based outside France to provide further information and document attesting the regularity of the employer's social situation. The copy of the declaration is necessary for the employer to receive the ID Card.

The information provided by the ID Card will be linked with the national data base of posting workers' declarations ([Déclaration préalable en ligne de détachement pour une entreprise étrangère - Téléservice SIPSI](#)) so that any control authorities will be able to check if the employee is or not correctly declared as posted worker. For each employee that is not declared, the employer could receive a fine of € 2,000.

### Process of the adoption of the practice

The ID card of the construction sector ("carte BTP") exists since many years but on a voluntary basis. The card is managed by UCF, where sectoral employers and employees are registered for the purposes of taking part in the sectoral compulsory bad weather funds. The aim of the card was to facilitate controls and to fight against illegal work (including fraudulent posting of workers). Yet, only about 10% to 15% of the companies of the construction sector asked for it.

By means of the Macron Law, the government took action to make the ID card compulsory by the end of 2016.

Notwithstanding some initial delay, a testing phase, involving 15 voluntary companies (mainly SMEs) was implemented and the card has been recently fully deployed during 2017 throughout the country. It is estimated to cover 500,000 companies and about 2.5 million employees.

### Criticalities and suggestions for improvement

The scheme is too recent to provide a complete assessment of its achievements, but, it is expected it will ease controls and help the detection of fraudulent practices.

Overall, the ID card eases the accessibility of the information to the different authorities holding inspection competences, including police. Thus, as far as information available from the card is used to steer field inspections where irregularities are more likely to be found or to speed-up checks, the information shared can be helpful in the following areas.

- **Fighting letterbox companies:** The card allows quick access to the database of posting declarations, containing information on the employer in the sending country.
- **Compliance with the minimum rates of pay:** The card allows quick access to information on partial information concerning pay (worker's gross pay in France as declared by sending companies).
- **Payment of social security contributions:** The card allows quick access to information on the employers, on the personal details of the employee and on the institutions where social security contributions are paid.

As for the drawbacks, the ID card does not have track of the current paid wage as for administrative records or payslips. It rather includes gross wage as declared by the employer.

In addition, the ID card does not cover self-employed. Therefore, it cannot contribute to detect cases of fraudulent posting practices taking place by sending bogus self-employed abroad.

The employers' organisations FNTP also expressed doubts on the potentialities of the ID card, mainly as far as civil engineering activities are concerned. Whereas building sites have a confined space, in the civil engineering, sites are on open space that can be several kilometres long, as it is the case of construction of roads or railways. In these cases, an ID card will not ease controls as the employee can be aware of the control and leave the site.

During the cooperation Labs, the advisability to provide inspectors other strategic information, which could prove useful also if matched with the one available from the card, was pinpointed. While information available through the card may help prevent and detect irregularities regarding registered companies and employees, the existence of complementary information may ease to identify where fully undeclared companies or workers are likely to be found. For instance, information available to the inspectors through the card may be complemented with information on construction works, say the blueprint of buildings to be erected, in order to assess whenever the declared number of workers in a construction site is reliable and, this way, orient field inspection activities.

# 4. ITALY

## 4.1 DECENTRALISED BARGAINING IN THE LOMBARDY REGION FOR THE MONITORING OF EMPLOYMENT CONDITIONS IN THE 2015 EXPO CONSTRUCTION SITES

### Stakeholders involved:

Casse Edili – Italy: Sectoral funds

Local unions – Italy: Unions

Local employers' organisations – Italy: Employers' organisations

Prefettura di Milano: Prefecture

Municipality of Milan – Italy: Local authority

EXPO – Italy: Company

Main large companies involved in the EXPO construction sites – different countries: Companies

### Main features

In 2015, the city of Milan hosted the Universal exposition 'Feeding the Planet, Energy for Life' (2015 Milan Expo).

In a view to host the event, large construction sites have been planned throughout Milan, including pavilions in the Expo site and relevant infrastructures in the site and throughout the city, many of them to be carried out by workers coming from countries involved in the EXPO.

In order to make sure provisions of collective bargaining agreements were observed in the EXPO construction sites, several agreements were bargained at local and company level.

These agreements targeted especially health and safety at work and prevention of undeclared work.

Apart from trainings made by the vocational trainings paritarian fund of the construction sector, the main tool to do so was the setup of a digital system to monitor accesses to the sites. In particular, a digital platform was created, SI.GI. Expo, and was connected with the Prefecture (providing data on the preliminary authorisation which each company needed in order to access the sites) and the local *Cassa Edile* (i.e. the sectoral fund where all the construction workers employed in Italy must be registered, and which intermediates many compulsory wage elements, such as: illness pay, holiday pay, thirteen month pay, seniority pay).

Pursuant to the agreements, companies wishing to work for the expo, once authorised by the Prefecture, had to:

- communicate to the *Cassa Edile* the number of workers to be employed in the construction sites,
- register employees to the *Cassa Edile*, notifying their working time;
- specify whether they intended to employ also self-employed or workers not bound to the collective agreements applicable to the construction sector.

Optical lectors at the gates of the construction sites registered entries and exits and detected if workers

accessing the site were not registered at *Cassa Edile*. Workers were identified to this aim by means of their health insurance card or, in the absence thereof, by a badge.

Furthermore, in order to avoid frauds, vigilantes monitored the gates and unionists were active in the construction sites.

Whenever irregularities were found, *Casse Edili* notified the company and could eventually proceed to freeze their DURC, i.e. the document certifying the compliance of construction companies necessary to receive payments by public administrations and to have public or private works authorised by public authorities (see section 4.2).

Data on entries and exits were registered automatically in a database. This was accessible to the contractor of the construction site and to relevant stakeholders, like unionists and *Casse Edili*.

Data were also collected in files summing up for each month the number of workers active in the site and their applicable sectoral collective bargaining (construction/other or none).

These files were made regularly available to the parties that underwrote the agreements for monitoring purposes.

### **Process of the adoption of the practice**

The parties included in this practice, especially unions, were concerned about the need to prevent accidents at work in the light of the size of construction works expected for the Expo. At the same time, as for posting of workers, there were concerns on social dumping practices, especially for cases of fraudulent posting of workers from countries with lower labour costs.

Thus, several agreements were negotiated and concluded before the beginning of works in order to establish in advance specific rules and procedures to be observed in the relevant construction sites. Meetings began after the assignment in 2008 of the 2015 EXPO to Milan, and were participated by social partners, paritarian institutions, the Prefecture, the Province and the Municipality of Milan.

At company level agreements were signed with main companies involved in the construction of the EXPO area, entailing commitments for their contractors as well.

### **Criticalities and suggestions for improvement**

The main provisions addressed during this practice relevant for posting are the following.

- **Compliance with rules on minimum rates of pay and terms and conditions of employment:** Construction workers could not access the site if not registered at the *Cassa Edile*, and, therefore, if not paid relevant wage elements intermediated by Cassa Edile pursuant to sectoral collective bargaining agreements. Over the last months before the opening of the EXPO (January – April 2015), the share of workers accessing the site registered at *Casse Edili* was never below 89%. This is deemed as a success since a limited share of self-employed or workers not covered by sectoral collective agreements, like vigilantes, was reasonably expected.
- To sum it up, the share of workers covered by the collective bargaining of the construction sector has remained quite high, proving the monitoring was effective in avoiding frauds, like those fraudulently using self-employment or posting.
- **Compliance with host country rules on health and safety at work:** During the second cooperation lab, the representative from FILCA highlighted that a crucial success factor of the agreements addressing undeclared work and posting was the role of the construction site Health and Safety Coordinators (CSE), appointed by companies. Beyond controls on accesses, CSE were also in charge of making sure workers active in the site had a regular employment contract, and could access to this aim to data from

Casse Edili. Companies and employers' organisations contributed to ensure compliance with the agreed rules. No fatal or serious accidents was eventually reported against a forecast of 40 deaths and hundreds of serious accidents made by the National Institution for Insurance against Accidents at Work (INAIL) before the start of construction.

As to drawbacks, it is to be mentioned the practice was fit for large construction sites and was related to rather an extraordinary circumstance. The use of optical lectors and the setup of the above mentioned monitoring system, including also the involvement of vigilantes at the entry gates, was a deterrent against companies wishing not to apply the rules, but seems not easy to replicate in small construction sites.

The possible adjustment and deployment of the experiment on a larger and structural basis needs a renewed commitment from all the involved stakeholders to consider this experience as a starting point toward a systematic framework to fight undeclared work.

Indeed, at local level some experiences are in place in the Lombardy Region but not in Milan to monitor the presence of undeclared work by matching data from the paritarian complementary pension fund of the construction sector, the *Casse edili*, and the Chambers of Commerce.

Obviously, in the absence of entry gates, the matching between declared data and access to sites shall be monitored by means of field inspections.

## 4.2 DURC ONLINE - UNIFIED DOCUMENT CERTIFYING LABOUR COMPLIANCE (DURC ONLINE)

### Stakeholders involved

National Institute of Social Security (INPS) – Italy: Social Security Institution

National Institution for Insurance against Accidents at Work (Inail) – Italy: Institution for Insurance against Accidents at Work

Casse Edili – Italy: Sectoral funds

Commissione Nazionale Paritetica per le Casse Edili' (CNCE)- Italy: Coordinating body of sectoral funds

### Main features

The DURC is as unified certification on the compliance of companies with due payments in the field of social security and insurance against accidents at work. For construction companies, DURC also certify the compliance with the payment of wage elements intermediated by Casse Edili.

In fact, due to the precariousness of employment in the sector, the applicable collective bargaining agreements entail the obligation for all the employers active in the construction sector to register at *Cassa Edile*. The employers shall then pay contributions to the local *Cassa Edile*, which, in turn, guarantees blue-collar workers holiday pay, thirteen month pay and seniority pay.

The DURC certificate is necessary for companies wishing to:

- submit a bid to a public tender;
- sign a contract with a public entity;
- receive interim and final payments by public entities;
- have private works authorised by Municipalities;
- contract out activities to a third party.

Under each of these situations, the client, and, in case of private works, the municipality releasing authorisations of works, must verify the compliance of the relevant company on-line. This occurs by logging in to the relevant web portal, and making a query with the fiscal code of the company.

The fiscal code is automatically linked with the databases of INPS and INAIL. It also checks the 'social security statistical code' (*codice statistico contributivo*, CSC) registered at INPS. Since this code provides information on the sector of activity, it allows to automatically extend the query to the database of *Casse Edili*, whenever the company is active in the construction sector.

This allowed Casse Edili to find out a number of companies fraudulently avoiding to register at Casse Edili or registering construction workers as white-collar workers for the sole purpose of evading contributions due to Casse Edili. During the first year of implementation, *Casse Edili* reported an increase of 7,500 registered companies and 30,000 registered workers.

Following a request, the system instantly releases a positive outcome (green light) if the company is in compliance with payments due to: INPS (social security contributions); INAIL (insurance premiums against accidents at work) and *Casse Edili* (contributions for intermediated wage elements). In case some payments are missing, this is notified to the company and to the requiring body, while the system shows the status of the company as 'under verification' (yellow light).

The company can regularise its position within a 30-day time span. In case this does not occur, its status is automatically converted into 'not in compliance' (red light) and the company is not allowed to be awarded or paid public works nor to be authorised private ones.

The three different databases sharing data with the system have full information on the compliance of companies with due payments, as well as on the amount and type of missing payments (pension contributions, insurance against accidents at work, holiday pay, seniority pay etc.). As for *Casse Edili*, information also includes the local sectoral funds where payments are missing.

The system shares only an aggregate information with the requiring body, i.e. whether the company has a regular DURC, whether it is under verification, or whether it is irregular. This information is based on the compliance at the date of the request with payments due from the beginning of activities of the company up to three months before the day when the request is made.

Requests can be filed by INPS, INAIL, CNCE and Casse Edili, as well as by labour inspectorates, public administrations, and authorised professionals (tax consultants).

Once applied and if the company gets a 'green light', this outcome remains valid for 120 days. During this time span, the system does not accept further queries for the same company but, in case a new request is made, shows the 'green light' without running a new check.

### **Process of the adoption of the practice**

DURC was firstly introduced in 2006 as a single document certifying the compliance of companies with payment of social security contributions, insurance against accidents at work and payment of intermediated wage elements for construction workers.

This was intended as a strong tool to tackle the alarming plague of undeclared work, especially in sector where this reaches high levels, like in constructions.

It integrated three previous certificates, released separately by INPS, Inail and, only in case of construction enterprises, the local *Casse Edili*. Even if all such documents were necessary in order to carry out public and private works, in practice most companies actually could avoid delivering the one from Casse Edili when needing to have works authorised without being sanctioned. Therefore, social partners and the government agreed to take action in a view to unify such certifications, making sure companies had to be regular with all the relevant institutions in order to carry out works.

Later on, in order to speed up the release of the document and to avoid falsifications, the overall procedure and document were digitalised.

### Criticalities and suggestions for improvement

The main contributions DURC plays with regard to relevant information in case of posting are the following:

- **Compliance with the minimum rates of pay:** DURC certifies that some elements of the minimum rates of pay (i.e. those intermediated by *Casse Edili*) are actually paid. Yet, this information is not currently shared at the transnational level. While obliging companies to declare workers not only to INPS and INAIL but also to Casse Edili, DURC is an important measure to ensure construction workers are regularly paid allowances they are entitled to;
- **Compliance with the payment of social security contributions:** DURC guarantees all the declared workers are paid the due social security contributions according to the declared working time and up to three months before the request.

The platform used for the DURC is currently not related to requests concerning the release of the A1 form.

Yet, in the light of its achievements, information available through DURC databases could prove useful to inform foreign competent authorities on the regularity of Italian companies with the payment of social security contributions, about the existence of the employment relationship in the Italy or to check previous employment records of posted workers through payment records of *Casse Edili*.

As far as currently the system does not allow to find out fully undeclared work, it could be advisable to match the system with other sources of information, like:

- authorisations of works released by local authorities and already available in other digital databases,
- declared value and expected length of works.

As highlighted in the Cooperation Labs, this information could help to detect whenever declared workers are too few compared to the expected size of work.

Actually, in the process of digitalisation of DURC some relevant information in this respect went lost. As for the previous process, the contracting undertaking requiring the DURC had to file a request online. By means of this request, INAIL, INPS and *Casse Edili* could see the place and name of the body requiring the DURC and, this way, they could get information over the place where works were to be carried out. This information could support also inspections.

In addition, by summing the 120-day validity with the three-month time-lag of the request, a company can have a green light even if contributions are not paid for up to 7 months. Though the 120-day validity of DURC was initially thought not to impose an excessive administrative burden on companies, this would be no longer the case as currently the verification of compliance with payments takes place in a quick and automatised way.

## 4.3 TRANSNATIONAL BILATERAL AGREEMENTS BETWEEN ITALY, GERMANY, AUSTRIA AND FRANCE

### Stakeholders involved

Commissione Nazionale Paritetica per le Casse Edili (CNCE) – Italy: Coordinating body of sectoral funds

Union des caisses de France BTP (UCF – BTP) – France: Coordinating body of sectoral funds

Soka Bau – Germany: Sectoral fund

Bauarbeiter-Urlaubs- und Abfertigungskass (BUAK) – Austria: Sectoral fund.

### Main features

This practice covers three similar bilateral agreements in place between CNCE, i.e. the coordinating body of the Italian sectoral funds of the construction sector (Casse Edili) and similar national institutions active in other countries, namely in Germany, Austria and France.

In all these countries, employers and employees active in the construction sector have the duty to register to sectoral funds, usually managed by paritarian institutions. Due to the temporariness and fragmentation of employment in the sector, the employers have to pay a share of the employees' wage to the sectoral fund. This might reach about 30% of the payroll and is intended to cover wage elements such as holiday pay or bad weather pay, which are part of the minimum rates of pay in case of posting.

According to the agreements, companies posting workers between these countries are exempted to contribute to the relevant sectoral fund of the hosting country and can continue to remunerate posted workers in line with provisions in force in the sending country, and continuing to contribute to the sectoral fund in the sending country.

Companies wishing to apply for the exemption must prepare a certification with: registration number or code identifying the company, place where the worker is to be posted, kind of activity, name of the client, starting and ending date of the posting. The certification must be accompanied with the list of workers to be posted and the period of posting of each of them.

The sectoral fund of the sending country checks compliance of the requesting companies with payments due to the fund. In case of positive outcome, the request is passed on to the institution of the hosting country, which approves the exemption and informs its local fund/branch.

This makes posting easier for companies while posted workers themselves do not have to reach out sectoral funds in the hosting Member State in order to receive back the intermediated pay.

At CNCE, all the certifications and the lists of posted workers are archived in a digital and in a physical archive according to the date of communication.

The digital archive includes: name of the company, province of registration, province where the posting takes place, starting and ending date of the posting, number of posted workers, date of communication.

CNCE also produces summaries of such data shared with its board of directors. Flows from/to each of the countries covered by the agreements are shown according to the annual average number of posted workers per construction site posted to/from each Italian province.

Soka Bau, which entered similar agreements also with Austria, Belgium, and Denmark, crosschecks information available on posting with the German Custom Authority, which is also notified postings, and that carries out checks along the borders of the country.

### Process of the adoption of the practice

The practice stemmed from concerns by companies in terms of bureaucratic problems arising when providing services abroad, such as the difficulty to understand which rules apply, and how to liaise with foreign sectoral funds. As for Italy, this was especially the case of two large companies having contracted works abroad and of those active in cross-border regions.

The process of adoption was implemented directly by CNCE and the national foreign counterparts. Local funds were informed about it. In addition, the Italian Ministry of Labour authorised the agreements, also by means of a memorandum of understanding signed in 2013 by the Ministry, the social partners, and the CNCE.

Law experts of the involved parties made a preliminary analysis of the wage structures in the involved countries, which is also reported in the agreements. The overall similar level of minimum wages and of the share of contributions due to sectoral funds was crucial to agree on allowing exemptions to register in the host country's sectoral funds.

### Criticalities and suggestions for improvement

The practice does contribute to simplify procedures for posting, while easing accessing to relevant information for sectoral funds of the host state, as summarised below.

- **Fighting letterbox companies:** Information on place of establishment of the company, and previous worked periods of posted workers is easily available to the sectoral fund. As the certifications must include also the periods of posting of each worker, frauds made by replacing workers are easily tackled.
- **Compliance with the minimum rates of pay:** The practice overcomes risks of non-compliance with minimum rates of pay. In fact, companies continue to contribute to the fund in the sending country and sectoral funds in the hosting country are informed whenever irregularities in payments occur during the period of posting. Yet, this simplification is possible and advisable as far as minimum wage levels and shares of contributions to the sectoral funds are pretty similar.
- **Reducing administrative burden on employers:** Employers do not have to communicate with funds in the hosting country but produce a mere communication to the sectoral fund they are registered to. Most of the work load accrues therefore to the funds rather than to the employers. Employers also benefit of a simplification of rules, since they stick to provisions on wage applicable in the sending country.

As to criticalities, unfortunately the data flow is still quite 'manual'. Information is shared by means of e-mails, which slow down both the process of communication and of monitoring.

The process of authorisation would be significantly speeded up if implemented by means of a database that interoperates with the internal databases of the involved funds.

Such a database could share information and authorise the company automatically when payments are regular, while it could freeze the request and send a notification to the relevant fund when some payments are missing. This would also allow to simplify controls as all the data would be available in the dataset and found by means of queries rather than by checking mails and paper archives. In addition, it could be enriched with information from companies that register their posted workers in the sectoral fund of the host country, opting not to avail of the agreement.

# 5. ROMANIA

## 5.1 REGISTER OF EMPLOYEES IN ROMANIA (REVISAL)

### Stakeholders involved

Labour Inspectorate – Romania: Labour Inspectorate

National Liaison Office – Romania: Liaison Office

### Main features

Any employer established in Romania is obliged by law to create and submit to the territorial labour inspectorate (ITM) a register of employees. In addition, this must be disclosed to labour inspectors at their request. In case of non-compliance, administrative fines can reach 8,000 lei (nearly € 2,000).

Fines are higher if non-compliance regards posted workers. The list can be submitted online in the 'REVISAL' platform, also through an authorised intermediary, or shipped in an electronic format (like CD-ROM or a pen drive).

Employers must communicate:

- the hiring of each employee;
- the suspension of the contract and its cause;
- date of termination of the individual employment contract;
- the period of posting and the name of the employer in case of posted workers;
- any change to the data mentioned above.

For each employee, the register must include:

- name, personal identification code - CNP, citizenship and country of origin;
- title / occupation according to the Classification of Occupations in Romania (COR) or other regulations;
- the type of individual employment contract;
- the standard working time and its distribution.

With this regard, it is to be highlighted that employers must release copies of information declared to the register to the relevant employees, if the latter require so. Employers registering for the first time must provide also a copy of the certificate of the registration with the Trade Register, a copy of the tax registration certificate and a copy of the identity document - for individual employer.

The employer is also obliged to inform in writing the ITM about the conclusion of a service contract. This information must be made within three working days from the date of conclusion.

Notably, all information is digitalised on the REVISAL database. The database also includes information on self-employed workers and workers posted to Romania.

The Liaison office regularly uses it for answering requests from foreign Liaison Offices concerning posting of workers.

## Process of the adoption of the practice

As highlighted by Latina during the second Cooperation Lab, in Romania there is a strong debate on irregularities concerning posting. The Revisal register represents a remarkable attempt to detect irregularities, by including information on employment relationships and on posting taking place from Romania. The register was gradually implemented up to the release of its current version in November 2016.

## Criticalities and suggestions for improvement

REVISAL is a digital register which can be very useful to provide information to foreign authorities on workers posted abroad. The main results of this practice concern:

- **fighting letterbox companies:** the register can help to quickly identify the existence and duration of an employment relationships in Romania. It indirectly helps to detect letterbox companies as identification data on company provide details on the registration in the Business Register;
- **compliance with minimum rates of pay:** Revisal can help to identify the applicable minimum rates of pay to some extent. Information on the occupation of workers relevant to define which wage levels apply in the host country can be disclosed to the authorities of the host country following a request for information.

Criticalities addressed delays in the update of the system, that implied the impossibility for employers to amend relevant data. This include, for instance, the modification of employees' occupation according to recent changes in the Classification of Occupations in Romania (COR). In addition, as highlighted by Latina during the third Cooperation Lab, data from REVISAL are not matched at national level with those of other offices with relevant data nor with those of paritarian institution, especially the Antifraud Agency (ANAF). Therefore, while it is widely used for transnational data sharing, its potential at the national level is still untapped.

Finally, as it covers administrative information, it does not detect false declarations concerning employment relationships, like bogus self-employment relationships.

# 6. SPAIN

## 6.1 AGREEMENT FOR THE EXCHANGE OF INFORMATION AND COOPERATION BETWEEN SPAIN'S LABOUR INSPECTION AND SOCIAL SECURITY AND PORTUGAL'S GENERAL INSPECTORATE OF LABOUR

### Stakeholders involved

Labour and Social Security Inspectorate – Spain: Labour inspectorate

Authority for working conditions – Portugal: Labour Inspectorate

### Main features

The practice is a relevant case of structured cooperation implemented by Labour Inspectorates of Spain and Portugal, pursuant to an agreement signed on the 3<sup>rd</sup> of October 2003.

The agreement allows the Labour Inspectorate to clearly identify the contact points for requests of cooperation, both at national and regional level. Accordingly, when a labour inspectorate from Spain or Portugal carries out actions that affect companies and workers posted from Spain or Portugal, it can swiftly obtain the information needed to check if the labour legislation is being respected. Generally, this information is related to labour accidents suffered in the country where the workers are posted, but it can also be related to other dimensions, such as wage or working time.

It is worth noting that requests for cooperation are not strictly limited to the exchange of information. They can also involve the implementation of research and verification activities in the other country, like joint inspections. As stressed by the labour inspectorate interviewed as part of Post-Lab activities, this aspect contributes to improve efficiency. To ensure the proper functioning of the agreement, a Joint Monitoring Commission that meets periodically was created. Moreover, in the framework of this agreement, campaigns have been launched to prevent occupational accidents, both in the agricultural sector and in the construction sector.

During 2008, 2009 and 2010, the most representative social partners in the construction sector in Spain and Portugal were invited to meetings that were held prior to the meetings of the Monitoring Commission. The last meeting attended by the social partners was held on February 9<sup>th</sup>, 2010.

Since that date, however, the social partners of the two countries have not been reconvened to any new meeting prior to the meeting of the Commission.

As for the data created and shared from this practice, it is important to mention labour inspectorates share information on several issues including changes in labour legislation, organisation and functioning of labour inspectorates in both countries and innovative actions carried out.

As per the agreement, meetings take place every six months. The cooperation is structured according to the following steps:

- previous communication to define the working plan;
- intervention of Spanish social partners;
- involvement in projects, like 'Vademecum', which deployed a 'dictionary' to guide inspections.

## Process of the adoption of the practice

The transnational agreement was signed in Madrid on the 3<sup>rd</sup> of October of 2003. The idea was to articulate mechanisms of communication between the two inspectorates to maintain a fluid and agile relationship, both at the central level and between the regional labour inspection services operating on both sides of the border. The signature of this Agreement was considered as the best way to design and coherently organise the successive activities. It was preceded by a Joint Statement on Cooperation and Technical Assistance on Labour and social issues, signed on the 30<sup>th</sup> of November 1998 between the Portuguese and Spanish Labour Ministries and by a Protocol on Cooperation and Technical Assistance on Labour and social issues, signed on the 2<sup>nd</sup> of October 2002. This Protocol foresaw a programme of activities for the year 2003, that included co-operation and exchange of information between labour inspectorates of both countries. As a result of these contacts, both Ministries and labour inspectorates considered the need to elaborate a tool that could allow for a permanent exchange of information, in the light of the intense flow of cross-border workers between the two countries.

## Criticalities and suggestions for improvement

The practice appears promising as a cross-border case of cooperation between labour inspectorates. Joint activities and ongoing process of information sharing can help to fine-tune monitoring of cross-border situations in a way transversal to the need of information sharing necessary to guarantee compliance with rules on the posting of workers.

It is worthy to note, as emerged during the Cooperation Labs, the Spanish Labour Inspectorate is actually strengthening information sharing with inspectorates from other countries. Agreements have recently been entered with Romania, France and Poland to support information sharing covering: establishment of the company, employment relationships and wage, social security coverage.

From the point of view of both trade union organisations and the business organisations – there is an understanding that this agreement could have a greater impact if unions and employers' organizations of both countries were actively involved.

Also, due to the issues dealt with in these agreements, it is considered necessary that at least the meetings prior to the formal meetings of the monitoring commissions, which were interrupted in 2010, should be resumed.

## 6.2 PROFESSIONAL CONSTRUCTION CARD (TPC)

### Stakeholders involved

Fundación Laboral de la Construcción (FLC) – Spain: Sectoral paritarian institution

Confederación Nacional de la Construcción (CNC) – Spain: Employers' organisation

Confederación Sindical de Comisiones Obreras (CCOO) – Spain: Trade Union

Unión General de Trabajadores, Federación de Industria, Construcción y Agro (FICA-UGT) – Spain: Trade Union

## Main features

The TPC is a card applying on a voluntary basis to any domestic and foreign worker entailed by a Collective Agreement covering the construction sector, and managed by the sectoral paritarian vocational training body, the FLC. The TPC covers also self-employed people and temporary agency workers but not posted workers.

The main task of the card is to ensure workers are adequately trained for health and safety purposes, following concerns workers were released fake certificates of attendance of courses on the matter.

The card is also intended as a tool aimed at improving the employability of the workers in the sector.

When applying for the TPC, construction workers are required to submit all official documentation attesting trainings they have attended, the centers where they have completed the training, the contents of the training, the hours etc. FLC is in charge of checking and validating these trainings.

To this aim, a process of accreditation of training center was implemented. Workers shall undertake trainings only in accredited centers for trainings to be valid. The FLC monitors these centers for ascertaining compliance with requisites for the accreditation. Trainings made abroad are not covered.

In order to demand and subsequently obtain the card workers need to have worked at least one month in the last 5 years in the sector and to have a minimum training in the prevention of occupational hazards. Minimum training in labour risk prevention is envisaged by the construction collective agreement for a minimum duration of 8 hours. The main documents to be provided to obtain the TPC are:

- ID or residence card;
- report of previous official social security records, released 90 days before the card is requested at the latest;
- all the training diplomas in original document and copy;
- professional category and sectoral experience through payrolls in order to be able to credit the jobs they have occupied throughout their professional career

Upon verification by FLC, this information becomes part of the CV of the worker.

The card allows the worker to upload all the information related to these aspects. Therefore, it is a document that guarantees the professionalism of the worker.

Information stored is available directly by using the card thanks to a personal code.

## Process of the adoption of the practice

The Professional Training Card (TPC) was implemented pursuant to the General Construction Agreement (2007) and Law 32/2006 of 18th of October regulating subcontracting in the construction sector.

The signatory parties are the National Confederation of Construction (CNC) on the employers' side, CCOO of construction and services and Federation of Industry, Construction and agriculture of UGT (FICA-UGT) on the workers' side. The signatory parties appointed FLC as the technical body responsible for managing the card.

In order to regulate the TPC, social partners agreed on: (i) basic trainings necessary in the field of construction on occupational risks prevention; and (ii) how to organize and recognize work experience in the sector (i.e. the professional category).

## Criticalities and suggestions for improvement

The card appears to have increased reliability on information concerning the attendance of trainings on health and safety at work.

Before the existence of this card, companies often preferred to train workers from scratch, even if they already had previous trainings, which required time and money.

By validating trainings, the system has enabled workers to receive more and better training in the construction sector.

It also certifies experience of employees, contributing to the functioning of the labour market and supporting workers' employability. This is a remarkable outcome, taking into consideration they might lack the skills to properly write a good cv, and that the card makes this information easily accessible.

The main weakness of the TPC is that it is not mandatory. It was declared as not mandatory by the Labour Court, thus stopping the obligation to present it in order to access in construction works. The judgment partly gave reason to the unions ELA and CIG, which represent workers from the Basque Country and Galicia, respectively. These unions are not part of the General Construction Agreement, and contested the obligation to have the card entailed therein on the basis of their representativeness at regional level.

So far, the card is not relevant in case of posting due to its different aims as set by social partners, and to the lack of a competence in the area by FLC.

Yet, the idea to include in a card employment records, skills of the worker and attendance of courses in the area of health and safety at work, appears interesting when compared with the French ID card and the system for registering employees adopted for the Expo construction sites described by these Guidelines.

The availability of such information in cards aimed at fighting undeclared work and irregular posting could help to identify whether the worker is normally employed in a country, the minimum level of pay which should apply in line with a worker's skill, and compliance with rules on health and safety.

## 7. CONCLUSIONS

The Post-Lab project, through its research activity carried out in the four countries taking part in the study, has pinpointed the main issues relating to the proper application of Directive 96/71/EC and of Regulation (EC) 883/2004. From the analysis on the temporariness of posting and on the compliance with the minimum rates of pay and social security contributions due in the host country, two main groups of fraudulent practices have emerged: the use of 'letterbox companies' with a view to benefitting from lower pay and social security contribution levels at sector level, thus bringing about a cost advantage against the levels to be complied with in the sending country; and the non-compliance with the minimum levels as set out in the abovementioned Directive 96/71/EC. The research work was thus conducted with the goal of contrasting such fraudulent practices through cooperation patterns between unions and employers' organisations of the construction sector, on the one side, and labour inspectorates, on the other.

These 'best' practices have turned out to be applicable both all over the country and within an international context. Investigations on behaviours featuring a risk of fraud are often linked to the failure to submit the relevant declaration to the authorities tasked with monitoring companies' compliance with administrative procedures, or to the lack of information, which stems from the posting itself. In these cases, international cooperation between various organisations such as labour inspectorates, bodies belonging to unions, or social partners themselves can make it possible to pinpoint and tackle such unlawful actions.

To this end, it is of utmost importance to enable access to key information such as the site where the company is supposed to perform its activities, the type of tasks that will be carried out, and the qualification of the worker. All of this in order to make it possible to have further insight into the company involved, whether it complies with social security contribution obligations in the sending country, and whether it applies the proper wage level to workers according to the levels applicable in the sending country.

Each country where the research activity of the Post-Lab project was carried out feature a set of practices to combat such fraudulent behaviours, using different methodologies to obtain information being relevant to the fight against undeclared work activities.

As previously stated, the practices deployed in Italy, Spain, France, and Romania take the form of international agreements, codes, and information exchange procedures, also based on the use of new skills, which outline a much more complex overall picture.

In most practices, the role played by social partners has been crucial not only for their actual implementation but also to outline a useful practice for the definition of effective procedures to combat fraud.

The circumstances that stirred up concerns among social partners are the same in all the countries involved: the risk of social dumping. Italy and France feature the presence of 'intermediate' bodies such as the sectoral funds tasked with intermediating wage elements. With a view to paying sector-specific contributions, construction companies shall register with these bodies, which, in their turn, are tasked with assessing companies' compliance with such obligations. The presence of these bodies has allowed for more specific and vigorous action. Bilateral institutions to be found in Spain and Romania play a different role.

The different practices outlined in the four countries involved allow for the possibility of reflecting on the implementation of each of these practices selected in the participating countries.

The specific feature of the Italian case is represented by the abovementioned international agreements in force with France, Austria, and Germany, entered into by bilateral institutions (CNCE, UCF-BTP, SOKA BAU, and BUAK). These agreements make it possible to gain further insight into the company that posts workers to one of those countries, providing accurate information on the location of the construction site, the company's details, the type of work, and the posted workers. All of this is made possible thanks to comparisons between the various pay and social security contribution levels of the countries involved, ensuring equal treatment. These agreements ease administrative checks on companies' compliance with applicable legisla-

tion, as well as the posting itself since companies will no longer risk being requested to pay twice for the same obligations. Through such agreements, the obligation upon companies to pay social security contributions is still linked to the sending country, which is in charge of providing information to the host country and of carrying out monitoring actions. Similarly, thanks to research conducted prior to the conclusion of these agreements, the host country will be able to ensure that the minimum wage levels are abided by.

In France, pursuant to the Macron Law, the ID card – which, after a trial period, became compulsory in March 2017 for all companies posting workers to France – gathers preliminary information on companies, posted workers, working conditions, and the principal. This information is available for about 500,000 companies. The card is managed by UCF, a paritarian institution tasked with checking the information provided. This tool is very useful since it is closely linked to the employment contract in relation to which it is applied for. This means the ID card is no longer valid once the contract is terminated.

The different practices thus base their action against unlawful posting on the exploitation of preliminary information, thus making it possible to assess companies' compliance with their obligations and to pinpoint them throughout the country.

Similarly, it should be clarified that also the possibility of applying provisions (and sanctions, should the rules not be complied with) becomes of utmost importance. Work at national level in cooperation with labour inspectorates goes hand in hand with the information provided; the latter, which can be shared through specific agreements, becomes a monitoring tool targeted at companies that are found not to be compliant.

All the participating countries, at different levels, feature practices demonstrating such possibility.

In France, the CGT Network – through the Reder project – was designed with a view to improving unionists' knowledge of the matter, so as to enable them to tackle any legal issues stemming from posting of workers, as well as to improve knowledge on the rights of posted workers. More specifically, the project sets up a network involving social partners and the Labour Inspectorate with the goal of enforcing workers' rights.

In Romania, the Revisal system, which is managed by ITM, is based on cooperation patterns involving various inspectorates, providing the necessary information to better understand cases of posting of workers coming from Romania. More specifically, the database contains information on companies, which is provided by employers registering their employees. Revisal sets out to combat undeclared work by sharing information on workers posted to other countries.

In Italy and in Spain, instead, inspection activities feature more specific goals linked to needs stemming from the national context.

In Spain, the agreement between the Labour and Social Security Inspectorate of Spain and its Portuguese counterpart, in force since 2013, allows for more direct action that simplifies cooperation between the two authorities in order to ensure full compliance with the rules on posting and with the wage levels applicable in the two countries.

In Italy, instead, decentralised collective bargaining in Lombardy in consideration of construction works for EXPO Milano 2015 set up a pattern of agreements involving social partners and local authorities, thanks to cooperation with the territorial paritarian fund (Cassa Edile) and the Prefecture of Milan.

Spain, once again, features a specific practice stemming from the national-level need to establish rules on the proper training of construction workers, to be completed at the centres accredited by the system: TPC, which is managed by FLC, a paritarian body in charge of training in the construction sector. TPC has proven to be a useful tool to prevent fraud by acknowledging workers' staff level, training, and employability, thus making it possible to identify the right wage level and their job role within the company.

The system stemming from the analysis of the practices in the construction sector, adopted in the countries taking part in the Post-Lab project, contributes to better understanding the necessary actions to combat unlawful posting. The practices described in the framework of this project thus suggest ways of implemen-

tation that ensure, at the same time, the availability of relevant information and its sharing with a view to enforcing legislative provisions.

By observing the practices implemented in Italy, France, Romania, and Spain in their entirety, it is therefore possible to understand why – for the inspectorates' monitoring system to work properly – it is fundamental to have a clear source of information before entering the host country to perform a working activity. For this reason, the initiatives described in the Post-Lab project, which implement a number of (sometimes fragmented) actions, turn out to be useful with a view to enlarging and fine-tuning the practices described.