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The Commission's Employment
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**European Institute for
Construction Labour Research**



**Posting of workers:
Improving collaboration between social partners and
public authorities in Europe**

General synthesis

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Introduction

This synthesis is the result of the common work led by 20 members of the steering committee and 98 workshop transnational participants of the project:

“Posting of workers: improving collaboration between the social partners and public authorities in Europe”

It will be available in French and English October 15, 2013 as a synthesis tool posted on the site EURODETACHEMENT <http://www.eurodetachment-travail.eu/>

The transnational workshops participants are all stakeholders involved in experiences in the field of posting of workers, and a mutual exchange of practice between public authorities and social partners has enabled to produce this synthesis.

This process has relied on concrete situations with a "pooled and sharable knowledge, a body of knowledge" gradually built by these interactions.

Designed as a directly operational tool, this synthesis is built upon fields of actions which are highlighted by an analysis of existing practices: **“sensitizing, informing, supporting”**, **“monitoring, controlling”**, **“anticipating, preventing”**, **“acting at the transnational level”**. A special chapter is dedicated to **“the role of the social partners.”**

For each field, an **"analysis"** part aims to formalize the result of these crossing points of views, collect and formalize, as a puzzle, knowledge and expertise held by each stakeholder (linked to his territory and his function).

Key issues, action-levers and “key actors” have been identified by the various participants.

The **action sheets** have been achieved by the participants themselves, on the basis of their experiences and to support analysis, with the support of the project team.

In order to facilitate a “network effect” and exchanges, action sheets incorporate contact information on the organizations involved.

The contents of this synthesis tool have been collected in this document in Word format which is an annex to the final technical report presented to the European Commission.

Sensitizing Informing Supporting

- Sensitizing Informing Supporting- Analysis

Information concerning posting: Goals for accessing and sharing information

1. On-line access to information

Information concerning posting is decisive in enabling companies and workers to exercise their right to mobility on the internal market.

Any deficiencies in this area impact the effectiveness of service provider rights. As an example, the French employers' organisation representing temporary work companies has indicated that temporary work companies wary of incurring prosecution do not offer their services to Member States because they do not know which rules apply. The cross-border activity of small and medium-sized companies without a large Human Resources department to manage such a complex operation is also affected by a lack of information.

With respect to employees, this lack also has a negative impact. The infringement of legal rules on posting is frequent (non-respect of the minimum wage, working hours, payment of transportation and housing fees, etc.) and results in wages which are equivalent to those of the country of origin (as a reminder, minimum monthly wage ranges from €157 in Romania to €376 in Poland; source: [eurostat 2013](#)). In any case, whatever the information available, the widespread unemployment in the habitual country of residence has an impact on employee choice. Workers will give priority to obtaining a job rather than to the respect of their social rights in the country where services are provided. This situation represents a major issue for those who aim to ensure that the social rights of posted workers are respected.

Inventory of websites

In terms of access to information, we can currently affirm that information is available on sites with a European scope (the [European Commission site](#), the site of the [social partners for the construction industry](#)) and on the public administration sites of Member States.

All Member States involved in this project have made posting information available on the site of the public authority in charge of controlling all or part of legal rules, in the local language and in one or more other languages of the member states with which there are a large number of exchanges. (An example is the [Polish Work Administration site](#), which has translated information into German, English and Russian; the [Finnish](#) site offers translations into Swedish, Estonian, English and Russian.) An analysis has enabled noting deficiencies here and there (difficulty of find the sites using a search engine, absence of information for national companies and workers, absence of translation into another language, absence of precise and/or up-to-date information, absence of information on the social security system, etc.).

Correspondingly, it is interesting to note that information on posting is not supplied by work administrations alone. Thus, in Finland the tax administration provides information for [national companies planning to post employees in another country](#) and for [foreign companies present in Finland](#). Employer organizations also relay information, as is the case in Finland, where the employers' organization for the construction industry together with the Finnish Construction Trade Union created and made available online a [guide designed for companies using foreign labour in Finland](#).

Other web trends show that information has been diversified to reach specific audiences and take into account their specific needs:

- In Poland, the labour inspectorate site has made [guides for Polish migrant workers](#) available online; these guides are made according to the destination country: Austria, Germany, Norway and the Netherlands.
- In France, the campaign targeting farmers who use provided services was relayed by the labour administration services, [agricultural social security](#) and the employers' organisation.
- In Denmark, social partners in the construction industry have created a [site dedicated to risk prevention](#) for each type of building trade in four languages.
- In Portugal, several administrations have relayed a major campaign targeting migrant Portuguese workers in foreign countries (whether posted or not) to inform them of their rights (see [Action sheet n°4](#))
- Finally, Internet has enabled spreading information and denouncing bad practices tied to posting. The [stop social dumping](#) site provides eye-witness accounts of abuses in the construction industry on the European level. The [Faire mobilitaet](#) site developed by DGB does the same for Germany for all professional sectors. The goal is to publicise online all forms of abuse tied to mobility (posting and false freelance workers) by relaying press articles and TV reports on the topic. The site also enables informing workers from the new member states of the assistance available to them at six counselling centres. The site has been translated in four languages.

Improving communication

The current goal is to make these sites live by regularly updating them, enriching them, making them known and linking to them. Project participants, in particular those who attended the first workshop in Strasbourg, have submitted several proposals.

- To improve contents:
 - o They suggest building these sites in partnership with the social partners to ensure they correspond to real needs;
 - o They suggest improving the contents related to occupational health. Although some Member States strongly promote occupational health, and this is reflected in the contents of their Web pages (Denmark, Finland), other sites do a rather poor job of providing the necessary information on occupational health and safety for construction sites involving several dozen foreign companies which intervene simultaneously.
- To facilitate access to poorly referenced websites and reassure site visitors concerning the quality of information found on the site, participants suggest:
 - o Labelling trustworthy sites with a shared logo which is identical for the 27 Member States;
 - o Make the [posting page of the General Directorate for Employment, Social Affairs and Inclusion](http://ec.europa.eu/social/main.jsp?catId=726&langId=en) of the European Commission into a meta-portal with links to all useful sites. In this case, all that would be necessary is to reinforce, replace or refine the existing websites offered by the 27 Member States.

This project could also provide an opportunity for Member States and social partners to enrich their current sites with links to web pages providing useful information on posting (sites maintained by the public administrations and social partners of the Member States concerned by posting activity).

2. Reaching out to stakeholders

Although Internet is a formidable communication too, many participants stressed that the people who need to consult the sites do not do so and that to reach this audience, the best way is through a physical presence at workplaces, border posts, places of worship, etc. Here, there are two obstacles: isolation of posted workers and their refusal to communicate.

Isolation of posted workers is organised on purpose by the service provider, and the more vulnerable the workers (citizens of countries outside the EU who require a permit to work in EU states before they can be posted in a Member State, inability to speak the language, physical isolation, absence of means of transport), the easier this is to do. The service provider assumes the role of sole purveyor of essential needs for the workers.

As concerns worker refusal to communicate, the social and cultural history of posted workers makes them wary of trade unions which are active in the host country. The intervention of these unions at the posting site is felt to be a potential menace to worker employment. To combat this, trade unions in the host country count on workers who are from the same country as the posted workers, but who have become established in the host country and/or have built partnerships with their counterparts in the home country. Thus, the CFDT agricultural union established a partnership with the Bulgarian organisation NFZGS Podkrepa in order to have easier access to workers in both Bulgaria and France (see [Action sheet n°2](#)).

At major construction sites, although information is more complex to organise because of the large number of companies present and the mixture of nationalities, we see initiatives to provide directly information for workers present at a site (see [Action sheet n°21](#)).

3. The awareness challenge

The client: a key player

In addition to the need to provide information on legal frameworks, project participants emphasize that one major issue consist in mobilizing stakeholders in these operations to improve the quality of service provided and working conditions (see [the field : Anticipating Preventing](#)).

During our work, a consensus has emerged: in the agricultural sector or construction operation “client” play a key role in acting on the conditions under which these parties implement services provided.

Motivating them can thus result in effective action.

The goal is to raise awareness amongst these key players in order to encourage them to find a balance between the economic constraints they must face and the implementation of service operations which respect the rights of recruited workers.

Faced with these opposing demands, the idea is to develop arguments which highlight shared interests, leading to improved quality of services, and demonstrate that the “lowest price” in the short term can be very expensive on human and economic levels in the long term.

In the construction industry, subcontracting strategies based on the lowest cost can lead to situations where the contractor loses control of the “process” when confronted with the difficulty of coordinating teams made up of different nationalities or of workers who are not qualified for the job to be done.

Feedback from “clients” and professional organisations working on projects has shown that this strategy affects work quality, prolongs deadlines and lowers the performance of the companies involved.

When workers are underpaid and poorly housed, when working conditions deteriorate or when fraud concerning taxes or social protection is involved, this leads to civil or criminal prosecution which are echoed in the media and damage the image of the client concerned (see [Action sheet n°21](#)).

For this reason, there is a pressing need for clients to implement regulatory and supervisory mechanisms and even to verify the operations.

Sensitisation actions carried out jointly by public authorities and professional organisations on the European level could play an important role in this respect (see [Action sheet n°3](#)).

Raising posted workers' awareness

As for the trade unions, they point out the need to make posted workers aware of legal information concerning their rights. The challenge is not an easy one because it is difficult to reach workers in their workplaces.

They are often wary and sometimes even afraid; several eye-witness reports describe the pressure put on them by employers to block communication between them and trade unions in the host country.

Trade unions emphasise that the economic conditions in which some workers find themselves, lead them to accept levels of remuneration and social protection which are well below those provided for in legislation passed in the host country.

The disparity in standard of living and salary between workers in Member States and the unemployment faced by candidates for posting means that failure to comply with their rights is not an obstacle to their mobility.

The Belgian CSC has implemented a system which aims to welcome, inform and support Polish workers coming to work in Belgium (see [Action sheet n°1](#)).

Experience has shown that these workers manifest themselves most often when they are confronted with their employer's insolvency, with fraud related to their social protection, or with issues related to work accidents.

In such cases, defending worker rights requires support which is implemented after the fact so that they can begin civil procedures to regularise their situation. Labour inspectors from the home country who receives these employees when they return indicate that these procedures are long and difficult to implement because of a lack of proof or the existence of problematic contractual documents.

In the workshops, these inspectors have mentioned the vulnerability of posted workers when they are ready to leave the host country. This can lead them to sign documents (some workers, for example, have even signed two different work contracts with the same employer) which place them in a delicate situation when it comes to legally defending their rights.

They observe abuses concerning human rights at times that constitute violations and sanctions listed in the Directive dated April 5, 2011 on the prevention of human slavery, the combat against it and the protection of victims ([Directive 2011/36/UE](#) the transposition of this directive must be effective on April 6, 2013).

In light of this situation, the usefulness of a campaign to sensitise workers before posting is obvious, and several initiatives have been developed in this direction.

http://www.eures.praca.gov.pl/index.php?option=com_content&view=article&id=30&Itemid=10

(see [Action sheet n°1](#), [Action sheet n°4](#), [Action sheet n°23](#))

4. Mobilizing actors “relay”

Thus, some method elements can be identified from these campaigns.

The first step is to clarify the objectives and identify target audiences.

The second is to question the contents, and the added value of these activities with regard to the online information is that they can go beyond the provision of information the legal framework.

More practical, more educational, more appropriate and specific target audiences better suited to their needs and concerns as well as arguments will be disseminated **according to the aim pursued**.

To optimize these campaigns reach wider audiences, partnerships will be able to develop with others, we can call actors "relay".

The "working abroad" campaign conducted in Portugal was promoted and coordinated by the Ministry of Foreign Affairs in partnership with the “Working Conditions Authority” (ACT), the Directorate General of Consular Affairs and Portuguese (DGACCP) Communities, Institute of Social Security (ISS), the Institute of Employment and Vocational Training (IEFP) .

The scope of the information provided was well beyond the specific information on the posting of workers, but the importance of this inter-institutional partnership has resided in the scope of the action taken on the territory, spreading very broadly to useful information, including for future workers.

Besides the number of documents distributed (5,000 posters, 50,000 brochures, leaflets 100,000) , events (European Job Days in Portugal) have been conducted and reported by the media (TV , radio, newspapers) that played a role in the dissemination of information.

In Luxembourg, are mayors who relayed messages to sensitize “clients” in the construction sector at the time of issuance of building permits.

Places "bridge "can be identified: government attended by companies or employees, chambers, places of worship frequented by Polish workers (Belgium).

Embassies and consulates may also contribute to deliver information

Conclusion

In matters of posting, the Information Stone Age is behind us, even if corrective steps must still be made. Authors and audiences have become diversified; trade unions are structuring themselves on an international level to face the challenges. In this current period of crisis in public finances,

stakeholders support similar aims and find the way to share tools which have been created among players with the same goals.

*Action sheets in the field of
Sensitizing, Informing, Supporting*

Action sheet n°1 : Supporting and organising Eastern European workers employed at construction sites in Belgium

CSC (Belgian Confederation of Christian Unions)

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1030 Brussels, Belgium

Tel. 02.246.31.11

Fax 02.246.30.10

<http://www.csc-en-ligne.be/>

1. Observations and motivations

In spite of the current crisis, the construction sector maintains a good level of activity in Belgium, and there is a significant demand for labour at worksites. Since the broadening of the European Union, we have observed the presence of an ever-growing number of workers from Eastern Europe, especially from Poland, in this sector.

Belgium is an attractive country for mobile workers and migrants; it has a good reputation as far as working conditions and social protection are concerned. But the “fairytale” about how workers will be welcomed, which often motivates their coming to Belgium, can unfortunately be very different from reality.

In certain situations, work and employment conditions are exceedingly poor and very much below what Belgian law requires.

This “social dumping” provokes reactions of rejection which isolate and lead to an even more fragile situation for these workers, including among our own members.

For the CSC, the foreign workers themselves are obviously not the issue; rather, it is the non-respect of their rights, the abuse they suffer and the lack of means and controls for effectively combating social fraud.

We feel that our role as a trade union organisation is to welcome and support these workers.

However, it is not easy for organised labour to locate and reach posted workers. They are often afraid or distrustful and will even avoid us when we try to contact them.

They are often employed at small renovation sites and work behind “closed doors”.

They are present for only very temporary periods and, of all mobile workers, are the most difficult to organise.

In Belgium, the minimum wage is 14 euros per hour in the construction industry. Posted workers are frequently paid half this amount because they work for 60 hours instead of the legal 39 hours.

They accept these working conditions without protest, and it is only when an employer disappears or when they are the victims of major abuse (non-payment of wages, for example) that they contact the union. In these cases, it is often difficult to gather the elements necessary to defend them.

For these different reasons, we have decided to implement a specific action strategy aimed at Polish workers.

2. Goals

The overall goal is to reach the worksites where Polish workers are found to:

- obtain a clearer idea of their employment and working conditions,
- give them information concerning their rights,
- unionise and organise them.

3. Method implemented

We have:

- defined a target group (mobile Polish workers in general, whatever their status),
- translated handouts and brochures in Polish to inform workers of their rights,
- and implemented several actions:
 - o **distribution of handouts at places where these workers are found**, including worksites, churches, stores, Polish travel agencies and consulates;
 - o **publication of press releases** to Belgian newspapers, as well as to Polish newspapers in Belgium, which relay our actions in a very regular manner;
 - o **organisation of “construction sector evening events”** in different venues in order to reach the greatest number of workers.

Since June 1, 2006, the opening of the Belgian labour market to Polish workers and the possibility of their working directly in the construction sector has led to unionising a large number of workers who wanted to become installed in Belgium.

This has enabled us to hire two permanent advisors for Eastern Europe to work on this action.

4. Type of action carried out

Since 2005, our organisation has addressed this “target group” with the help of volunteers of Polish origin.

These volunteers are mainly qualified women who have a migrant background and are familiar with the difficulties encountered.

In addition to information actions, we work in collaboration with representatives from the Social Law Inspectorate and point out abuses to them.

We also support workers if they undertake civil proceedings to defend their rights.

5. Impact of action on issues encountered

We are now able to state that the CSC has a true audience among these mobile workers and that we have extended our initiatives to include Bulgarian and Romanian workers.

We currently edit brochures in 13 languages (see attached documents).

6. Feedback

We conclude that as a trade union organisation, we must invest in the protection of migrant workers because this is a phenomenon which will continue to develop. The idea is to plan for the future.

On the one hand, we must reinforce unionisation of these workers in order to organise them, and, on the other, we must reinforce links and collaboration with the supervisory services.

Action sheet n°2 : Building a France-Bulgaria trade union information strategy

This action is in the launch and beginning implementation phase. Consequently, we cannot yet analyse results or make an assessment.

FGA CFDT in France / NFZGS Podkrepa in Bulgaria

http://www.cfdt.fr/jcms/recette_11468/agroalimentaire

http://www.podkrepa.org/content/menu_14.php?id=203&eyear=2010&emonth=5&estate=iaticbex

1. Observations and motivations

Bulgarian workers are coming to France in increasing numbers to work in agriculture.

The standard of living in Bulgaria is very low. The average salary of an agricultural worker is between €150 and €200.

Workers are therefore ready to emigrate under any conditions because they will be paid more than in Bulgaria in any case.

For this reason, these workers often do not care whether laws and legal provisions in the host country are complied with.

French employers rely more and more on service providers because of:

- recruitment facility
- turnkey service

Service providers have thoroughly understood the advantages for all sides and aim to take advantage of the situation.

As an employee trade union, we must take into account the issues facing these workers.

For a number of years, the topic of seasonal workers has been a major concern of the CFDT Confederation.

Every summer, we carry out an information campaign directed at the most vulnerable workers. In the summer of 2011, FGA-CFDT passed out leaflets to inform approximately 200 Bulgarian workers of their rights.

We were unable to communicate with them for two reasons: the language barrier and their obvious fear of being in contact with us.

These difficulties keep us from fully understanding the problems confronting them and building an action strategy.

2. Goals

1. Develop a joint strategy on both sides of the border to convey pertinent information and give an adequate and coherent message to these workers;
2. Inform them so that their rights will be respected;
3. Be able to contact and speak with them in France to better understand their working and employment conditions and act on the problems they encounter.

To ensure that the rights of these workers are respected, we are looking for a way to act upstream (inform employees before they leave their country of origin) and downstream (at the place where they work in France).

3. Partner

In early 2012, NFZGS-Podkrepa and FGA-CFDT decided to implement joint action.

In addition to cooperating on materials and techniques and organising discussions on trade union positions and practices, the question of information appeared as a major axis and an excellent lever to reinforce action toward seasonal migrants in agriculture.

In the context of our cooperation, we were fortunate to represent both a country supplying labour (Bulgaria) and a host country (France).

4. Actions

Step 1) An information action in Bulgaria (April 2013) directed at employees before leaving their country of origin:

- Organisation of a public meeting to provide information in the Montana region (northwest Bulgaria), a former industrial area which is now a very poor agricultural region from which many workers emigrate.

The Podkrepa union provided on-site support to distribute invitations in the towns and surrounding country to reach as many people as possible.

We also organised a press conference and invited the labour inspectorate.

Step 2) Creation of a guide or distribution of a slide show in the form of questions and answers on:

- the rights of employees who are bound by a working contract to a company,
- the rights of workers posted by a temporary work agency or a service provider;

- useful contact information for both Bulgaria and France, such as the labour inspectorate, national employment centre, the MSA agricultural mutual fund and the CLEISS international social security liaison office;
- contact information for our trade unions (in case of contact, we arrange links among our unions);
- a section describing what needs to be done before departure from the country: “Before Leaving Bulgaria”.

This guide aims to prevent and inform but also contributes to monitoring the working and employment conditions of posted workers.

Step 3) We plan to carry out another worker information operation for Bulgarian workers in France in 2013, this time with the assistance of our Bulgarian counterparts from Podkrepa.

In this way, we hope to be able to talk directly with the workers and successfully accomplish our information action.

During this operation, the guides will be distributed along with an invitation to an informational meeting the same evening.

5. Feedback

These actions are being carried out for the first time. Consequently, we do not yet know whether they will lead to success or failure.

Depending on our assessment of this operation, our idea is to continue developing and multiplying this type of initiative in coming years in one form or another.

In any case, the goal is to succeed in entering into contact with as many workers as possible and to continue informing them of their rights.

*Action sheet n°3 : The construction sector: Raising the awareness of contracting owners
(Luxembourg)*

Luxembourg Inspectorate for Labour and Mines (ITM)

<http://www.itm.lu/detachement-de-travailleurs>

Luxembourg Liaison Office for Posting

blld@itm.etat.lu

1. Observations and motivations

During controls which we carry out at construction worksites, sometimes after work or on weekends, we have observed that contracting owners often do not comply with the legal rules concerning health and safety at work.

In the situations encountered, we often find subcontractor companies and non-declared posted workers.

The posting Directive was implemented in Luxembourg in 2002. We transposed our entire Labour Code, including the provisions related to occupational health and safety.

After the condemnation of Luxembourg by the Court of Justice of the European Union in 2008, we were obliged to backtrack and return to a system where the declaration of employee posting must be made at the latest on the day work begins. At the same time, we limited the number of documents required for establishing this declaration.

This situation greatly modified our control practices and made it difficult for our services to react properly, in spite of working in close collaboration with customs services.

In the past, labour inspectors had, in principle (except for clandestine labour), previous knowledge of the place where posting operations were carried out for all sectors of activity and could deliver a “Temporary Cessation of Activity Order” when the posting declaration had not been communicated. This is no longer the case.

Therefore, how could we continue to act at the worksites to guarantee safe and decent working conditions?

Rather than count on an evolution of the legal system on posting, we preferred to use as a basis existing Luxembourg regulations on mobile and temporary construction sites and initiate a sensitisation campaign which targeted contracting owners.

2. Goals

For building operations, our action gives priority to working conditions and occupational health and safety, but it also includes social dumping by making the entire chain of participants responsible for a situation. This includes both the contracting owner and the general contractor.

In turn, the general contractor is the contracting party for subcontractors, temporary workers, posted or assigned workers (loan of labour), etc.

By involving a third entity in the employment relationship, the hoped-for effect is to make the author of a real-estate project (whether public or private, and as the initial and primary contracting party) aware that non-compliance with regulations (labour, social and tax law, right of establishment) can have negative consequences, including negative economic consequences, on the progress of work on the site.

3. Partners and method

Implementation of action is based on :

- **the mobilisation of relay entities**
 1. Through the intermediary of the Ministry of the Interior, the supervisory Ministry for the Communes. In a first step, we distributed a circular inviting the burgomaster to systematically provide information to contracting owners with delivery of the building permit.
 2. In close collaboration with the health and safety coordinators. Trained by the Labour and Mines Inspectorate, they act at construction sites as “relays” or even mediators between the contracting owner (or developer) and the contracted companies.
- **the existence of legal tools tied to the regulations applicable to construction sites**
 - o an obligation to declare the opening of a construction site, before starting building operations, which enables us to know ahead of time where the worksite is located and to target our controls;
 - o an obligation to maintain updated information posted at the site on companies working at the site;

- an obligation to update communication with ITM when new trade companies or successful bidders are selected;
- the possibility of deciding to close the site temporarily in case of serious and imminent danger since labour inspectors have room to manoeuvre when evaluating a situation;
- the possibility of removing a worker from a situation when he is working under conditions considered to be at “specific risk” – a situation which is rather frequent in the construction sector and even more frequent among posted workers – and when he does not have a certificate of aptitude for this type of work delivered by a certified occupational health service.

4. Type of action

We developed two specific position papers:

- For burgomasters, we have prepared a circular emphasising their role as a source of information for their constituents (in this case, the contracting owners) on the difficulties they may run into in case of non-compliance with legislation concerning working conditions and social rights on their building sites.
- For contracting owners, we call their attention to the cost and the risks tied to non-compliance (delays, penalty clauses, administrative procedures to close the site, possible criminal proceedings in case of accident at work or serious occupational illness).

Information for contracting owners is found in a brochure which is systematically distributed by the burgomasters with the delivery of a building permit (list of the regulations concerning mobile and temporary construction sites).

It is also available on the Labour and Mines Inspectorate website in French and German at the following address: <http://www.itm.lu/home/legislation/detachement-de-travailleurs.html>

5. Impact of action on problems encountered

- **Evolution of the situation**

A control campaign is currently being carried out, since feedback from the agents was positive. The general level of “safety culture” seems to have improved (less site closings), under the combined effect of continuous and more systematic training and a fear of retribution.

- **Difficulties and limits**

Because of a lack of sufficient personnel, thorough and repeated control of all construction sites is materially impossible.

- **Positive effects**

Field agents have been freed of the need to inform contracting owners (information on regulations is considered to have been acquired), and they are now able to concentrate on noting violations.

6. Impact on participant dynamics

- **Evolution of collaborations implemented**

Greater awareness of a “community of interest” among specialised participants under the guidance of:

- health and safety coordinators, including safety representatives (personnel representatives) and designated workers (prevention advisors on the employer’s side);
- project managers and general foremen or team foremen within the framework of specifications drawn up following the instructions of the contracting owner/developer.

- **Difficulties and limits**

- A “unidirectional” information campaign, except for some feedback from community technical services.
- Inapplicable to “micro-construction sites” (or to undeclared work).
- Use of non-qualified coordinators (not certified by the ministry) and shortcomings in on-site tracking.
- An often prohibitive cost of health and safety at work coordination for small projects, especially during a time of crisis and recession, and a lack of state subsidies (for the energy council, for example).

Certain contracting owners, either in bad faith or because of shameful dishonesty, hide behind a supposed ignorance of the documents handed out with the building permit (ITM brochure).

- **Positive effects**

- Perception of a more responsible general and collective ethical approach.
- The marginalising of illegal or dangerous work.

7. Two key points on feedback

- The effectiveness of action for medium-sized to large construction sites;

- A potentially disproportionate approach for “micro-projects,” whence the need for administrative tolerance.

ACT (Working Conditions Authority)

[http://www.act.gov.pt/\(pt-PT\)/CentroInformacao/DestacamentoTrabalhadores/Paginas/default.aspx](http://www.act.gov.pt/(pt-PT)/CentroInformacao/DestacamentoTrabalhadores/Paginas/default.aspx)

<http://www.trabalharnoestrangeroinforme-seantesdepartir.pt/>

1. Observations and motivations

We are currently in the midst of a major economic and social crisis in Portugal. As a consequence of this situation, unemployment has sharply increased (the unemployment rate in Q4 2012 was 16.9% according to the National Institute of Statistics).

For this reason, the number of workers leaving for other countries has also increased.

This campaign is based on the fact that the more information workers have before leaving the country, the less they will be vulnerable to abuse under foreign working conditions.

In this way, we hope to give workers a basis for being able to make a well-reasoned decision before leaving.

2. Goals

Through better worker information, the idea is to:

- combat fraud and undeclared work in countries hosting Portuguese workers by letting these workers know what their rights and obligations are,
- act on employment conditions (ensure respect of minimum wage, working hours, etc.),
- avoid the isolation of Portuguese workers when faced with problems they may encounter in the host country by providing practical information (access to health care, contacts for administrative requirements, etc.).

The main message is: “If you are planning to work abroad, get information before leaving!”

3. Partners

This campaign is promoted and coordinated by the Ministry of Foreign Affairs in partnership with the:

- Working Conditions Authority (ACT)

- Directorate-General of Consular Affairs and Portuguese Communities (DGACCP)
- Institute for Social Security (ISS)
- Employment and Vocational Training Institute (IEFP)

4. Method implementation

- A total of 5,000 posters, 50,000 brochures and 100,000 flyers were created and distributed. Specific brochures were designed for certain target countries which are the most frequent destinations for Portuguese workers (France, Luxembourg, Brazil and Angola).

We used different “relays” to disseminate information:

- **institutions**

92 municipal offices to support migrant workers in the North, Centre and Algarve areas,
 10 municipal offices in the Lisbon area,
 ACT, IEFP and ISS public assistance services.
 Portuguese Catholic Mission for Migration for distribution in parishes.

- **media**

We have broadcast TV and radio spots

http://www.youtube.com/watch?v=XfM_AN8k3bY

- **websites**

All partner websites and the creation of a specific campaign site:

<http://www.trabalharnoestrageiroinforme-seantesdepartir.pt/>

- **specific events** such as the organisation of European Job Days in Portugal.

5. Actions

We carried out three campaigns: the first took place in 2003, the second in 2006 and the third in June 2012.

Contents were defined starting from an **identification of needs** (What types of information are necessary before leaving for a foreign country?) and include:

- **information on methods and useful information**
 - o How do you look for a job and apply for it in another country?
 - o How can you access health care in the different countries?

- Which language is spoken in the destination country?
- Which contacts are useful? Which authorities can workers contact for the different issues which may be encountered?

- **legal information to enable workers to be aware of their rights and obligations**
 - What are the different ways of working abroad (direct hiring by a company located in another country, posting, employment through a private agency, as an independent worker)?
 - What are the regulations and administrative formalities for the different trades and professions for each country?
 - What is the country's legal framework with respect to labour (minimum wage, working hours, etc.)?

Monitoring Controlling

- Monitoring Controlling - Analysis

Controlling transnational productive organisations

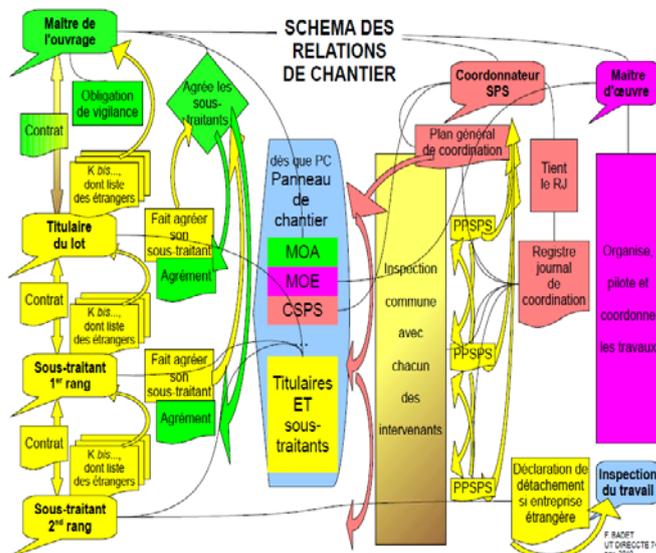
The administrative cooperation imperative

The posting of workers in Europe is a complex phenomenon which at once relates to economic, social and legal issues. It originated in the business strategies, from which we can distinguish two main approaches:

- Looking for a competitive advantage linked to the skills and human resource management (in particular including scarce or not locally available skills and dealing with labour shortages) – in line with this, transnational provisions of services, intra-group mobility, and more generally workers' mobility help to boost the economic and social development ,
- Looking for a competitive advantage based on the lowering of labour and social costs - this approach can lead to strategies of "social dumping".

As highlighted by Jan Cremers, "Nowadays the use of the posting mechanism ranges from normal and decent long-established partnership between contracting partners to completely fake letterbox practices of labour-only recruitment. "(see [Posting of workers: enforcement problems and challenges - Jan Cremers, CLR-expert](#))

These approaches are deployed through a variety of organizational patterns and in several sectors, service is currently provided under conditions which are characterised by the outsourcing of activities; this leads to subcontracting chains which are constantly being recomposed.



Take, for example, the construction sector:

This is a diagram of a construction operation. Large companies hire qualified workers who are in charge of planning, coordination and control, whereas the development of labour subcontracting leads to a strong fragmentation of small companies or self-employed, where employees are vulnerable from the point of view of employment and working conditions. These changes are made according to complex means which are difficult to grasp and therefore to control.

“Functional” subcontracting; as “classical” form” in the construction, allows contractors to subcontract specific skills that are not the core business (specialty subcontracting) or to outsource work for peak activity (capacity subcontracting).

“Economic” subcontracting which historically started in the early 1980s is accompanied by the refocusing of the entrepreneur’s job around the activity of coordination and a significant reduction of the size of firms in the sector. It is the corollary of the

intensification and the internationalization of competition. The contractor is a lead contractor seeking to increase its economic efficiency through a constant and maximum competition between subcontractors. The strategy focuses on reducing costs (labor costs, raw materials) to strengthen the competitiveness of the business in the marketplace, taking advantage of the differences between territories. Subcontracting networks today also follow another model that is called "financial subcontracting" (on this point, see " Working without HRM : the building sector at the time of contracting financial " Lentic , HEC - Management School of the University of Liege XVII Congress of the HRMA , 2006). This leads to the development of intermediaries, such as *"project managers, who are players outside of the sector and who make profits solely through their financial ability to place the general employer in a position of contractual subordination."*(See the attached "Lentic" article.)

Labour suppliers appear with propositions for supplying cheap labour wherever it is needed. Channels are developed and organisations are deployed from one country to another. These situations make it even more complex to control and supervise workplaces because decision-making centres are difficult to ascertain and the multiplication of participants in these operations muddles the customary benchmarks used by control services.

Analysis is made even more difficult by the fact that we cannot currently establish a "typical model" and therefore must find new ways to interpret and act.

The strategy behind effective control is thus to better understand the productive organisations at the origin of the posting situation and the legal and economic combinations for providing services **taking into account their transnational dimension.**

To better understand this "the murky" situation, locate the proper contacts, find the pertinent levers for action and ensure the tracking of these actions and their impact on workers, the control services must be subject to investigations by and cooperation with public authorities **in the place where companies are located or in the country which sends** posted workers.



This is why project participants share the observation that the effectiveness of control and supervision **cannot be separated from the effectiveness of transnational administrative cooperation and the exchange of information between different public authorities.**

1. National control systems: the difficulty of working together

Which player systems need to act ?

The administrative systems to control working and employment conditions, social protection and taxation, as well as the distribution of roles between the state and its social partners, were built over time according to the economic and social history of each member state.

These national systems are coherent when it is a question of controlling internal situations but are upset by the development of transnational services.

Some labour inspectorates are "generalist"; that is, they are authorised to intervene in all areas: salary, working hours and occupational health and safety (Luxembourg, Poland, Portugal, Romania, France, etc.). In Spain, the labour inspectorate has even greater authority and also covers the social security area. Others are competent to act only in the field of health and safety at work and thus are not able to check on labour relationships in the context of posting (Denmark).

There are also mixed models, like in Finland, where labour inspectorates are in principle «generalists», but they have strong control measures only in the field of safety and health. As regards monitoring of terms of employment and generally binding collective agreements, the control measures of Finnish labour inspectorates are mainly a written advice to the employer or a report of an offence to police.

In Belgium, one authority is competent to act "social laws and dialog" and another is competent to take care of "well-being at work."

These differences have a direct impact on the exchange of information about the type of checks carried out by host country authorities and therefore on the questions these authorities ask other public authorities through the liaison office.

In a similar way, the ability of the authority questioned to provide an answer will be limited or require long delays if it is necessary to obtain answers from other administrations when the first authority does have the requisite jurisdiction.

In some countries, the social partners have the responsibility to enforce collective agreements (as in Denmark for example), in particular, the minimum conventional wage.

Also in Finland social partners have an important role of making sure collective agreements are applied. Social partners monitor both generally binding collective agreements and other collective

agreements which they have signed (Finnish labour inspectorates monitor the observance of generally binding collective agreements too).

Some liaison offices are institutionally attached to administrative authorities who do not have to power to conduct investigations in the field of posting of workers. In these countries, the establishment of a liaison office and its institutional "scope" remains an open question, as in Denmark, for example, where the social partnership takes precedence.

Finally, certain Member States run into difficulty when attempting to answer requests for information, either because there is no authorised body to carry out the necessary investigations on salaries or the status of companies or workers for example, or because the organisational means of the authorised bodies are limited by an insufficient budget.

How should control practices be coordinated?

- **The way field agents do their job depends on both the situations they encounter and their administration's strategic orientation;** the transnational workshops have shed light on the plethora of control practices.

They are deployed in all "hard core" fields of the 1996 directive: some member states pay particular attention to regularising salaries, like Belgium, for instance; the priority for others is to combat illegal work, as is the case in France and Luxembourg, or as concerns the "shadow economy" in Finland.

In certain sectors, such as the woodworking industry in France, the absence of qualification of the Bulgarian workers who take care of woodcutting tasks and the multiplication of serious or mortal accidents gave rise to controls.

In addition, actual conditions in the field show that transnational services and labour providers do not stop at the borders of Europe. In countries bordering the European Union, such as Lithuania, Estonia, Portugal or Romania, controlling bodies have been confronted with service providers and workers from "third-party countries" (coming from the Ukraine or the Maghreb, for example) or even, and this is a growing phenomenon, from Southeast Asian countries, as in the case of rose growing in Portugal or public works in Poland.

- **They also depend on the national legal framework and the power of control services:** collective agreements (whether generally applied or not), worker status, company obligations, etc.

These different national legal frameworks raise question of a shared interpretation of the legal standard in particular of the "hard core" of the directive (minimum wage, status of self-employed, etc.).

The authority to act on a penal or administrative level influences the type of investigations and the type of request for information formulated by public authorities (for example, the possibility of incriminating the “client” in countries where this possibility exists).

Concerning answers from the other side of the border, documents are not necessarily available or may not exist. Certain information cannot be communicated by the authority questioned (in particular if this authority does not have the power to investigate service providers, for example, or in the case of self-employed).

In this case, investigations cannot be continued and the control services of the requesting authority may find themselves blocked and unable to act.

Concerning the impact of controls and a decrease in fraud, participants estimated results to be mediocre; however, this evaluation is "intuitive" and "subjective" and is based on personal experience because we were unable to collect sufficient objective data on this subject.

There are several legal tools, and a first overview of the transnational workshops tends to show that it is generally difficult to bring criminal proceedings to a conclusion, excepting a few spectacular judgements and highly publicised proceedings. This is because state authorities cannot act against a foreign company unless the company is located on national territory (see [Action sheet n°16](#)).

Inversely, the authorities of the state sending workers are unable to apply their social rules to the execution of services; they are able only to enforce rules which are applicable on their own territory.

This weakness is exploited by volatile service provider companies who organise their procedures among different Member States, thereby avoiding legal pursuit.

Certain countries have implemented a joint responsibility for principals, and this is a key lever in posting operations for maintaining the possibility of action.

This question is being debated in Europe, in particular during discussions concerning the new directive project (directive project for application of Directive 96/7/CE).

The most effective controls in terms of impact seem to be those related to occupational health and safety, for which labour inspectors have more extensive power to act directly on situations while the company is still present (administrative sanctions).

However, countries like Belgium have acquired know-how in the matter of salary regularisation (€2,017,064 of total salary regularisation in 2011) and the ability to follow cases over time (with Poland, for example).

What means of control can be used in the future?

Member States guarantee the effectiveness of the 1996 Directive on their territory and the protection of workers, but they cannot, however, implement or impose constraints on service providers as

concerns controls which interfere with the freedom to provide services (ECJ dated November 23, 1999, C-369/96 and C-376/96, Abade).

The enforcement Directive project for Directive 96/71/CE takes up Articles 9 and 10 of these obligations. It provides a restricted list of the type of possible administrative measures for exercising control from the host country.

The ECJ has condemned certain practices related to previous declarations, for example, or to constraints set by national frameworks on service providers (Luxembourg, Belgium).

The idea is thus for the authorities concerned to adapt to the changes in productive organisations while respecting the limits set by the European framework, with the imperative of modifying the legal means made available to their agents in the field.

These condemnations upset field agents, who were obliged to reorient their professional practices while facing more complex situations in the field.

2. Effective Levers

Nonetheless, the shared analysis of practices opens paths to greater effectiveness.

IMI: a shared tool

All project partner countries use the IMI ([Internal Market Information system](#)) pilot application, which enables identifying the proper administration partner in another country and communicating with this contact on all standard questions related to posting.

- IMI improves the speed of information exchange, although project participants point out that the time it takes to receive answers may vary. The time spent for giving an answer may depend on resources and jurisdiction of inspectorate and legislation of a Member State.
- IMI also structures the implementation of liaison offices in some countries (Estonia, Lithuania).
- However, project participants are equipped in different ways: thus, only public administrations in charge of legal missions have access to IMI.
- They are also the main beneficiaries of [bilateral cooperation agreements](#) which aim to stimulate and reinforce exchange. Without a doubt, these agreements have improved the quality and speed of answers supplied (see [Action sheet n°11](#)).
- These tools enable searching for information on service provider companies (legal existence, declared activity and number of employees), posted personnel (work contracts, salaries, social security affiliation), applicable regulations in the sending country, etc.
- The existence of this type of exchange, in particular when it concerns service provider companies and their possible illegal activity, has awakened the interest of employer organisations: in some

Member States, companies are severally liable in case of failure by service providers. Being able to access certain data would enable these companies to secure their subcontracting operations.

- They could either request this data from liaison offices in charge of information or use Article 12 and Preamble 17 of [Regulation No. 1024/2012 dated October 25, 2012](#), to obtain an evolution in IMI functionality: *Although IMI is primarily a communication tool reserved for administrative cooperation between authorities and is not meant to be available to the public at large, it might be necessary to develop technical means which would allow external participants, such as individual citizens, companies and organisations, to interact with the authorities in order to supply information, recover data or exercise their individual rights. These technical means should include the appropriate guarantees to ensure data protection. To guarantee a high level of security, public interfaces of this type must be elaborated in such a way as to be totally independent from IMI on a technical level; only IMI users should be able to access this system."*
- A strong demand from employer organisations has thus emerged for employer access to certain data concerning the legal situation of service providers with whom they are planning to draw up a contract (see [action sheet n°7](#)).

New organisations oriented toward administrative cooperation

Investigations are carried out in different ways, depending on whether the authorities act at workplaces in the country of destination for services and posted workers or at the place of origin of companies and workers.

On the one hand, the idea is to control or keep watch over the places where work is done and implement effective means to obtain regularisation or impose sanctions; on the other, the idea is to carry out appropriate investigations to meet requests for information and ensure regularisation.

Understanding how these aspects work together enables implementing better internal coordination in support of administrative cooperation.

Some countries reinforce the pertinence of information exchanged by consolidating the link between the liaison office(s) and the authorities who supervise the workplaces. This link allows orienting investigations in a more precise way, targeting pertinent issues and ensuring mutual information on the consequences of the controls and regularisations undertaken.

Coordinated organisation enables sorting the different types of requests and treating them in different ways by distinguishing simple requests for information on company registration (which is available on the Internet) from requests to carry out more in-depth investigations on complex cases.

- "Control units" which are specialised in combating unfair competition in countries like Belgium, for example, and which carry out a sufficient number of controls, increase the

pertinence and effectiveness of verifications and reinforce control service expertise (See [Action sheet n°5](#)).

Networked organisations which are supported by relay labour inspectors, as in Poland, lead to better-quality answers and greater exchange reactivity (see [Action sheet n°10](#)).

- Decentralised offices, as in France, or a liaison office included within control services, as in Luxembourg, promote rapid exchange across borders and enable organising coordinated and targeted controls (see [Action sheet n°8](#)).
- In Finland, there have been some preliminary discussions on placing the liaison office to some of the labour inspectorates (Regional State Administrative Agencies) in the future. In addition, the Regional State Administrative Agencies start to use the IMI system by themselves during year 2013 in order to fasten the information exchange process (see [Action sheet n°7](#)).
- Romania plans to decentralise IMI users toward regional inspectorships in order to implement a general framework of information exchange which is as efficient as possible (see [Action sheet n°12](#)).

We thus observe that certain control systems have implemented internal organisations which increase their ability to cooperate with other countries.

"Back-and-forth" operations over time based on "transnational" control practices can then be developed for certain cases affecting the situation of workers; this can involve issues such as ensuring salary regularisation (see [Action sheet n°13](#)).

Better coordination of action by public authorities

As a central issue with respect to the problem of social dumping, cooperation between public authorities (labour, social protection, taxation) is implemented in a more or less formal way within project partners' countries.

Whether these are inter-institutional arrangements, as in Luxembourg (CIALTI), Belgium (SIRS) and France (DNLF), collaboration agreements, such as in Romania; or more informal means, such as in Finland, Lithuania or Estonia, there is a strong consensus to implement coordination in an operational way.

This requires defining coherent action strategies in terms of goals, targets and expected impact, as well as sharing information and data (see [Action sheet n°20](#)).

3. Identifying and sharing: tools to support control

Identifying workplaces: the prior declaration on the posting of workers

- These declarations enable measuring in a more precise way the number of interventions by foreign companies providing services and their evolution over time, as well as the number of employees the company plans to post.
- They enable establishing a list of posting characteristics: nationality, period of posting, sector of activity, worker qualification.
- They also enable locating the workplaces where workers are posted, identifying large operations and collecting data on companies and workers (see [Action sheet n°9](#)).
- They promote the emergence of control strategies which can be further elaborated by sector of activity, industry, territory or even by operator when necessary, and which help to orient control and supervision operations by developing "targeted" actions, for example (see [Action sheet n°5](#), [Action sheet n°8](#)).

Sharing information and data

The project has enabled the different participants to present their actions, tools and partnerships. Since posting is inherently a cross-border operation, players have attempted to address the situation according to the functions and tools available to them by developing cooperation efforts internationally with their counterparts in other countries or in a given geographical area with the help of other participants (employer and trade union organisations, public administrations).

The effectiveness of controlling bodies implies the ability to query a database established on the EU scale, in which all companies involved in illegal activities would be listed. This would be a first step before accessing a database listing all active companies. The [application directive proposal](#) currently under discussion attempts to find a compromise on this issue. Paragraph 6 of Article 6 stipulates: *"Member States shall ensure that the registers listing service providers, which may be consulted by their national authorities, may also be consulted under the same conditions by authorities from other Member States."*

Social partners in some Member States have pointed out their lack of means to ensure effective assistance to their adherents and even, to non-adherents.

One work axis could therefore concern sharing information between participants who have the same goals, such as the prevention of social fraud and undeclared work, where participants have an interest because this works against fair competition between companies, deprives employees of their rights and decreases the resources required by public administrations to carry out their missions.

National experience has shown that cooperation is already effective in some cases.

In Belgium public administrations combating illegal work (*Federal Public Service for Employment, Work and Social Dialogue, Federal Public Service Public for Social Security, National Office of*

Social Security, National Employment Office) signed a collaboration agreement on June 22, 2012, with employer and trade union organisations in the construction sector with the purpose of attacking social fraud and undeclared work in this area. This agreement follows similar agreements concerning more limited territories (see [Action sheet n°19](#)).

In Finland, both the public administrations and social partners have control functions. They have their own duties and jurisdiction, but they all share the same goal: respect of labour, social security and tax regulations. The social partners of construction sector meet different authorities regularly and they act together to guarantee the application of regulations and to fight against grey economy.

Sharing tools

Certain Member States attempt to meet these challenges by implementing databases which are fed by posting declarations from companies involved in cross-border operations (Belgium) or by mandatory tax declarations (Finland).

Belgium has implemented a database of service provider companies and their employees which enables tracking their activities (identity, dates of intervention, workplaces, social security coverage). These data, which are collected through the [Limosa](#) interface, are shared among national public administrations, enable answering questions from foreign counterparts and are used by control organisms in the context of posting. They are not, however, available to the public. This tool is remarkably effective and observers cannot help but wonder why it is not deployed toward public administrations in other Member States which share the same goals.

In Finland, a [tax administration register](#) centralises the tax numbers attributed to individuals working in Finland on construction sector (national and foreign, permanent or posted). This register is public and can be accessed via Internet. It thus allows a main contractor, a subcontractor or an employer to verify whether the employees present at a construction site are properly registered; if this is not the case, they are not allowed to access the site or work (see [Action sheet n°7](#)).

Controlling access to workplaces

- In Finland, legislation related to safety and health at work requires every contractor and employer to ensure that all individuals working at a shared construction site wear a pictorial identification card (name, photo and tax number of the worker, status of the worker as an employee or an independent worker, also the name of the employer). The obligation to wear a pictorial identification card at all shared construction sites has been effective in Finland since 2006. Since 2013 also the tax number (registered into a public tax number register) has been obligatory information in a pictorial identification card.

According to Finnish safety and health legislation the main contractor shall maintain for labour inspection purposes a list of all individuals working at a construction site. This obligation will be reasserted and made more detailed by new legislation which will be effective on 1 of July 2014. In addition, according to new Finnish tax legislation a main contractor has to give to Finnish tax authorities quite detailed information on employers and individuals working at a shared construction site. This obligation will be effective on 1 of July 2014.

The principle of systematic recording of persons present on a construction worksite was also implemented in Belgium through the [law dated December 27, 2012](#). Joining this requirement to the mandatory wearing of a badge is being discussed.

- National registers and badges are two ways to distribute information oriented towards controlling employment and combating the grey economy (see [Action sheet n°18](#)).
- Although these tools are already available to control organisms, their effectiveness is greatly improved by collaboration with social partners, as foreseen by partnership agreements in Belgium.
- However, the existence of these registers alone is not enough to guarantee the proper establishment of posting operations. The nuclear power plant construction site of Olkiluoto3 in Finland involved the posting of employees on a large scale over the national territory and destabilised a model operating on the control of companies by trade union organisations. The near absence of Finnish companies affiliated to an employer organisation undoubtedly contributed to the scope of irregularities found at the construction site (see [Action sheet n°20](#)) and played a role in ruling out Areva/Siemens as suppliers for the construction of a new nuclear power plant at Pyhäjoki.

Advantages and limits of a shared tool: A1 (E 101) forms

These are documents delivered by social security administrations in the country where the service provider/posted labour employer is located. They confirm that the employer pays contributions in the country of origin and that employees therefore have social security coverage; i.e., that the employees have been declared.

In some countries, they are the only tool which enables tracking the evolution of posting situations. Here again, a consensus has arisen concerning the fact that the A1 forms are under-declared and thus do not allow a realistic appraisal of the phenomenon.

However, they may be requested by the controlling authorities in a country for execution of work services, and their absence leads to a suspicion of illegal work conditions.

Keys to improving administrative cooperation :

- **IMI: a structuring tool**
- **Toward new organisations oriented along the lines of administrative cooperation**
- **Toward better coordination of action by public authorities**
- **Identifying and sharing: tools to support control**

*Action sheets in the field of
Monitoring Controlling*

Action sheet n°5 : Control and supervision in Belgium

Belgian liaison office:

E-mail : rit@emploi.belgique.be

Federal Public Service Employment, Labour and Social Dialogue

cls@emploi.belgique.be

Directorate General for Supervision of Welfare at Work

cbe@emploi.belgique.be

Information for the public:

<http://www.emploi.belgique.be/defaultTab.aspx?id=6196>

1. Knowledge of posting situations

In Belgium, a centralised computer registration must be established previous to the posting of salaried workers and free-lance workers in the territory.

This is mandatory for the foreign company or freelance worker planning to post in Belgium. However, the system is open in the sense that it declaratory and therefore does not constitute a request for prior authorisation.

This is a so-called "*LIMOSA*" declaration.

If it has not been established by the foreign company, the Belgian contractor, who may otherwise incur criminal sanctions, must make this declaration before the start of work.

LIMOSA declarations seem to be generally established, although, as is the case for all declaratory systems, non-established declarations can enable hiding a posting situation from public authorities.

Nonetheless, declarations do allow better preparation and targeting of controls designed to supervise posted workers.

Other sources of information

There is also a GOTOT IN/OUT database which contains social security data from A1 forms.

2. Exchange of information with other Member States

The liaison office listed above is attached to the following authorities:

Federal Public Service (FPS) Employment, Labour and Social Dialogue

Directorate General for Individual Labour Relations

Division for the Regulation of Individual Labour Relations (RIT)

Rue Ernest Blérot, 1

1070 Brussels

Telephone: 02/ 233 48 22 or 02/ 233 47 71

Fax: 02/ 233 48 21 Email: rit@meta.fgov.be

IMI pilot project

This project is under the responsibility of labour inspectors from the "networked" departments which supervise social law. The following table lists the countries with which correspondence was exchanged in 2011 by decreasing number of exchanges:

Period from 01/01/2011 to 31/12/2011		
Country	Number of Information requests	Number of Answers
Poland	62	31
Netherlands	14	5
Romania	12	8
Hungary	11	2
Portugal	9	-
Germany	8	6
Bulgaria	7	4
Slovakia	6	1
Luxembourg	5	2
Latvia	3	2
Italy	2	-
Spain	2	1
Lithuania	1	1
Czech Republic	1	1
Slovenia	1	1
Estonia	1	-
	145	65
TOTAL		

Comments (on the period under consideration):

- Collaboration and data exchange with Poland was carried out in an optimal manner;
- Communication was relatively easy with the Netherlands, Germany and the Grand Duchy of Luxembourg;
- Communication was more problematic with other countries;
- The deadlines requested for an answer to our questions were not always met and required reminder letters;
- Estonia, Italy and Portugal did not respond to requests.

Relationship between the liaison office and the bodies in charge of control

The liaison office does not carry out controls. Its mission is to provide general information of a legal nature.

Within the same division (FPS Employment), the Control of Social Laws (CSL) department supervises labour and remuneration conditions, while the Welfare at Work (WAW) department oversees health and safety in the workplace.

Within the CSL, contacts are established with foreign labour administrations to exchange information on operational files through a Single Point of Contact (SPOC) system.

All Requests and questions now spend almost via IMI except with France where a referral system exists in the framework of the Franco-Belgian administrative arrangement. The system of "SPOC" is kept mainly to provide the sender with information, for example to inform it about regularization after an inspection in Belgium.

Schematically, the liaison office operates in a dual mode: providing legal information on citizens through the RIT (liaison office *sensu stricto*) and contacting foreign labour administrations on more operational aspects of the CSL.

The liaison office and control services collaborate according to these specificities and needs.

3. National collaboration

- There is a structured collaboration between the federal work inspectorates and different authorities – judicial, police, finance, etc. – within "arrondissement units."
- Collaboration between labour inspectorates and tax authorities is based on the exchange of information resulting from the processing of specific cases which interest both parties.
- The Social Information and Research Service (SIRS) provides support for federal labour inspections as a coordinating structure.
- Regular meetings (once a month) of the "arrondissement unit" in each judicial arrondissement are presided by the Labour Auditor (Public Ministry of Social Affairs). At least two shared

controls are organised each month within the arrondissement. Statistics which track the results of these controls are provided by the SIRS.

- Collaboration with tax authorities is done through the exchange of information using standardised forms with, if necessary, added documents. Currently, exchange takes place using a "paper" format, but it should be available digitally in the near future.
- The SIRS: regular meetings of the executive committee, which includes the Directors General of federal labour inspections and judiciary authorities.

Federal labour inspectors have effective computer tools which enable crossing social data and tracking current files and enquiries being carried out in other offices of the same administration and in other administrations (Genesis, Oasis, BCE, NATReg, DIMONA, LIMOSA, DUC, GOTOT IN/OUT, E-Pv).

In addition, there are tripartite collaboration agreements with social partners in the construction, cleaning, security and meat processing sectors.

Action sheet n°6 : The liaison office on posting in Estonia

The liaison office on posting is situated at the Labour Inspectorate of Estonia

www.ti.ee

Questions can be sent to this email address:

Mrs. Liis Naaber-Kalm

Chief Lawyer

Labour Relations Department

Labour Inspectorate of Estonia

29 Gonsiori Str,

10147Tallinn,

ESTONIA

liis.naaber@ti.ee

Information on working in Estonia

- Töötervishoiu ja tööohutuse seadus, <https://www.riigiteataja.ee/akt/106072012060>

Translation: Occupational Health and Safety Act, see

<http://www.legaltext.ee/et/andmebaas/ava.asp?m=022>

- Töölepinguseadus, <https://www.riigiteataja.ee/akt/122122012030>

Employment Contracts Act,

<http://www.legaltext.ee/et/andmebaas/ava.asp?m=022>

- Soolisevõrdsuslikkuse seadus, <https://www.riigiteataja.ee/akt/126042013009>

Gender Equality Act, see

<http://www.legaltext.ee/et/andmebaas/ava.asp?m=022>

1. Knowledge of the posting situations

In Estonia, the labour inspection as state agency currently uses Internal Market Information System (IMI) to provide answers or to make requests for information about posting.

Mostly queries are sent to Estonian Labour Inspection to receive information about posted employees coming from Estonia, but more and more there are reasons for Labour Inspectorate to make query to Member State about their posted employees of Estonia.

Estonian employees mostly are posted to Scandinavia, especially to Finland, that is why the closest co-operation is with Finnish Labour Ministry. According to this fact, most of the requests are coming from Finland.

On national basis labour inspection communicate directly with employees. We have prepared Estonian language material to let employees know their rights who are heading to work in Finland. Also we guide them to contact other authorities to learn their rights before working abroad. On Estonian Labour Inspection website, we have internet links for such information -

<http://www.tooelu.ee/et/teemad/paindlikud-toovoimalused/lahetatud-tootajad> .

2. Information exchanges with the other MS

Forwarding the information and queries about the posted workers in Estonia are done through the Estonian Labour Inspection, which is the contact institution between Member States as supervision body. Contact person in Estonian Labour Inspection is the **Labour Relations Department** chief lawyer. As much as possible, the information exchanges are done by IMI system, but some requests are addressed directly to the Estonian Labour Inspection director.

Member States requests are handled by the Labour Relations Department. Query is forwarded at the regional level to labour inspectors to find out circumstances, to carry an investigation on the company and its employees and get answers. Chief lawyer reviews the material and prepare the answer to the requesting Member State.

Estonian Labour Inspection is a much tighter jurisdiction since the amendments introduced into the Employment Contracts Act of July1, 2009.

3. National partnerships

In Estonia, the co-operation does exist between the state agencies. We have started investigations using Estonian Tax Department's hints (see **the case of self-employed - Estonian Labour Inspection**). Also we have tight relations with Estonian Police, Unemployment Insurance Fund, Employment Agency and many others.

In Estonia, labour inspection has access to Tax Department's information about registered taxes, which are declared by the employers. Tax Department and the other authorities have no access to the Estonian Inspection data base.

4. A shared tool

We have planned to put in place a register of employees at the Estonian Tax Department. Such a system would obligate the employers to register the new employees before they start to work. On first quarter of 2013, specific nuances have been discussed and the register should be active from 2014. State agencies will use the same data base as needed and the data duplication will be avoided. The tool is designed primarily to collect state taxes and the registration of employees to the electronic register would be one of the possibilities of this new data base. Such a register will respond to the need for massive circulation of "anonymous" employees or "black labour environment" including the construction sector.

So far, employers in Estonia must fulfil A1 form in Social Security Department if they post employees. Such information has given us important overview of posted employees' movements between countries.

Action sheet n°7 : Supervision and monitoring in Finland

The Finnish Liaison Office on posting is situated at the Ministry of Social Affairs and Health / Department for Occupational Safety and Health: <http://www.stm.fi/en/frontpage>

<http://www.stm.fi/en/occupationsafety/postedworkers>

[The web pages of the Ministry will be improved in the near future.](#)

Questions can be sent to this email address:

Finnosha@stm.fi

The Finnish regional occupational safety and health authorities, OSH divisions (labour inspectorates) are administratively parts of the Regional State Administrative Agencies:

<http://www.avi.fi/fi/Sivut/inenglish.aspx>

Unfortunately, the web pages are under construction. Please, use the former web pages of the OSH divisions: www.tyosuojelu.fi

<http://www.tyosuojelu.fi/fi/yhteystiedot>



Information on working in Finland

<http://www.tyosuojelu.fi/fi/workingfinland/>

Finland is going to improve the web pages of the OSH divisions. Information especially on posting will be published on the internet after the Enforcement Directive of the posting of workers Directive has come into effect in Europe and the informing obligations of the Member States are clear.

Meanwhile, information on posting can be found:

<http://www.tem.fi/index.phtml?l=en&s=3468>

http://www.mol.fi/mol/en/02_working/05_foreigners/02_employment_relationships/03_posted/index.jsp

http://www.mol.fi/mol/en/02_working/05_foreigners/index.jsp

Guide for employment of foreigners in Finland 2013 :

<http://www.rakennusteollisuus.fi/RT/Ty%c3%b6markkinat/Opas+ulkomaalaisten+ty%c3%b6skentelyst%c3%a4+Suomessa/>

The guide was made by the Confederation of Finnish Construction Industries RT

<http://www.rakennusteollisuus.fi/en/> and

The Finnish Construction Trade Union

<http://rakennusliitto.fi/en/>

1. Knowledge of the posting situations

So far the majority of the posted workers in Finland have been Estonians and the most common sector where they work in Finland has been the construction sector.

The administrative requirements for posting employers

There are some administrative requirements for posting employers in the Finnish Posted Workers' Act (1146/1999).

The Posted Workers' Act (1146/1999)

- in Finnish: <http://www.finlex.fi/fi/laki/ajantasa/1999/19991146>
- in Swedish : <http://www.finlex.fi/sv/laki/ajantasa/1999/19991146>
- Unofficial translation in English. Unfortunately, it is not wholly up-to-date : <http://www.finlex.fi/en/laki/kaannokset/1999/19991146>

The main requirements are:

- Usually, a posting employer shall have a representative. A representative must be available for contact in Finland also after the posting has ended. Please, see the Posted Workers' Act for details.
- A representative shall have in his/her possession certain information and documents. Please, see the Posted Workers' Act for details.

At the moment, Finland doesn't have any prior notice obligation for posting employers.

However, on the construction sector every person, either Finnish or foreign, shall have a Finnish tax number and shall be registered to the public tax number register before starting work at site in Finland.

If a worker's tax number is not in the tax number register, the worker can't start working in Finland.

<http://www.tax.fi/taxnumber>

A foreign construction worker gets the tax number and can be registered to the tax number register by visiting the local tax office. The tax authorities give the worker also Finnish ID related to the tax number. The tax authorities collect certain information during registration process from the worker

such as some personal data, contact information and information about the posting. However, only the name of the worker and the tax number are public information for anyone in the tax number register. According to the Finnish Occupational Safety and Health Act (738/2002) each person working at a shared construction site has to wear an identification card. The data content of the card is prescribed in the Act. The worker's tax number has to be printed on the identification card too.

Finland is expecting some legislative changes on the construction sector. The Finnish authorities will have more rights to collect information about the companies and workers working at the construction sites in Finland.

2. Information exchanges with the other MS

At the moment, the Liaison Office is responsible for the information exchanges with the other Member States. The information exchanges are done via the IMI system.

In practice, the information requests from Finnish authorities to foreign authorities come to the Liaison Office from OSH (labour) inspectors of the regional occupational safety and health authorities. Likewise, the Finnish OSH (labour) inspectors of the regional occupational safety and health authorities usually answer to the questions of the foreign authorities. The Liaison Office is mainly an intermediary between the Finnish regional occupational safety and health authorities and the foreign authorities.

The duties of the Liaison Office

The duties of the Finnish liaison office are:

- To send and to receive information requests made by Finnish OSH (labour) inspectors or foreign authorities related to posting cases via the IMI system.
- To answer to questions about Finnish posting legislation made by foreign companies and workers.

The officials in the Liaison Office take care of the Liaison Office's duties alongside their other, main work duties.

Information requests between authorities

Before the IMI system started (spring 2011) Finland sent by post only few information requests to other countries and received requests even more seldom. When the IMI pilot started, Finland decided to be more active, because the need for cross border cooperation was and still is real and is becoming greater. Between the period from May 2011 to May 2013, Finland has sent 39 IMI request and received 2 IMI requests.

Usually Finland uses IMI system if a posting company doesn't have a representative or the representative neglects his/her obligations and Finnish OSH (labour) inspectors can't have the information which they need for their inspection. There can be also other kinds of cases.

The role of Finnish social partners in IMI process

In principle, Finnish social partners don't have a role in the IMI information exchange process. But, in practice, it may happen that the Finnish OSH (labour) inspectors need to ask advice from the social partners when answering an IMI request which is related to some collective agreement. That's because, according to the Finnish Employment Contracts Act (55/2001), the regional occupational safety and health authorities must act in close cooperation with the social partners in particular when supervising the observance of generally applicable collective agreements.

Future prospects of the Finnish Liaison Office

In the near future the main responsibility of using the IMI system in Finland is going to be transferred from the Liaison Office to the OSH (labour) inspectors of the regional occupational safety and health authorities. This change speeds up the information exchange process. The Ministry/ Department for OSH will remain as a coordinator of the IMI cases.

In addition, it is possible that the whole Finnish Liaison Office moves in the future from the Ministry to some OSH division, but actual plans or decisions have not been made yet.

3. Partnerships

National partnerships

In Finland the occupational safety and health administration cooperates with the other Finnish authorities, such as the Finnish Centre for Pensions (social security authority), the Tax Administration, the Finnish Immigration Service, Police and the Centre for Economic Development, Transport and the Environment.

The authorities don't have any official partnership agreements and usually the cooperation is based on current needs and can be carried out at national or regional level. However, there are some cooperation practices, for example, on joint inspections to the workplaces and on exchanging information between authorities. Confidential information can be exchanged only if an authority has a right to access it. In practice, the rights of different Finnish authorities vary and that may create obstacles to information exchange.

The Finnish occupational safety and health administration (and the other authorities too) cooperate also with the Finnish social partners, especially on the construction sector. The occupational safety and health administration have regular meetings with the Confederation of Finnish Construction Industries RT and the Finnish Construction Trade Union. Finland has had these meetings in the field of construction for more than five years. The Finnish Association of Building Owners and Construction Clients (RAKLI) participate to this cooperation too. <http://www.rakli.fi/en/rakli/>.

These meetings are being held from 2 to 4 times a year and they focus on the grey economy in the field of construction.

International partnerships

Finland doesn't have any bilateral or multilateral cooperation agreements at the moment, but Finland is willing and open to international cooperation between authorities and social partners.

Action sheet n°8 : Administrative cooperation in France

Email address of the national liaison office

bureau.liaison@dgt.travail.gouv.fr

Access to information on posting via Internet:

<http://travail-emploi.gouv.fr/informations-pratiques,89/fiches-pratiques,91/detachement-de-salaries,407/>

Address of the labour inspectorate in France

<http://www.direccte.gouv.fr/>

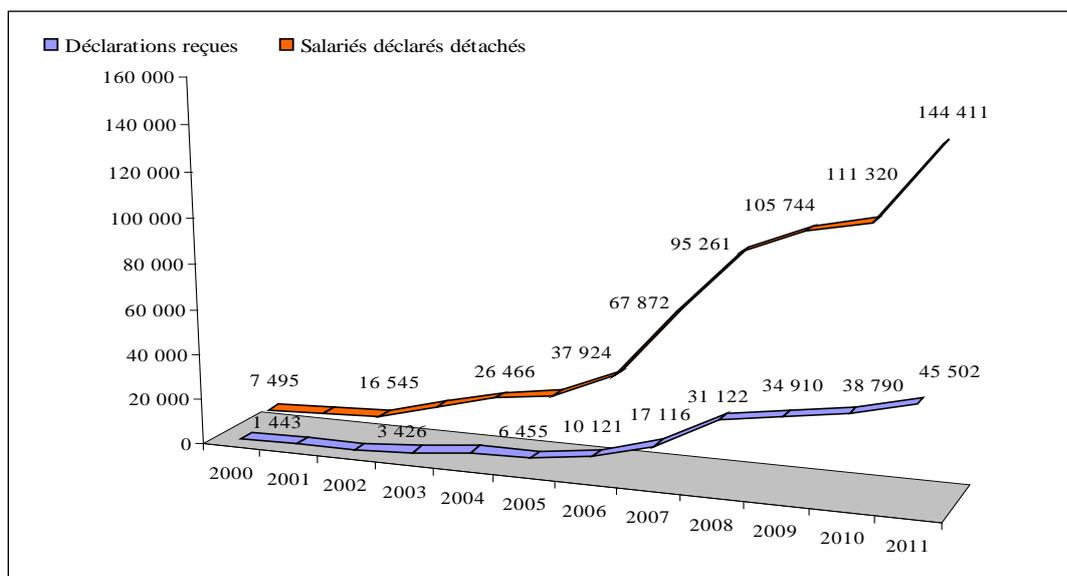
1. The context of worker posting in France

France is both an important destination state for posted workers and a state which sends out many workers for posting.

During the past five years, the number of employees from other countries who are declared as posted in France has grown fourfold (144,000 posted employees in 2011 as compared to 38,000 en 2006), with particularly strong growth between 2010 and 2011 (+30% as compared to +5% for the previous two years).

The main sectors involved are construction (a third), industry (a fourth) and temporary employment (nearly a fifth).

Chart: Declarations Received (blue); Declared Posted Workers (red)



The number of posting declarations received by labour inspectorate services grew by 17% over one year.

In 2011, the three countries of Luxembourg, Poland and Germany accounted for over half of the posting declarations counted in France. A third of these declarations was made by six other countries (Romania, Portugal, Spain, Belgium, Italy and Slovakia).

In 2011, over 19% of employees declared as posted in France were Polish, ahead of French employees (13%), who were primarily posted by temporary employment companies in Luxembourg, and Portuguese workers (11%). The number of Romanian and Bulgarian employees who were declared as posted continued to show strong growth (+37% and +96%, respectively).

Figures on control of foreign companies by labour inspectorate services

In 2011, there were an estimated 1,400 to 2,100 verifications of foreign companies by labour inspectorate services in France. Nearly two out of three controls concerned a company which had made a posting declaration: 61% of these controls concerned the public works sector, and 18% concerned temporary employment, followed by agriculture (10%) and industry (7%). Nearly three out of four verifications of companies, which did not declare posting concerned public works (73%) followed by agriculture and industry (7% each).

The main frauds detected ranged from failure to declare posting to non-payment of salaries, excessive working hours, concealment of activity, concealment of employees, bargaining, the loan of illicit labour and even abuse of vulnerability.

Eight-one criminal proceedings were initiated, and 19 reports and three referrals to the public prosecutor were made.

2. Exchange of information with other member states

Article 4 of Directive 96/71 dated December 16, 1996, concerning the posting of workers provides for the designation of one or more liaison offices in each member state to enable cooperation as concerns supervising labour conditions and the hiring of posted workers.

In particular, cooperation consists in calling upon other European liaison offices for the exchange of information necessary for investigations and administrative enquiries made by control services, supplying these services with legal assistance and distributing information on labour laws which apply to the posting of workers and the interpretation of these laws.

Liaison offices in the 27 Member States have access to a computer application (IMI – the Internal Market Information system) which is made available by the European Commission and enables providing more complete answers, as well as shorter processing times.

The implementation of decentralised liaison offices

To reinforce cooperation effectiveness, in addition to the national liaison office at the General Directorate for Labour, France has chosen to implement decentralised liaison offices in charge of exchanges with bordering countries.

Thus, bilateral agreements have been signed with Germany, Luxembourg, Belgium, Italy and Spain to enable the implementation of the following decentralised liaison offices:

- DIRECCTE Alsace;
- DIRECCTE Lorraine
- DIRECCTE Nord-Pas-de-Calais;
- DIRECCTE Provence Alpes Côte d'Azur and Rhône-Alpes;
- DIRECCTE Aquitaine and Languedoc-Roussillon.

These decentralised liaison offices are authorised to handle requests concerning companies from neighbouring countries which intervene in French border regions and vice-versa (as in the case of the Franco-Spanish and Franco-Italian liaison offices) or throughout French territory (as in the case of the Franco-German and Franco-Luxembourg offices).

The missions and means of referral and exchange of information are the same for all liaison offices, whether national or decentralised.

The interest of implementing a decentralised liaison office

Decentralised liaison offices implement and develop their own local network and pertinent contacts.

They thus provide support for control services through a geographical and linguistic proximity which facilitates exchange and contact between administrations.

With their counterparts in neighbouring countries, they speed both preventive actions and coordinated control actions.

They elaborate computer tools related to legislation on posting and the current control procedures used by neighbouring countries.



Information obtained by liaison offices

Information obtained from a foreign liaison office can provide elements to complement the procedures undertaken by control agents, in particular as concerns infractions related to a lack of proper establishment or the concealment of salaried workers, employment of foreigners without a work permit and even illicit loaning of labour or bargaining.

Requests primarily concern the verification of significant activity by the foreign company in its home territory, the affiliation of employees to a social protection system, the application of posting rules by service provider companies (respect of the minimum wage or conventional salaries, working hours, payment of overtime) and the respect of obligations by temporary employment companies (mission contract and assignment contract, financial guarantee).

The great majority of these requests highlight situations where the remuneration of foreign workers posted on French soil has no relationship to work done.

Liaison office activity figures

An assessment of liaison office activity reveals an increase in exchanges. As an example, the activity of a sole national liaison office increased by nearly 50% in one year.

In 2011, the countries most called upon by the national liaison office were Romania (30% of requests), Poland (16%), Portugal, Slovakia, Bulgaria and Spain (7%).

The sectors most often targeted by these enquiries are building and public works (56%), followed by temporary employment (18%) and agriculture (12%).

Control organisms authorised to call upon liaison offices

All control agents who are authorised to note infringements concerning illegal labour practices may call upon the liaison offices:

- Work inspectors and controllers;
- Criminal investigation officers and agents (police);
- Tax and customs agents;
- Agents from social security bodies (URSSAF and MSA);
- Officers and sworn agents of the Maritime Affairs Office;
- Sworn civil aviation officers;
- Officers or agents in charge of controlling land transport;
- Sworn agents of the Job Centre

The controlling bodies most frequently asking for information are, far and away, labour inspectorate services at 76.5%.

3. Structures for coordinating the combat against undeclared work in France

The National Committee to Combat Fraud (CNLF) is presided by the Prime Minister and is in charge of orienting an anti-fraud policy to protect government funds, whether they stem from mandatory contributions or from other sources, as well as fraud involving social services. When this Committee meets to examine issues related to combating illegal labour, it is known as the National Commission to Combat Illegal Employment (CNLTI) and is presided by the Minister of Labour if the Prime Minister is not available.

A local Committee to Combat Fraud (CODAF), under the authority of prefects and prosecutors and comprised of local social protection bodies and representatives of state services, has been set up in every French department.

In addition, there is a National Delegation to Combat Fraud (DNLF) with a mission to:

- coordinate actions carried out to combat fraud by state services and organisms responsible for social protection,
- improve knowledge of fraud and promote the development of file exchanges between the pertinent administrations,
- contribute to the implementation of a national policy of prevention and communication,
- steer the activity of operational committees to combat illegal labour.

It acts as secretary to the National Committee to Combat Fraud and the National Commission to Combat Illegal Employment.

4. The national plan to combat illegal work

The combat against posting fraud in the context of providing service internationally is one of the priority goals in the new 2013-2015 plan to fight illegal employment, which was presented by the Prime Minister during the CNLTI meeting on November 27, 2012.

Action by control services in the combat against concealed labour must focus in particular on frauds organised around the posting of workers, on statutes which have been deflected from their original goal and on the fraudulent consequences of cascading subcontracting agreements.

The national action plan aims to reinforce training and inter-institutional cooperation and provide leadership to confront this complex delinquency.

It also encourages control services to use the levers of action available to them, both as concerns sanctioning employers (in particular administrative sanctions) and guaranteeing the social rights of employees who have been harmed.

Partnership with social partners to prevent illegal work

Since 1992, seventeen partnership agreements have been signed on the national level to combat illegal work in a number of sectors (agriculture, private security, building and public works, temporary employment, removal companies, events, etc.).

To develop the commitment of branches and professional sectors to combating illegal work, the new 2013-2015 plan against illegal labour includes a certain number of actions aiming to re-activate these agreements, draw up new ones in other sectors and rely more heavily on professional and trade union organisations, as well as communities and consular bodies.

State Labour Inspectorate in Lithuania

e-mail: info@vdi.lt

vanda.zabulionyte@vdi.lt

Senior Labour Inspector of Legal Division

Aras Petrevičius

Tel.: +370 5 2139768

E- mail: aras.petrevicius@vdi.lt

Informations on posted workers

Internet: www.vdi.lt

www.lrs.lt

1. Knowledge of the posted situations:

To improve the registration of posted workers, The State Labour Inspectorate is going to simplify the procedure of prior declaration about posting.

Decree No. A1-169 of 16 June 2005, published by the Ministry of Social Security and Labour, adopting the information procedure on posted workers (Official Journal 2005, No. 77-2801) stipulates that various information relating posted workers in Lithuania must be submitted to the regional sections of the State Inspection of the Ministry of Social Security and Labour.

This Decree requires employers sending an employee from a Member State or from any other State to work temporarily on the territory of the Republic of Lithuania for a period longer than 30 days or to carry out construction works specified in the Law on Construction of the Republic of Lithuania (Official Gazette, 1996, No 32-788; 2001, No 101-3597) to submit the notification in Lithuanian in the form established in paragraph 1 of Article 4 of the Law on Guarantees to Posted Workers to the division of the State Labour Inspectorate. If the employee is temporarily assigned to a number of companies owned by individuals or legal entities, each individual or legal entity concerned must be mentioned in the notification.

The notification must be submitted by post or by fax not later than five days before the beginning of work period on the territory of the Republic of Lithuania.

In special cases not planned in advance (for example, if an employee is sent to carry out immediate repairs and restoration work on mechanisms or equipment in cases where their failure would force a

large number of employees to stop work or where materials might deteriorate or equipment might break down, etc.), the notification must be submitted on the first working day of the employee sent to work on the territory of the Republic of Lithuania.

Following submission of the notification, according to paragraph 1 of Article 4 of the Law applicable to employees sent on a business trip, if the length of or other conditions applicable to business trips are changed, the employer must immediately submit a revised notification in accordance with the established procedure.

The regional divisions of the State Labour Inspectorate register all notifications. The State Labour Inspectorate exchanges information on employees sent on business trips with the State Social Insurance Fund Board under the Ministry of Social Security and Labour and with the Lithuanian Labour Exchange under the Ministry of Social Security and Labour in accordance with the conditions and the procedure established in agreements on the exchange of such information.

2. Information exchanges with the other MS

The liaison office listed on the European Commission site is supervised by

State Labour Inspectorate

Algirdo 19

03607 Vilnius-06

Tel.: +37052650193

Fax: 37052139751

e-mail: info@vdi.lt

vanda.zabulionyte@vdi.lt

Where a Member State sends a request for information relating to posted workers to the liaison office via IMI, The Head of the State Inspectorate of Labour asked the regional divisions of the Labour Inspectorate to conduct a survey of the posting company or in the workplaces of employees posted in Lithuania.

In the liaison office, there is one Inspector responsible for the communication with other Member States in the field of posting of workers. However the inspections of workplaces where posted workers perform work are made by the inspectors of the territorial divisions of the State Labour Inspectorate.

In cases of request for information about posting from other Member State, the Chief Labour Inspector ask territorial divisions of State labour inspectorate to make an inspection of enterprise which posts workers or where posted workers perform work.

The State Labour Inspectorate consults and provides information to employers and their organizations, and trade unions on the application of the Law on Guarantees of Posted Workers.

State Labour Inspectorate controls labour conditions apply of posted workers in accordance with the Law on guarantees of posted workers.

Using IMI since 2011 september:

- 29 requests received (mostly from Belgium, France and Norway)
- 5 requests sent

2 labour inspectors from the State Labour Inspectorate and the National Coordinator (Ministry of Economy of the Republic of Lithuania) are authorized to access to IMI.

The State labour Inspectorate has an agreement with Norwegian Labour Inspectorate and a project of amendments of agreement between Lithuanian and Polish Labour Inspectorates.

3. Supervision and monitoring

With Lithuania's EU membership, besides the supervision of enforcement of existing standard acts, the State Labour Inspectorate is endowed with new functions and obligations:

- control of working conditions of posted workers from EU countries,
- control of drivers work and rest time performed on the roads and in the enterprises following the procedure established by EU documents and national standard acts.

Pursuant to the Law on European Work Councils of the Republic of Lithuania, the State Labour Inspectorate is commissioned to control the protection and guarantees of workers representatives' rights in the European Community companies and their units.

And these, no doubt, are not the last obligations.

In order to be able to execute these obligations, the inspectors are encouraged to upgrade qualifications, to improve administrative and professional capacities aiming at the implementation of the prevention culture by new activity methods, at the same time not leaving out the traditional forms of work, verified by life.

4. National partnerships

The State Labour Inspectorate is assigned the function to carry out the control of undeclared work as well as to coordinate activities of institutions carrying out control of undeclared work in accordance with the procedure established by the Government of the Republic of Lithuania. The State Labour

Inspectorate by controlling the compliance with laws regulating labour relations, inspects compliance with the provisions of the Labour Code, among them - related with employment contracts, work pay, organization of work and rest, as well as the enforcement of relevant resolutions of the Government of the Republic of Lithuania and orders of the Ministry of Social Security and Labour.

In the field of posting of workers, State Labour Inspectorate exchanges information with State Social Insurance Fund Board of the Republic of Lithuania and Lithuanian Labour Exchange.

State Labour Inspectorate has access to the database of State Social Insurance Fund Board in order to receive information about issued E-101 LT forms to the citizens of Lithuania.

We also have an access to the data base of Lithuanian Labour Exchange in order to check if a third-country national posted for temporary work has work permit.

While performing its objectives and developing social partnership, the State Labour Inspectorate cooperates with all trade unions and employer organizations in the country.

We also maintain relationships with more than 30 governmental institutions and organizations, all municipalities and organizations of counties, Government representatives in counties.

Since 1994, the State Labour Inspectorate has a permanent representative in the tripartite Commission of Occupational Safety and Health of the Republic of Lithuania; specialists of the institution on the ongoing basis participate in the activities of the tripartite Council of the Republic of Lithuania

Action sheet n°10 : The National Labour Inspectorate's related to exchanging information on the terms of employment of posted employees – overview – practical case (Poland)

National Labour Inspection

38/42 Krucza St.

00-926 Warsaw

kancelaria@gip.pl

www.pip.gov.pl

The liaison office for posting of workers is the Chief Labour Inspectorate in Warsaw, 38/42 Krucza St.

The liaison office for social insurance of posted workers is the Social Insurance Institution (Zakład Ubezpieczeń Społecznych) in Warsaw, 3-5-7 Szamocka St.

1. The role of National Labour Inspectorate

The National Labour Inspection (PIP) is a body appointed to exercise supervision and control of respecting the **labour law**, especially the **occupational health and safety** regulations and regulations of **legality of employment and other gainful work**.

Statutory tasks :

- supervision and control of respecting the labour law, especially the occupational health and safety regulations
- control of employment legality
- prevention, promotion and consultancy
- other tasks (including cooperation with authorities supervising working conditions and international cooperation)

Website: www.pip.gov.pl

2. PIP as a liaison office

National Labour Inspectorate is obliged to cooperate with liaison offices of European Union and European Economic Area member countries responsible for supervising working and employment conditions.

Therefore, our inspectorate:

- provides information on specific cases of workers posted by Polish employers to other EU/EEA countries, including information about these employers, the posted workers and their employment conditions,
- informs about confirmed offences against labour rights of workers posted to work in Polish territory by an employer from another EU/EEA country,
- points out relevant supervisory authorities controlling the job market that can provide requested information.

Moreover, in response to a written request of the person concerned, **PIP provides information about so-called minimal employment conditions**, according to Polish regulations, that should be provided to workers posted to our country.

Statistics of the IMI System (June 2013)

Since 16th May 2011:

- PIP has been providing information about posting as a part of service providing through the Internal Market Information System (IMI).
- Exchange of correspondence is in the following languages: English, German, French, Spanish, Italian.
- 4 weeks for providing answers (standards of cooperation) (managed by Chief Labour Inspectorate and District Labour Inspectorates)
- According to the EU information Poland is the addressee of the biggest number of requests for information about posting (164 - on 31st December 2012).
- The cooperation within the IMI System has involved **228 cases** including 7 cases referred by PIP to the Labour Inspection in Austria, Belgium, Estonia, Finland, Romania. The relevant authorities from 12 countries have referred cases to Polish Labour Inspection through the IMI system. There have been 221 requests:
France 93 cases, Belgium 92 cases, Austria 11 cases,
Finland 4 cases, Italy 4 cases, Estonia 4 cases,
Germany 3 cases, Denmark 2 cases, Norway 3 cases,
Slovakia 1 case, Holland 3 cases, Luxembourg 1 case.

In 2011, the highest number of cases was referred to the Chief of Labour Inspection by liaison offices from the following countries: Belgium - 66 (55,5%), France - 24 (20,2%), Netherlands - 11 (9,2%), Finland - 4 (3,4%), Italy -3 (2,5%), Austria -3 (2,5%).

The number of cases referred to PIP by liaison offices from other countries from January to December 2012 was: France -54 (41%), Belgium -51 (39%), Germany-8 (6%), Austria - 7 (5%), Netherlands - 6 (5%), other countries-6 (5%).

Other data

- In 2011, PIP referred 63 complaints of Polish workers to liaison offices in other EU member countries. The complaints included :
 - o 29 complaints of workers posted as a part of service providing,
 - o 24 complaints of workers who started working for foreign employers (mainly through Polish employment agencies).
- The range of posting polish workers to EU/EEA countries according to E101/A1 forms:
 - o issued from January to December 2011 in total : 227.930 to Germany : 125.804
 - o issued from January to December 2010 in total : 265.605 to Germany : 113.615
(Data of Zakład Ubezpieczeń Społecznych (ZUS) – Social Insurance Institution)
- Number of complaints concerning posted workers in 2011: Finland 1, Sweden 1, Denmark 1, Czech Republic 2, Belgium 5, France 6, Netherlands 8, Germany 16.

3. Cooperation with the EU Member States

The most **common questions** directed to the National Labour Inspection are :

- confirming the existence of the employment relationship between the employer and posted workers,
- conducting legal business activity by the employer in Polish territory, the sector of the employer business activity,
- conducting significant business activity of the employer in the posting country territory,
- the confirmation of the entry in the court register or in the Business Activity Central Register and Information Records/business activity register, information about the management staff of the company,
- does the employer really conduct business activity, the date of setting up the company,- the places and times of workers posting,
- does the company provide temporary work services, and if so has it been recorded in the register of operators running employment agencies?
- questions about conditions of workers employment, including systems and norms of working time, leave entitlement, declared and paid salary, benefits paid for the posting.

4. Feed Back

4.1 The main difficulties encountered

- **Problems related to exchange of information**
 - lengthy proceeding,
 - low effectiveness of activities undertaken by both cooperating inspectorates from the point of view workers lodging complaints,
 - reply from a foreign liaison office only to some issues raised in complaints, and without specifying authorities competent in other issues that exceed the competence of the liaison office.
- **Problems related to control – Posting to Poland**
 - o **Problems with findings making**
 - In Poland, lack of the person entitled to represent a posting employer before control bodies (Polish regulations don't impose the obligation of appointing such a representative on employers from EU/EEA countries),
 - Lack of legal possibility of inviting a representative of the posting company from abroad (Code of administrative proceedings, art. 51 and the following),
 - Lack of documents necessary to make findings.
 - A long time of waiting for information provided as a part of liaison offices cooperation
 - o **Difficulties in imposing penalties for offenses**
 - Absence of the person responsible for the offense in Poland
 - o **Doubts about possibilities of recognising certificates on OSH training and medical examinations carried out in a posting country**

4.2 Guidance that will contribute to efficient and fruitful cooperation

- Taking account of the fact that NLI may be unable to send extensive worker-related documentation
- Conducting an inspection as requested, focusing especially on employees whose data were sent by NLI
- As far as possible, providing data that will facilitate unambiguous identification of a company
- Eliminating lengthy proceedings
- Providing comprehensive and full replies to questions included in letters addressed to liaison offices, and if any issues raised in requests fall beyond the competence of a liaison office, specifying the competent authorities

- Using information contained in:
 - o **Business Activity Central Register and Information Record - Centralna Ewidencja i Informacja o Działalności Gospodarczej RP**
<https://prod.ceidg.gov.pl/CEIDG/CEIDG.Public.UI/Search.aspx>
- and
- o **National Court Register - Krajowy Rejestr Sądowy**
<https://ems.ms.gov.pl/krs/wyszukiwaniepodmiotu>
- before sending request for information

The authority competent: to provide information on social security, to confirm whether an employer conducts significant activity, and to inform on the company's turnover, is **ZUS**:

Social Insurance Institution

(Zakład Ubezpieczeń Społecznych)

ul. Szamocka 3,5

01-748 Warszawa

Action sheet n°11 : Control, supervision and administrative cooperation in Portugal

Portuguese liaison office:

Autoridade para as Condições do Trabalho (Working Conditions Authority)

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www.act.gov.pt

Information for the public:

[http://www.act.gov.pt/\(pt-PT\)/CentroInformacao/DestacamentoTrabalhadores/Paginas/default.aspx](http://www.act.gov.pt/(pt-PT)/CentroInformacao/DestacamentoTrabalhadores/Paginas/default.aspx)

1. Knowledge of posting situations

In Portugal, a prior declaration of posting must be established five days before the start of the operation. This prior declaration concerns companies which post workers to other countries of the European Union. No prior declaration is necessary to post workers on Portuguese territory.

In 2011, ACT received 3,621 prior declarations for the posting of workers. The economic activity with the most declarations was the construction industry, with 2,176 declarations (60.1%).

In 2012, ACT received 4,167 prior declarations for the posting of workers. The economic activity with the most declarations was the construction industry, with 2,263 declarations (54.3 %).

2. Exchange of information with other Member States

We answered 14 requests for information in a paper document format in 2011:

- France: 8

- Spain: 3

- Slovakia: 1

- Netherlands: 1

- Slovenia: 1

In 2011, we answered 7 requests using IMI:

- France: 3
- Belgium: 3
- Spain: 1

We answered 3 requests for information in a paper document format in 2012:

- Belgium: 3

In 2012, we answered 66 requests using IMI:

- France: 33
- Belgium: 24
- Austria: 3
- Italy: 3
- Netherlands: 1
- Norway: 1

Three inspectors have access to the IMI system.

Requests for information through IMI are received centrally by the liaison office; this office transmits them to the decentralised control services to obtain elements which will provide an answer. When the control service obtains information, it is sent to the liaison office, which responds using IMI. When a Portuguese inspector wants to make a request, he sends it to the liaison office, where it is entered into IMI.

The Working Conditions Authority (ACT) has implemented bilateral agreements to ensure closer collaboration with the inspection systems in Spain, the Netherlands, Bulgaria, Poland, Romania, Belgium and Luxembourg.

We carry out a large amount of activity within the framework of these agreements:

1) Agreement for the Exchange of Information and Cooperation between the Spanish Labour Inspectorate and Social Security and the Portuguese Labour Inspectorate (October 3, 2003).

According to the terms of this agreement, the two inspection systems exchange information on workers travelling across the border between the two countries, especially in certain cases:

- Workers posted in the neighbouring country in the context of providing services;
- Workers who travel daily from one side of the border to the other;
- Workers who move for a period of two to three months to carry out an activity in the agricultural sector.

The two inspection systems have decided to target control interventions in the sectors of economic activity where the most serious irregularities have been noted: agriculture, forestry and construction.

The ACCEPT project (Support for Competitiveness and Cross-Border Labour Quality in Galicia and Northern Portugal) was carried out in 2010 with the main goal of promoting competitiveness between companies and strengthening their social responsibility approach as concerns cross-border labour. This was accomplished through a series of control and coordination actions which were shared jointly by the institutions in these two regions.

In the context of this project, joint visits by Portuguese and Spanish inspectors were carried out, and meetings were held with trade union participation.

2) Hispano-Portuguese Social Security Days, Portalegre (Portugal) / Badajoz (Spain) - 2012

The Provincial Directorate of Badajoz of the Autonomous Community of Extremadura and the Portalegre District Centre organised a meeting between the two services to promote better knowledge of legal frameworks applicable in specific social security areas in each of the territories, to define jointly communication process and coordination to prevent, identify and provide a framework for so-called irregular behaviour on the part of citizens of the two countries concerning circulation and travel.

3) Information exchange and cooperation agreement between ACT and the Labour Inspectorate for Mines in Luxembourg

Within this framework, the two national labour inspectorates carried out a joint intervention on construction worksites in Luxembourg in July 2012.

This type of action plays an important role because of the large number of Portuguese workers in Luxembourg.

3. National collaboration

In the context of national collaboration, joint inspection visits are carried out, most notably with the tax and social protection administrations, and target the development of specific campaigns and actions.

Action sheet n°12 : Control, monitoring and administrative cooperation in Romania

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Labour Inspectorate website:

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

1. Knowledge of posting situations

In Romania, companies are required to submit a worker posting communication to the *Territorial Labour Inspectorate* in the district where the company will intervene. This communication must be written in Romania and be sent by the first day of activity at the latest.

Companies must also notify the *Territorial Labour Inspectorate* of any change in information concerning the posting situation within five days of this change.

If the company posts a foreign worker from a country which is not a member of the European Union (EU) or the European Economic Area (EEA), it must supply a declaration stating that the employee fulfils the legal conditions of employment in EU or EEA member countries where the foreign company is established.

The declaration is filled out in Romanian and sent to the *Territorial Labour Inspectorate* in the district where the company will be working at least five days before the start of activity by the employee from a non-EU or non-EEA member country when the employee is posted on Romanian territory.

We do not have information on the number of 101/A1 certificates because they are provided by another public institution: the National Public Pension Fund.

2. Exchange of information with other Member States

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

Daniela GEORMĂNEANU, Labour Inspector

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IMI pilot project

The Labour Inspectorate was named national IMI coordinator.

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

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

The Romanian Labour Inspectorate has designated six people to be users of the interior market information system (IMI): Daniela GEORMĂNEANU, Eduard NICOLAU, Daniela MIRCEA, Simona NEACȘU, Mihaela ILIE, who are labour inspectors for the Labour Relations Control Service (LRCS), and Maria MOTĂNTĂU, head of LRCS in the Labour Relations Control Department.

As a liaison office, the Labour Inspectorate has received the following numbers of requests for information via IMI: 2007 = 4, 2008 = 26, 2009 = 20, 2010 = 38, 2011 = 90 and 2012 = 126. Over 80% of requests come from France, followed by Belgium, the Netherlands, Italy and Austria.

Requests for information concerned Romanian companies which had posted Romanian citizens in the EU for different activities, except in the road transport sector.

In 2012, the labour inspectorate sent ten requests via the IMI system to Hungary, Germany, Cyprus, Slovakia and Norway.

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

Certain key questions can reveal a false posting activity in the following cases:

- The company which posts workers does not have significant activity on Romanian territory;
- The employee was employed before posting;

- Posting was established for a function other than the one related to the company's legal activity;
- The hiring date corresponds to the posting date for companies which are not temporary work agencies.

Deadlines requested for carrying out verifications and providing answers to the questions asked are realistic, in general 30 days.

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

Questions are also asked about the company's situation at the time of control (active, insolvent? – if yes, since when is the company insolvent?), data on the identity and domiciliation of the company administrator. These questions imply an investigation, possibly by the police.

In this case, the IMI system and form do not take into account situations where two government authorities who are in contact agree to extend the response deadline. *(In this respect, it would be preferable for the system to allow changing the initially agreed-upon deadline.)*

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

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

After adoption of the Directive of Application of Directive 96/71/CE, the *Territorial Labour Inspectorates* will use the IMI system to establish a joint general framework for optimally efficient management of information exchange and the measures and mechanisms of control necessary to implement the Directive.

3. Collaboration at the national level

The labour inspectorate collaborates with all other government institutions. To do this, it has drawn up cooperation protocols aiming to carry out joint control actions with the Financial Police, the Inspectorate General of Romanian Civil Police, the Inspectorate General of Romanian Military Police, etc.

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

Action sheet n°13 : Practical case - Belgium's experience: a physical inspection on a construction site in Aalst

Federal Public Service Employment, Labour and Social Dialogue

<http://www.emploi.belgique.be/home.aspx>

Control of Social Legislation

CLS@emploi.belgique.be

1. Background

In Belgium,

- the liaison office is attached to the following authorities:

Federal Public Service (FPS) Employment, Labour and Social Dialogue;

- a centralized computer registration must be established previous to the posting of salaried workers and free-lance workers in the territory (so-called "*LIMOSA*" declaration)

Exchanges of information with other Member States – data IMI 2012

Belgium requests to other EU Member States

Country	Number	Country	Number
Poland	56	Ireland	6
Portugal	33	Lithuania	6
U.K.	19	Italy	4
Romania	18	Luxemburg	3
Hungary	17	Latvia	3
Bulgaria	15	Slovenia	3
Slovakia	14	Czsech Republic	3
Germany	7	Estonia, Cyprus	2
Netherlands	7	Denmark, France	1
Spain	6	Total	224

Requests from other Member States to Belgium

Country	Number
Italy	2
Slovakia	2
Portugal	1
Poland	1
Luxembourg	1

The construction site in Aalst

Nature of the work: the old post office building was demolished and rebuild as offices.

In this building houses at the moment the regional labour inspectorate of Aalst, some tribunals (Police tribunal and labour court) and the regional offices of the FPS of Finance).

A private company is the owner of the building.

The head contractor was a company of Antwerp.

According to the information received, the total amount of the construction site is about 2.2 million Euros

Date of the start: 25 October 2010

Date of closure: end of 2012

According to the construction site mandatory declaration to the NOSS:

118 Belgian companies were active and 11 foreign companies/self-employed persons (seems to be very low).

2. Overview

During an inspection carried out by Control of Social Legislation on the 12 October 2011,

- 35 Belgian companies were identified,
- 1 company of the Netherlands
- 3 companies of Poland
- 1 company of Portugal

3. Findings, exchange of information with other Member States and follow-up action

* The findings for the **company of the Netherlands**: the employer with 1 employee.

>> The company went bankrupt on the 29 November 2011 before we could obtain the pay slips

* The findings for **one Polish company**: 33 workers present

- No pay slips were sent to Control of Social Legislation despite 2 requests
- Criminal report has been transmitted to the Labour Prosecution Office (for not sending the requested pay slips and non – respect of working hours (work on Saturday and Sunday, bank holidays)
- Limosa declaration (as employees) and construction site declaration were made. The A1 forms were issued.

>> Via IMI: request to the Polish Labour Inspectorate to send us the pay slips for the concerned workers and periods

- Answer : these workers signed a contract as “self-employed” (civil contract)
- No-one of the workers mentioned this fact during the inspection

>> As the Belgian Labour Inspectorate did not know, we did not investigation concerning possible bogus self-employment

* The findings for **one Polish self-employed person** – subcontractor of a Belgium company: Limosa and A1 declarations were in order

* The findings for a **second Polish construction company**: 2 workers present

- A1 and Limosa were in order (see below)
 - No pay slips were sent to Control of Social Legislation, despite the request, and no OPOC affiliation (Fund for existence of construction business workers)
 - Criminal report to the Labour Prosecution Office (for not sending pay slips)
- >> Via IMI: request to the Polish Labour Inspectorate to send the pay slips
- First answer : employer claims that one of the workers does not work for his company, and the other one is a self-employed but he pays no social contributions in Poland as self-employed

What about the A1-forms?

- Second answer : Poland did not issue an A1 form (falsified form)
- >> The two workers were not declared in Poland. What can Belgian Labour Inspectorate do?

* The findings for the **Portuguese company**: workers come from Poland (45 persons)

- A1 and Limosa declarations were in order
 - Pay slips were sent to Belgian Labour Inspectorate
 - Belgian minimum wage was not respected and no contributions to the OPOC
- >> Employer paid extra (made correct pay slips – 87 000 euros) and paid contributions to the OPOC (24 700 euros). The employees signed for their extra money

Extra payments were communicated to Portugal via IMI

Answer received: no declaration in Portugal of these extra payments at social insurance institution and tax department

4. Feedback

- Posted workers are always paid according to their own legislation
- They work as many hours as necessary (even 7/7)
- Many work as self-employed, but are clearly employees workers.
- In many cases, no cooperation with the foreign company (no pay slips, extra payments, declaration to SSI...)
- Cooperation with foreign Government Authorities is not always 100% -e.g., what is done with information communicated to them in case of fraud? Feedback would be very interesting, and motivating for the inspectors involved in the host countries controls if regularizations are carried in the home country.

Action sheet n°14 : The case of self-employed - Estonian Labour Inspection

Labour Inspectorate of Estonia

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1. Overview

According to Estonian Tax department's hint, Estonian Labour Inspection carried out inspection on a construction site, related of using migrant workers (KuressaareSoojus AS).

At the construction site were identified Polish employees contractual relationships. At the process of inspection, came out that an Estonian Company (as main contractor) had signed contract with an Austrian company. The Austrian company had to provide and install a boiler heating system for the Estonian Company.

The Estonian Company ordered the installation of the boiling heating system from a Polish Company. Estonian Company did not have any contacts with Polish citizens to provide the installation service at the construction site. At the time of inspection, there were no Polish persons at the construction.

2. Exchange of information and results

Estonia Labour Inspection sent a request to Polish Labour Inspection about the Polish employer through IMI and received the following information: Polish company's registered address, registration date and registered activities. The Polish company's registered activities were construction planning

and installation of burning systems of biomasses. The working place was registered as Europe. The Company wasn't registered as employment agency.

Polish company's work was to install the heating systems for the boilers. According to the Polish law and to the European directive 96/71/EC, the employees were not employees, but sole proprietors (self-employed). Each person was separately registered as such in the Polish Business Register. All these sole proprietors provided for the Polish company.

Estonian Labour Inspection identified that the Polish company was acting legally on the Polish territory and the so-called employees **have never been employees at the company**. The Polish citizens were sent to the construction site in Estonia by the Polish company's Unit as sub-contractors. The Polish company itself was sub-contractor of the Austrian company which had been "hired" by the Estonian company.

The self-employed were working at their own cost and had signed contracts for the specific work in Estonia.

3. Feed back

Posted employees in Estonia work under conditions which are regulated by the "Act of Working Conditions of Workers Posted in Estonia". A Posted employee is a physical person who usually works in a foreign country under an employment contract and the employer posts the employee to Estonia for a specified period. A posted employee's employment contract is applicable to the international law.

The various obstacles arising from the MS posted employee's rights are often similar between different cases, although in Estonia every case is treated separately because the practical experience can't be generalized.

This fundamental aspect is illustrated by the present case. During the inspection processes, different employment relationships are identified on the basis of available information (sole proprietor/contract...), which can't be excluded.

Although state agencies are closely co-operating in Estonia, the time delay is indispensable, such as within MS co-operations. We know from our practice that despite of the case's priority we received through IMI system, it is impossible to always contact employer and then receive the needed information. The problem is not data base using between state agencies but rather as a necessary and accurate data exchange between countries.

Action sheet n°15 : A good practice of using IMI. Practical case of State Labour Inspectorate of the Republic of Lithuania

Ministry of Social Security and Labour and the State Labour Inspectorate under the Ministry of Social Security and Labour

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1. Background

The State Labour Inspectorate of the Republic of Lithuania (hereinafter – SLI) is a liaison office implementing Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services.

Implementing the Directive, SLI uses the Internal Market Information (hereinafter – IMI) system which is an important instrument to receive proper information from the authorities of host countries.

2. Overview

The task of State Border Guard Service is to guard the State border on land and in the sea. In this case, officials of State Border Guard service patrolled in the territory of seaport.

During the inspection of a Lithuanian company, inspectors of the State Border Guard Service detected 4 Ukrainian citizens at the workplace. All of them as well as the employer of the company did not have temporary work permits. The temporary work permit is a mandatory document for non EU citizens wishing to work in the Republic of Lithuania.

According to the Lithuanian Labour Code, a third-country worker without work permit, even if he has permission to stay in the country performs illegal work. In that case, Ukrainian citizens declared their work legitimacy by presenting labour contracts concluded with an Estonian company.

The manager of the Lithuanian company explained that all third country citizens had valid permits issued by Estonian authorities and were legally posted for a temporary work to the Republic of Lithuania.

Furthermore, Ukrainian citizens declared that they were legally employed in a Ukrainian enterprise and were posted to the Republic of Estonia.

Having doubts about legality of Ukrainians' work, State Border Guard Service forwarded the relevant documents to SLI.

3. Exchange of information

In order to investigate the legality of foreign workers, labour inspectors had no legal means to check proper documents without the assistance of relevant foreign authorities. As Lithuanian authorities were not sure the documents collected complied with the Estonian regulations (Estonian labour contracts), SLI applied to Estonian authorities for the provision of information about legality of Estonian labour contracts through the Internal Market System.

Estonian authorities sent a reply via IMI stating that all above mentioned third country nationals were not employees of the Estonian company nor they had been issued E-101 form (Estonian company was indeed a subcontractor of the Lithuanian company, however third country citizens weren't employed in that company).

4. Follow-up action

Having obtained this information, SLI issued a protocol of administrative law violations and handed over to the court according to the provisions of the article on illegal work of the Administrative Offences Code.

This case was examined in 2 instances of courts and the Higher Court recognized the work of Ukrainian citizens in the Lithuanian enterprise as an illegal work. The head of Lithuanian company was fined 12000 Litas (3500 Euros).

Action sheet n°16 : Two practical cases of the National Labour Inspectorate: Infringements of employee rights – Posting to Belgium

National Labour Inspection

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www.pip.gov.pl

Case 1

1. Overview

Signals sent to National Labour Inspectorate (NLI) by the Polish Police Force and an employee of the Polish Embassy in the Kingdom of Belgium (**the case with characteristics typical of human trafficking for forced labour**).

The case concerned employees posted by the Polish employer in the framework of the provision of services to work in three companies producing mushrooms in Belgium.

2. Findings and reported irregularities

- The workers were supposed to work **20–22 hours** per day
- Employees were only paid **advances for remuneration**, once a month, in the approximate amount of 50 - 300 EUR, whereas they were promised remuneration of 1.317 PLN and 1200–1600 EUR per month,
- **Standards of accommodation** provided to employees were glaringly different from what had been promised to them before departure (they were provided places for sleeping, but without bedclothes, and of very low standard)
- **Frauds** related to working time records and the amount of collected mushrooms, which resulted in lowering amounts of their pay
- The employees were supposedly trapped in the so-called “**debt spiral**”.

3. Steps undertaken and follow-up action

- NLI forwarded the case to the Belgian Labour inspection.

The case was examined by the **following Belgian authorities**: prosecutor's office, federal court police and Labour inspectorate.

These two authorities conducted inspection activities in the mushroom producing company. As of the day of the inspection, the Polish entrepreneur involved in that matter, no longer employed the workers. The female employees present in the mushroom producing company were employed by two other Polish companies, of which one was established following the transformation of the posting entrepreneur.

- The Belgian services submitted a fine report to the court, asking to punish the posting entrepreneur for:
 - o failure to submit a LIMOSA declaration,
 - o failure to report the expected extension of the period of posting,
 - o failure to pay minimum remuneration for work,
 - o failure to comply with the duty to pay remuneration regularly.

Inspection activities and court investigation are still underway.

- Employees of the Polish Embassy in Belgium intervened on the spot two times (they participated in meetings with employees and the Belgian Police with a view to questioning the wronged individuals).
- Based on testimony of the workers who returned to Poland, the Provincial Police Headquarters in Gorzów Wielkopolski initiated proceedings concerning exploitation of individuals for forced labour in the territory of Belgium.

Case 2

1. Overview

A Polish construction entrepreneur posted **29 employees** to work in Belgium.

The above-mentioned company had been established by a Belgian enterprise for whose benefit the posted workers performed work.

The owner of both companies, Polish and Belgian, was the same person.

- **Infringements mentioned by the employees:**
 - o failure to pay remuneration for work for the period of several months,
 - o failure to pay sickness benefits, allowances for business trips and financial equivalent in lieu of unused annual leave,
 - o failure to refund the costs related to return to Poland,
 - o failure to issue work certificates and RMUA documents confirming the payment of contributions for social insurance and health insurance,
 - o failure to fulfil formal requirements -failure to submit Z3 forms to ZUS necessary for the payment to employees of financial benefits from social insurance.

2. Exchange of information and follow-up action

- Polish labour inspectors attempted to conduct an inspection of the Polish company. Their attempts failed because **the entrepreneur did not conduct activity at the address known to the Polish authorities**. The company had not been crossed out from the court register, so formally speaking it still existed.
- Chief Labour Inspectorate sent a letter to the Belgian liaison office, asking them to verify charges against the Polish employer.
- Belgian inspectors undertook activities aimed at proving that the Polish entrepreneur who posted the workers established a **bogus company**. Through this, they hoped to be able to **enforce claims of the Polish workers from the Belgian entity**.
The case of the owner of both companies was investigated by a Polish judge.
- **After over two years from sending the case to Belgium**, NLI received a reply with the following details:
 - o In June 2008, bankruptcy was declared by the Belgian entity to which the workers had been posted;

- The owner of both companies conceded that he had not paid wages for May 2008. He claimed, however, that the employees had been paid wages for all earlier months. Yet, he did not present payment confirmations.

The workers were informed by Chief Labour Inspectorate that they may enforce their claims from the employer in proceedings before a Labour Court.

Action sheet n°17 : The Dutch compliance office in the temporary agency sector

SNCU

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info@sncu.nl

1. Background and motivation

The compliance office SNCU (StichtingNaleving CAO voorUitzendkrachten - Foundation for the compliance of the collective agreement in the temporary agency sector) was created in February 2004 by the trade unions (FNV Dienstenbond, CNV Dienstenbond and De Unie) and the employers' organisation in the sector (ABU). It was created in the slipstream of the negotiations for the renewal of the collective agreement for the agency sector. A second employers' organisation NBBU joined in 2007. SNCU has a Dutch/Polish website. The reason for the foundation was the joint wish to fight against unfair competition and wage dumping in the sector. Starting point is respect for the collectively agreed working conditions.

2. Aims

The aims of SNCU are:

- To provide information and guidance to user undertakings, temporary agency workers and agencies on:
 - o Provisions based on the collective agreement for the sector and the connected social fund for the temporary agency sector.
 - o Other prescriptions related to labour conditions.
- In cooperation with other authorities:
 - o Promotion of compliance of the collective agreed conditions and the social fund provisions.
 - o Monitor the compliance of these conditions and provisions, also in relation with other applicable legal provisions and conditions.
 - o Monitoring the exempted parts of the collectively agreed conditions.

3. Partnership - collaboration/cooperation with other authorities

SNCU cooperates with the Inspection Services of the Ministry of Labour and Social Affairs and with the Tax authority. A cooperation agreement has been signed with the Expert Centre Human Trafficking. Further cooperation includes regular contacts with the pension funds, with the paritarian fund for the agency sector (for education, working conditions and collective affairs), with the paritarian fund/bargaining secretariat for the construction sector and with the Fund for Norms and Standards in the agency sector.

4. How was the Dutch Compliance implemented?

The compliance office has a helpdesk & hotline, a website and a special site for alerts www.meldenhelpt.nl that can be used by everyone: companies, workers and the general public. In case disrespect of the collective agreement is suspected, this can be signalled through this website and /or the other communication channels. The office investigates and controls and, if necessary, starts juridical procedures. The founding fathers, the social partners, have handed over the competence to act in this field to the office. The office also performs risk-assessment analyses. Special attention is also given to the dissemination of information. Documentation about the provisions of the collective agreement is provided in three languages. The website is in Dutch and Polish.

5. What specific actions have been conducted?

Resumed:

- Dissemination of information and awareness-raising,
- Notification address,
- Investigations, checks on compliance and reporting,
- Initiating procedures,
- Sanctioning of breaches,
- Following up of cases.

6. The impact of the action on practical problems on the ground

Result of Work - data

Results				
Year	2009	2010	2011	2012
Questions about contract compliance	2000	2500	3067	3415
Alerts on possible breaches	1025	836	1150	1050
Number of investigations	225	280	461	340
Compensation fines (reports to the tax authorities that lead to fines are excluded, for instance in 2012 approximately €10 million)	€3.999.835	€5.067.871	€6.450.700	€7.230.000

7. The impact on the dynamics of the stakeholders

The general attitude of the partners is a positive one. They see the office as a method to fight against dishonest and fraudulent agencies that appear on the market.

8. Feedback

In the sector the office is labelled the 'contract-police' (or the collective agreement police). The government is very positive about the office and has decided to recognise the role of the office. The exchange of information between inspection services and the office is actually assured in the relevant legislation.

Fabienne Muller – University of Strasbourg

Construction site Badges*

** This work was carried out using questionnaires sent to the partners concerned by the system; in some cases, the questionnaires were complemented by consulting available legal data.*

The construction sector presents several characteristics which justify thinking about and adopting specific measures to respond to the issues identified. Construction sites are sometimes very large and involve the simultaneous presence of a large number of companies, their employees and self-employed over a long period of time. This type of situation makes it more difficult to supervise employment and labour conditions.

Depending on their degree of responsibility for irregularities observed at the construction site, clients may have a direct interest in implementing a way to supervise the individuals present on the site. In this way, they can prevent the complexity of subcontractor chains from giving rise to opaque situations which lead to irregularities for which they will be held responsible.

The construction sector is an area where occupational accidents are frequent. The co-activity of companies on a site requires coordination and specific measures as concerns health and safety at work. These measures should aim at guaranteeing that everyone present on the site benefits from minimum training and that as concerns accidents, the client or the main contractor will be able to ensure their safety.

Among the partners involved in the project, three have presented their experience with construction site badges: the Finnish public authorities, the participants at the Flamanville (France) construction site (EPR mission head, coordinating head, ASN labour inspector and trade union representative) and the social partners of construction in Belgium. The way they use badges is very different, with Finland presenting the most highly developed system, since it has been applied throughout the country since 2006.

1. Using badges to achieve different goals

In **Finland**, mandatory badge-wearing for all individuals present at a construction site is part of the legal regulations concerning health and safety at work (2006 legislation). These regulations are pieces of a puzzle aiming to **combat the “gray economy”**; the overall system is composed of OSH legislation (badge, registration of personnel present on the site) and fiscal legislation (Finnish identity

code for foreign workers, tax number, registration of tax numbers, obligation of the head contractor to supply monthly data to the tax administration).

Badge-wearing allows the contracting owner/the client, the main contractor and employers involved in construction to identify all individuals and companies participating in the construction site. All three groups are responsible for complying with this requirement, and employers are responsible with respect to their employees. In practice, the main contractor ensures that each individual wears a badge. Since the tax number was included on the badge in 2012, it is now possible to check whether individuals at the construction site are in order from a tax viewpoint: either they are taxed in Finland or they are taxed in their home country, depending on fiscal agreements drawn up between the two member countries. However, in all cases, the tax number enables checking the situation of everyone on the construction site and contributes to facilitating exchanges between tax administrations, in particular when they need to follow the situation of expatriates working in a foreign country. The entire system is scheduled to be computerized and will thus supply considerable information to the tax authorities (presence of companies and individuals on the construction site, type of contracts drawn up, price of services, control of tax obligations for individuals and corporate bodies).

In **Belgium**, the badge-wearing project being discussed between social partners and the construction industry aims to combat undeclared work and enable the identification of employers and employees present at the site. It is up to employers to ensure that employees wear their badge. Eventually, the badge will also be used to check on health and safety training for employees.

To complete these arrangements, we should point out that the new recording system introduced by the law dated December 27, 2012, aims to identify the presence of individuals on the construction site and to collect their data (identity of individuals present, quality and proof of their identity). This data feeds a database managed *“by the authority which collects specific data in view of checking and using these data.”* Data which has been collected is made available to social inspectors and social security institutions which can *“exchange data among themselves within the framework of the missions they have been assigned by law.”* Social inspectors can, on their own initiative or when requested, communicate this data to foreign inspection services. A royal decree will specify whether this data may be accessed by others (the main contractor for the construction site, public administration for a public contract, the employer for employees, workers for their services and others for their services). The two systems are thus complementary, although the latter has a broader field of application because it is imposed by law. The former is part of a collective bargaining agreement with a field of application limited to the companies which are covered by the agreement.

Badge-wearing arrangements thus exclude self-employed and foreign companies which are not under the collective bargaining agreement and which post workers on the site, although these companies are required to comply with certain stipulations.

On the Flamanville site in **France**, badge-wearing targets several goals: check and identify individuals entering the site and present on the site, identify the type of individual (employer, salaried worker,

self-employed – wherever they are located in the subcontracting chain) and note medical fitness and training on safety, since the badge is delivered only after a safety training course.

Conclusion

Shared points: Badge-wearing and the recording system aim to identify all individuals present on a construction site in order to combat fraud and properly manage safety conditions.

2. Who needs a badge?

In **Finland**, wearing a badge is mandatory at construction sites where at least two companies or self-employed are involved simultaneously or for the duration of the work. All individuals present on the site must wear a badge identifying them. The individual's status (employed or self-employed) and length of stay on the site are not required; the only exceptions concern individuals who deliver consumer goods to the building sites for private individuals.

In **Belgium**, badge-wearing is currently a project being developed by social partners in the construction industry. It should become part of a collective bargaining agreement, which could acquire regulatory status if the government so decides. Mandatory badge-wearing concerns only employers and salaried workers covered by the collective bargaining agreement.

In parallel, the law dated December 27, 2012, provides for an *“obligation to record electronically the presence of individuals on temporary or mobile construction sites which involve simultaneous or successive work by at least two companies and which concern constructions with a total surface area of 1,000 square meters or more.”*

Although this law does not require mandatory badge-wearing, it aims at goals which are partly identical. Employers, entrepreneurs or subcontractors carrying out activities during the execution of construction, workers and assimilated individuals who carry out activities for employers, self-employed workers acting as entrepreneurs or subcontractors and the main contractor in charge of execution must record their presence on the construction site using an electronic presence-recording system or any other automatic recording method offering equivalent guarantees.

In **France**, wearing a badge is not mandatory on construction worksites. The EPR Flamanville site uses badges because of the special instructions applying to nuclear installations.

Conclusion

These three examples indicate a great diversity of conditions for implementing badge-wearing: a national regulatory context (Finland and Belgium for the recording system), a local and sectoral context (France) and a national, negotiated context (Belgium for the badge). Continuous wearing of a badge by all individuals present on a construction site allows anyone to directly verify the

individuals present, and each company is responsible for complying with this requirement at the company level (Finland). The recording system controls construction site arrivals and departures but is not able to check the nature of the individuals present on the site (Belgium). When applied only to companies bound by a collective bargaining agreement, badge-wearing has limited usefulness.

3. Badge contents and use of data

In **Finland**, the card resembles an ID card with mandatory information: photo, person's name, current employer (the one paying the worker), whether salaried or a self-employed, and tax number from the Finnish public tax register. Useful complementary data may be included in the chip.

Badge data are not used as such and do not feed the register except for the tax number, which is recorded in the tax administration database.

[http://www.vero.fi/enUS/Individuals/Individual_Tax_Numbers/The_public_register_of_Tax_Numbers\(21096\)](http://www.vero.fi/enUS/Individuals/Individual_Tax_Numbers/The_public_register_of_Tax_Numbers(21096))

However, the main contractor is required to know all individuals working at the site, and employers are required to provide him with this data. Starting on July 1, 2014 (reform of the OSH law), the head contractor will be required to provide labour inspectors with an updated list of all individuals working at the site and to give complementary information to the tax administration.

Henkilö = person's name

Veronumero = tax number and date of effect

Yritys = company and company registration number

Voimassa = card validity period



In **Belgium**, the badge includes the photo and name of bearer, the employer's identity and the year of validity. Identical data is found in the chip, along with health and safety training.

The recording system targets individuals: "All individuals who are present on a temporary or mobile construction site are required to record their presence on the site immediately and daily." The data

collected by the mandatory recording system concern the identification of an individual, the nature of the individual's work, employer identification if necessary, identification of the client for whom a self-employed worker supplies service, location of the construction site and time of recording.

At the Flamanville site, obtaining a badge requires supplying last name, first name, nationality, birth date, address and employee identification number, as well as the individual's profession, qualification, work period dates and date of medical aptitude validity.

The company ensuring security at the site takes a photo and prepares the badge. Information concerning the salaried worker's company aims to identify the company, its exact place in the subcontracting chain and its contractual partners (market number and address of main companies and subcontractors). The badge indicates the individual's last and first names and includes his photo, the name of the company he belongs to and a badge number enabling electronic identification when entering and exiting the site. A colour code indicates if access is normal or priority, including outside working hours. Security information is on the back (numbers to call in case of accident).

The badge is valid for a one-year maximum.

For individuals who are not involved with the site, access is possible only with the previous consent of the prefecture, including for EU citizens.

For posted employees, the information to be supplied is found on the posting declaration sent to the nuclear safety authorities.

Conclusion

Data to be supplied in exchange for a badge are more or less exhaustive. The data collected feeds a database managed by the client (Flamanville) or by public authorities (Belgium for the recording system). In Finland, the goal is to contribute to the transparency of labour relations on the construction site, and the data does not go into a database. A database already exists, and it is managed by the tax administration. It is included in badge contents. The new requirements for clients could change this situation and result in their being required to manage a database.

4. Implementation of badge-wearing and responsibility

In **Finland**, information related to badge-wearing is managed within the context of calls for tender and contracts drawn up between companies, since they are jointly responsible with respect to this obligation. Employees are then informed by their employer, and everyone in the construction sector is aware of this requirement.

In practice, the badge is handed out either by the main contractor or by the employer.

Non-compliance with badge-wearing violates health and safety regulations (6-20 days of fining).

Badge-wearing is the responsibility of the main contractor who heads the construction site. Employers

are also responsible for their employees. The client can also be held responsible if he has not imposed this obligation in the contract with the main contractor.

In **Belgium**, the employer is responsible for badge-wearing. Data is collected by the Construction Fund for Socio-Economic Security (a joint sectorial fund) from social security databases and the Fund delivers the badge.

With respect to the mandatory recording system, the Federal Public Service Employment, Labour and Social Dialogue office is responsible for processing the data.

The implementation of a recording system is the responsibility of the main contractor, who makes the recording system available to the entrepreneurs who use it. Each entrepreneur is required to use the system and is responsible to the companies he calls on; he must make the recording system available to them. These obligations are repeated at each level of the subcontracting chain.

In addition, each company is responsible for data transmitted and for the effectiveness of transmission toward the database. If a company calls on a subcontractor, it takes the necessary steps to ensure that the subcontractor records all data effectively and correctly and sends them to the database.

Responsibility is thus present at each subcontracting level and can be summarised as follows: *“All entrepreneurs and subcontractors must ensure that each individual has been recorded in his own name before entering the temporary or mobile construction site.”*

In **France** at the Flamanville site, each employer designates the individuals who require a badge. The contracting owner delivers these badges after ensuring that the procedure for attributing badges has been followed and that the necessary justification has been presented (certain categories of personnel are subject to previous approval by the prefecture). Badges are strictly personal and must be worn at all times; they may be checked by the security company. Each passage through the entrance and exit gates is recorded electronically.

Conclusion

The badge is delivered either exclusively by the client (Flamanville), who checks the conditions to be met, by the client or the employing company (Finland) or by a joint body (Belgium, for the badge). The Belgian recording systems requires each company present, at whatever level, to make a recording system available and to ensure the exactness of transmitted data.

The effectiveness of these different systems was not evaluated in this study.

Anticipating Preventing

- Anticipating Preventing - Analysis

Anticipating, preventing : in search of new practices

1. Acting upstream from service supply: the development of new practices

If we look at its temporal aspect, we see that posting of workers involves three types of possible actions: before the supply of services, during the posting situation when workers are on the workplaces in the “host” country and after service has been provided.

The administrations which supervise posting are organised at the national level by defining action frameworks with various organisational configurations (with or without specialised control agents, only one liaison office or several decentralised liaison offices associated to a national liaison office, etc.). To prevent and combat fraud and irregularity, these frameworks also frequently use conventions and partnership agreements to define cooperation arrangements; these are inter-institutional with the relevant public authorities and tripartite with social partners.

Within and beyond these organisational and institutional frameworks, different approaches anticipating the supply of service are implemented. These emerging practices aim to:

- secure the supply of service and its effects on employment and working conditions for posted workers;
- prevent and avoid fraudulent practices and circumvention of the provisions [Directive 96/71/CE](#)

These initiatives mobilise social partners and public authorities, as well as clients and companies, to develop room to manoeuvre which can be qualified as “strategic”.

They are based on feedback and are oriented toward a “search for solutions” by implementing systems and operational tools for detecting and analysing, preventing, monitoring and follow-up the different situations.

2. Toward new ways of acting

Among the different “lever effects” being sought, we can identify three preferential ways of acting underlying these anticipation approach.

Action from initial design of building operations

Although controlling and supervising workplaces is essential, this is done on already structured operations. However, various determinants influence the quality of service supply, and working and employment conditions are established before these operations begin.

On construction sites, a set of economic, technical, organisation, legal and social factors must be taken into account, and their combination will determine how the project is carried out. An operation must meet cost, quality and deadline criteria. From the start, the evaluation and determination of these goals will weigh on the conditions of worker recruitment and employment and on the conditions for carrying out the work. For major construction projects, the work process is particularly dependent on contractual and financial aspects, as well as on technical and industrial aspects. The client, known in French as the *maître d'ouvrage*, orders the work to be done and demands in an increasingly clear way a *service*, which uses the construction as a “*material basis*” (op.cit., p.54, Jean Carassus, “Construction: la mutation – de l’ouvrage au service” - Presse de l’Ecole Nationale des Ponts et Chaussées – 2002). As they are carried out, these projects – for eminently complex reasons – give rise to delays and extra costs, which are often associated to poor working conditions. The example of the construction site for the Olkiluoto 3 nuclear power plant in Finland is particularly illustrative. Originally estimated to cost 3.5 billion euros, it has currently been evaluated at 8.5 billion euros. Although construction started in 2005, commercial implementation is not expected before 2016. In 2006, serious technical problems affected the work of welding the reactor cover. A Polish company was called on to remedy the situation but used inappropriate working methods.

(see [Action sheet n°20](#))

Several months were necessary to resolve the mutual impossibility of the client and the main contractor to find a solution, which finally resulted in redoing the work. Thus, a re-evaluation of the initial goals was made while these operations were being carried out. For the operations, organisational complexity was combined with reliance on multiple transnational subcontracting services: the Finnish construction site mobilised over 2,000 companies and nearly 30,000 workers of 60 different nationalities.

The Flamanville site for the construction of an EPR in France gave rise to 150 main contracts and used nearly 600 companies in 2012; there were 3,000 employees at the site, including 900 foreign workers,

essentially Polish, Portuguese and Romanian. Workers of 27 different nationalities participated in the project (see [Action sheet n°21](#)).

Acting from the design and preliminary study phase (which includes the sketch, pre-project summary, and pre-project detail steps), and therefore upstream from the project, thus provides a way to secure the transnational supply of services and, consequently, guarantee proper working and employment conditions.

Long-term action

In operational terms, the idea is also to elaborate “solutions” which enable acting throughout the construction project lifecycle (or even beyond when it is a case of future industrial operations requiring maintenance work) by implementing mechanisms of information, dialogue, tracking and supervision. In any event, building these solutions for the “major construction sites” presented during this project was based on feedback by the participants concerning the difficulties encountered during the work process. The strategy is, of course, tied to the complexity of “overall steering” which implies a great diversity of participants. But it is also important that all stakeholders – from the contracting owner to the employees working on the site – take on a transnational character with all that this implies. In this respect, the analyses of the difficulties encountered and the lessons learned by the professional organisation, the trade union and the public authorities at the Olkiluoto 3 nuclear power station site are a good illustration. The “reciprocal” difficulties encountered are “novel” in the Finnish context; these include cultural differences as concerns working methods with the main contractor’s managers (whose previous experience was in the Gulf countries), turnover of foreign employees and language difficulties, as well as employees qualified as “invisible” and afraid (on this point, see also [Action sheet n°1](#)).

Solutions implemented and planned for the future pertain to several registers:

- Provide information on legislation and the “right to employment” with brochures which are easy to understand, facilitate contact at the site and organise an advice and orientation day or seminar on questions of occupational health and safety;
- Coordinate action among public authorities, in particular as concerns joint inspections;
- Ensure better cooperation upstream from the construction site and over the long term through contacts and regular meetings;
- More generally, develop and create together “new” solutions based on the experience acquired.

Other initiatives which are sectoral and/or territorial illustrate the desire to find action levers which are not merely transitory but enable structuring actions over the mid-term, thereby ensuring greater effectiveness.

When they experienced unfair competition in their territory and were confronted with a large unemployment rate, Hainaut Province participants implemented, in the form of a territorial convention, a system for combating social dumping, improving sector image (construction) and making everyone concerned aware of their responsibilities (see [Action sheet n°19](#)). Although the agreement, which was drawn up between the public authorities and the social partners, lists specific actions, it is based on an organisation which the participants want to be long-term, in particular through a committee which meets monthly. Implemented in 2009, this multipartite partnership aims over the long term to facilitate contacts and reinforce inter-institutional collaboration and exchange of information to determine specific actions.

In addition to detecting fraudulent situations and ensuring enforcement (see below), it includes a preventive aspect with the organisation of information and awareness campaigns, as well as study and training days targeting companies, ordering parties, salaried and self-employed workers, with the implementation of a specific group on worker posting.

The Dutch office for supervising the application of regulations in the temporary work agency sector in the Netherlands was created in 2004 (see [Action sheet n°17](#)). This initiative aimed to ensure that labour conditions set by collective bargaining agreements would be implemented. Its creation was also motivated by the social partners' shared goal of combating unfair competition and social dumping in the sector. The office distributes information (in two and three languages), carries out inquiries and controls, undertakes legal proceedings, ensures follow-up of files and carries out analyses to evaluate risk. Like the multipartite convention of Hainaut Province, this joint sectoral initiative aims to act over the long term through a partnership system by combining preventive actions with supervision and enforcement of compliance. Concerning these actions, the Dutch government recognises the office's role and the exchange of information by the SNCU with the inspection services.

Action on identified and pertinent areas

Identifying the pertinent scope is a third way to anticipate. Targeting action on major infrastructure projects in construction, on large-scale agricultural operations (harvesting campaigns), over the territories (Hainaut Province) or over an entire industry or sector (compliance office in the Netherlands) should lead to greater impact.

In some cases, the idea is to start by listing identifiable operations, which may potentially be “lever-effect” situations. Although the sectoral system of the construction industry is heterogeneous and fragmented, major projects, in particular those which are industrial or based on civil engineering and are ordered by public or private entities, are, in contrast, generally predictable. This is also the case for agriculture, the seasonality of part of activities leads, for example, to temporary but repeated actions known as harvesting “campaigns”. Since they are part of the national and transnational distribution and marketing industries, these operations are also identifiable and predictable. Their expected

production volumes require a strong reliance on labour which, in many cases, is not met by local labour and/or gives rise to using “cheap” labour because of cost pressures.

In another case, the participants are organised at a territorial and/or sectoral level to orient their action on identified “targets”. To better detect and anticipate problematic situations, the working programme of the Hainaut Convention provides for the analysis of contracts drawn up between contracting owners and contractors and between main companies and their subcontractors. The analysis consists in taking into account price, deadline, volume of labour, volume of services to be provided, etc., to reveal the possible use of undeclared labour.

3. Greater room to manoeuvre

3.1 Better knowledge of the posting phenomenon

Anticipating and preventing abuse requires delineating the posting phenomenon and understanding how it evolves by detecting situations in which the use of posted workers is potentially an issue.

This identification goes well beyond the knowledge of worker flows obtained from statistics based on the AIs edited by the European Commission. It requires quantitative and qualitative knowledge. European-level studies (see Study on the economic and social effects associated with the phenomenon of posting of workers in the EU – Final report VT/2009/062 European Commission) run up against the complexity of economic and legal arrangements, their liability and the necessarily transnational scope of the analysis. In addition, there are “thermometer” difficulties – in other words, concerning the sensors and measuring tools used – and the need for shared data (see “Identify – Share: Tools to Support Control” in “Monitoring Controlling”). The actions noted and presented during the project nevertheless indicate that a set of initiatives at the European and national levels targets the posting phenomenon or can help to delineate it.

Responses by the partner member countries to the preliminary survey questionnaires (sent at the beginning of the project) indicate that the reports prepared by labour inspectors provide substantial amounts of information on the situation of the posted workers and the service providers, as well as on failures in terms of working and employment conditions.

Using information available to inspection agents, it is possible to describe and reconstitute the legal and economic arrangements observed, the sectors or territories concerned and the type of investigations carried out. These data enable identifying and delimiting the situations, as well as the issues requiring action.

At the national level, public authorities are able to play the role of “observatory” in the combat against social dumping:

- In France, the Central Office to Combat Illegal Employment (OCLTI), which is under the Directorate General of Police and includes an inter-institutional unit, carries out the analysis of complex situations.
- In Belgium, the coordination of trans-regional folders aims at social fraud “on a large scale”.
- In Finland, the “Grey Economy Unit” of the Ministry of Finances produces and distributes data for the set of public authorities concerned.

Social partners have also carried out initiatives.

- In Finland, the Confederation of Industries has distributed data each year for the past five years on the evolution of service supply by foreign countries which is based on questions asked to Confederation members. These data are used by public authorities.
- In Belgium the Hainaut Province multipartite convention stipulates that the federal office of orientation of the Service for Social Research and Information shall provide support for actions by the inspection services by carrying out studies and analyses (especially as concerns supervisory methods, database crossing and the fraud phenomenon).

With the financial support of the European Commission, FIEC and EFBWW have carried out a comparative study of 11 member countries on self-employment and bogus self-employment in the construction sector a key issue which we find in several case studies presented in the transnational workshops (see [Action sheet n°14](#), [Action sheet n°16](#)) (see also [Posting of workers: enforcement problems and challenges - Jan Cremers, CLR-expert](#))

<http://www.efbww.org/default.asp?Issue=Self-employment and Bogus Self-employment&Language=EN>

3.2 Opening new paths to negotiation

Work on the Flamanville EPR began in 2007. The future nuclear site has the earmarks of a “major construction site”, with the intervention of hundreds of contracting and subcontracting companies and thousands of employees with several dozen different nationalities. Faced with problems encountered, most notably several “critical” events in 2011 (see “Observations and Motivations” [Action sheet n°21](#)), the client owner and the trade unions created a specific joint forum which was implemented in 2008. The goal is to make mutual information available at the workplaces to encourage employees to express themselves on their working and living conditions. This “negotiated” approach, which results

from a process joining the interest of the contracting owner in improving “social and societal” mastery of the construction site and actions led by the party which tracks the living and working conditions at the site, thus leads to a forum for dialogue.

The idea is to adopt an integrated approach which takes into account working and living conditions at the construction site, as well as the need to anticipate and support the “after-construction site” period.

Concretely, the framework is both functional and operational:

- functional, because the forum has been extended to include other participants, including the president of the inter-company association in charge of construction site living condition issues (lodging, meals, transportation), the president of the legal authority in charge of safety at work issues (inter-company body) and public authorities representing supervisory bodies;
- operational, because information-sharing and dialogue are oriented toward solving issues: allowance of means for trade unions, implementation of a system to supervise access to the construction site, guide and information on worker rights and obligations for workers at the site and services aiming to improve living conditions at the construction site.

As was the case for the initiative at the Olkiluoto 3 power plant in Finland, this initiative first makes apparent the interest of the “client”, who is the contracting owner, as the key player in social regulation (see also [“The Contracting Owner: a Key Player” in “Informing, Sensitising, Supporting”](#)). But the corollary – in any case, for the experiences presented during the project – is the importance of trade union action on the necessarily “transnational” scope, since it is a question of the living and working conditions of all workers at a site.

Will these initiatives open new doors to transnational social negotiation? A Community framework already exists through the implementation of European Works Council [Directive 94/45/CE](#). The central managements of numerous European-wide and international groups and employee unions in different member countries have by now experienced a “transnational dialogue” by gradually learning a new type of dialogue and how to weave together points of view and interests. But the scope of these bodies is still limited to the company, and the unity of a worksite which mobilises employees of various nationalities under an international subcontractor is a new configuration. This new order involves public authorities, private and public ordering parties, construction professionals and the trade union organisations of both construction site “host” countries and the “home” countries of posted workers.

3.3 Mobilising new participants ?

The experiences presented during the project provided an opportunity for public authorities and social partners to share the “current state of practices”. Confronted with new configurations where the

transnational aspect is central, these practices are far from static. Participants are looking for new ways to act (see also “Acting at the transnational level”), which range – to use the Finnish partners as an example – from explicitly affirming their shared wish to create new ways of thinking to new solutions (see [Action sheet n°21](#)).

However, the participants inscribe their practices and look for action levers within existing institutional frameworks. From a perspective of mid-term anticipation, can we identify other participants whose mobilisation could provide room to manoeuvre?

As pointed out by Virginie Xhaufclair (L.E.N.T.I.C. –University of Liège) in the first transnational workshop on construction, the exercise consists in taking into account the complexity of organisational evolution and examining its effect on:

- the scope of stakeholders (constant, expanding?),
- and the manner in which roles are (re)distributed among the different stakeholders, by taking a look at the models underlying the existing action frameworks, in addition to the application of rules.

“The regulatory framework which governs working relationships in our societies is both binary (it rests on a base which is dual: employee status and self-employed status), bilateral (it takes into account only the contractual relationship between employee and employer) and standardised (it favours a full-time work contract for a predetermined period)” (op.cit., p.9, “Le réseau et la régulation sociale,” research report – LENTIC 2004). This observation, which is based on the traditional employer/salaried employee relationship, has been called into question through the search for a new and more pertinent scope – the site, the territory – as shown by the previously mentioned initiatives. Along with an issue mentioned above, it is also *“the emblematic situation of the ‘false self-employed’ illustrating the limits between professional statuses. Although attached to an ordering party by a commercial agreement to provide services, the self-employment finds himself in a relationship of near subordination”* (ibid, p.11, LENTIC, 2004).

The dual model is transformed to some extent into a triangular relationship giving rise to a *displacement of the link of subordination*, thus making the legal protection of workers problematic (ibid, p.13 LENTIC, 2004).

Within the context of transnational supply of services, the evolution of subcontracting also calls into question the scope of stakeholders. With the development of so-called “economic” subcontracting, *“which takes advantage of outsourcing in an organisational and contractual context that is constantly re-negotiated through an on-going competition between subcontracting companies”* (see Lentic article), new players appear – investment funds, general contractors, etc. – who, in fact, outsource risk

and move the action levers. How can these third-party players between the client and the general contractor be identified? How can they be mobilised to assume social responsibility and awareness when their main motivation is financial?

3.4 Acting on service supply determinants

Anticipating and planning ahead also means questioning the possibility of acting on service supply determinants. Some of these have been clearly highlighted through the initiatives and cases discussed in the project workshops:

- reduction of costs and a search for “cheap” labour, to cite Jan Cremers <http://www.efbww.org/pdfs/Part%202%20final-november%202010.pdf>
- human resource needs, scarcity of labour and qualified workers, as well as insufficient knowledge of legal obligations by service providers and lack of proper management;
- type of legal and economic arrangements in the organisation of productive systems.

Several “preventive” possibilities have been mentioned by project partners:

- act on the conditions for establishing services through awareness of the “hidden costs” and negative externalities brought about by the strategy of “lowest common social denominator” and by cooperation between participants in favour of more satisfying relations between the contracting parties (see [Action sheet n°20](#)).
- act on a European scope concerning major construction operations which can be considered as “EURO Projects” by looking for the benefits of connection in organising these markets;
- act on worker qualification as an action lever to develop performance and the quality of human resources (see the SASeC sectorial initiative in Romania – the social partners behind the project look for ways to integrate their arrangement within systems whose goals are analogous in the European area) (see [Action sheet n°23](#)).
- act on conditions under which work will be carried out by preventing occupational risks (see the example of tree-cutting work in forestry, where the danger and harshness of work make OSH issues unavoidable) (see [Action sheet n°22](#)).

*Action sheets in the field of
Anticipating Preventing*

*Action sheet n°19 : Multipartite Territorial Convention to Combat Fraud and Illegal Work:
Hainaut Province in Belgium (Belgium)*

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1. Observations and motivations

Faced for some time with a high unemployment rate and a large number of company closings, the province of Hainaut must continue to develop its efforts to relaunch economic activity and revalue human resources.

The province is, in particular, subject to unfair competition.

Different forms of illegality related to this situation lead to harmful consequences for both workers and companies:

- workers in these situations do not have social coverage or lack sufficient coverage, they do not benefit from adequate safety measures at construction sites and working conditions and their remuneration does not correspond to what regulations require;
- as concerns companies, they are confronted with a breakdown of the building sector and consequently to unfair competition.

These illegal practices also imperil the mechanisms of solidarity implemented by social partners within the sector.

The parties who signed the convention have thus decided to elaborate a common strategy to combat the phenomenon of undeclared work and its consequences by uniting their efforts and jointly orienting their actions.

The occurrence of unfair competition has become even more worrisome since the mechanism for registering companies was eliminated in September 2012.

Implemented in 1978 to combat social and fiscal fraud, the non-mandatory registration of companies was an effective way to provide provincial control of construction companies. It was a sort of “label” granted to companies which followed social and fiscal legislation. This registration enabled other companies and private individuals using the services of these companies to benefit from certain financial advantages.

The commission which granted or refused registration was made up of members of government services (social and fiscal), trade unions and professional organisations in the building sector.

2. Goals

- Combat social fraud and undeclared work and its negative consequences for workers and companies.
- Improve sector image and make participants responsible for their actions.
- Carry out specific actions in Hainaut Province within the context of a global policy of combat against social fraud throughout Belgium.

3. Partners signing the convention

- FPS for Employment, Labour and Social Consultation – General Administration for the Control of Social Laws and Labour Well-Being
- FPS for Social Security
- National Employment Office
- National Social Security Office
- Hainaut Construction Confederation (employer organisation)
- Centrales Générales FGTB du Hainaut (trade union organisation)
- CSC Bâtiment et Industrie du Hainaut (trade union organisation)

A representative of SIRS (Social Information Research Service) also attends the monthly meetings.

4. Method implemented

Conclusion and implementation of a convention signed by all parties on April 1, 2009.

Provincial meetings are held monthly.

The agreement defines:

- Scope of the convention

This convention applies to all persons (individuals, companies) who engage in business activity in Hainaut Province or who are headquartered in Hainaut Province and whose activity falls under (or should fall under) the authority of the joint commission for construction.

- Operating means:

- **through an office**

The office provides support to signatories for preventive actions.

It supports inspection services by carrying out analyses, in particular as concerns control methods, cross-referenced databases and instances of fraud.

If necessary, it coordinates control actions by inspection services in specific cases.

- **through a committee**

The committee is composed of representatives of the signatory parties.

It meets monthly and acts as a secretarial office, in particular for actions implemented (see below); the committee:

- participates in data collection (while strictly following legislation concerning the respect of personal data, information privacy and the secrecy of legal proceedings);
- organises and carries out preventive actions;
- detects unfair competition, for example through the analysis of company contracts;
- communicates the necessary information to the appropriate social inspection service or to the labour auditor;
- formulates proposals for new objectives or changes in existing regulations.

An official of the Directorate for Social Law Control ensures daily management of the secretarial office.

- **Contact and collaboration with other bodies**

Labour auditors (a public Ministry) are regularly informed of on-going actions.

Signatories affirm their intention to take action to establish or intensify collaboration with their colleagues or similar bodies in other countries.

At the level of the social inspection services, this type of action aims in particular to ensure the exchange of useful data for the completion of inspection service files; this should be done systematically when an administrative cooperation agreement has been signed with the country of origin of the individual or company being controlled.

In late 2012, signatories implemented a specific workgroup on posting.

5. Type of actions carried out

- **Data verification**

Joint commission no. 124 of the construction industry is responsible for checking all individuals exercising an activity in the building sector, whether temporary or permanent, in Hainaut Province.

Both Belgian nationals and foreigners are concerned by this verification. It consists of a joint examination by the partners on the committee.

As examples, the following issues have been analysed:

- the appropriate joint commission for delivery of concrete (certain companies are under the joint commission for transport although their main activity is delivering ready-made concrete, an activity under the joint commission for construction).
- the joint commission for the placement of solar panels (according to the partners, there is incoherency with the joint commission for electricity in the scope of application).
- the use at building sites of agricultural tractors which are subject to a special technical and fiscal exemption and which are under the joint commission for agriculture.

Non-compliance with the proper joint commission leads to unfair competition for companies in the building sector and a non-compliance of worker remuneration with the rates established by this joint commission.

- **Preventive actions**

- Organisation of information campaigns (preparation of brochures and website documentation, etc.), study days and sensitisation actions directed toward:
 - sector companies and the contracting owners they work for,
 - salaried and self-employment,
 - accounting offices,
 - temporary work agencies,
 - social bureaux specialised in the sector.

Example:

- A press campaign was organised for the establishment of the convention.
 - A letter was sent to all public contracting owners in Hainaut Province (community and provincial administrations, work services) informing them of the mandatory requirement for maintaining a daily list of workers (in compliance with the Royal Decree dated 26/09/96 establishing the general rules of execution for public sector contracts - MB 18/10/96).
- Organisation of training for all convention partners to assist the social partners in relaying information to companies and workers.

Example :

- The following training sessions were organised: coordination of safety on temporary and mobile construction sites; Article 30b - declaration of works/declaration of subcontractors; invoice deductions; principle of responsibility; new social penal code; posting of foreign company workers; Limosa documents; supply of personnel and subcontracting.

- **Detection actions**

A future action: the analysis of company contracts.

The convention states that contracts drawn up between clients and companies or between contractors and subcontractors may be examined with respect to the rates established, since these rates may indicate the use of illegal labour.

Contract “feasibility” is analysed from the angle of price setting and scheduled deliveries, taking into account the number of workers employed and the volume of services corresponding to these workers.

The convention also states that the company contract is communicated to the social partners in an anonymous way only.

- **Enforcement actions**

The partners communicate the information they have on significant cases of fraudulent or suspect practices to the secretarial office.

Inspection services carry out targeted investigations on this basis when the information obtained indicates the commission of serious social offences and/or continuing or repeated social offences.

Thus, a control of “ghost” companies (letterbox companies without real offices, no way to contact the company manager, etc.) was carried out in 2010/2011.

In 2012, information supplied by the social partners led to numerous inquiries in the context of posting.

In addition, regular checking of construction sites which have been geographically targeted are organised in coordination with well-being at work Control according to information provided by the social partners concerning unsafe situations.

A few figures

In 2010, 19 inquiries were carried out at the request of partners. Targets were:

- Foreign labour
- Posting
- Unemployment violation

Ten inquiries gave rise to infringement notices.

- **Criminal indemnification by the social partners**

The convention also states that, in compliance with Article 324 of the Programme I Law dated December 27, 2006, a professional organisation which has drawn up a partnership convention may bring criminal indemnification related to undeclared labour and social fraud.

This same professional organisation informs the other signatory professional organisations and government services.

Government services commit to informing the professional organisations when, at the closing of an investigation, the findings are made known to the corresponding labour auditor.

6. Impact of action on issues encountered

- **Difficulties and limits:** number of possible controls, follow-up of controls by judicial authorities, difficulty in controlling the application of collective bargaining agreements, etc.
- **Positive effects:** exchange of relevant information, better-targeted controls, well-coordinated control operations, application of the proper joint commission according to main company activity.

7. Impact on participant dynamics

- **Positive effects**

Those who were directly involved in the Hainaut partnership convention are convinced of the added value of working together.

Each participant has information from his or her area of intervention which enables inspection services to more effectively combat social fraud, in particular social dumping and unfair competition, which, as each partner is aware, are as harmful to workers as they are to companies and the State.

- **Negative effects**

In certain areas where partnership conventions have been drawn up, we have observed that there is still distrust among partners or a certain amount of corporatism which prevents the implementation of a positive dynamic.

8. Analysis in terms of feedback

Overall, action has been positive even though it is still necessary:

- for inspection services, to make control agents more fully aware of the benefit of information provided by social partners;
- for the partners, to better target their requests for control.

*Action sheet n°20 : OL 3 Nuclear Power Plant: A learning experience about posted workers
(Finland)*

Stakeholders

Finnish Construction Trade Union

Confederation of Finnish Construction Industries

Regional State Administrative Agency of Southwestern Finland/ Area of Responsibility for
Occupational Safety and Health

Regional State Administrative Agency of Southern Finland/ Area of Responsibility for Occupational
Safety and Health

Finnish Centre for Pensions

Finnish Tax Administration

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Finnish Tax Administration

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1. Background and motivation

The Olkiluoto 3 project (OL3) consists of the third nuclear power plant to the isle of Olkiluoto in Eurajoki, Southwestern Finland. The project is one of the biggest construction sites in Europe. The cost is about 8,5 billion €(original estimate 3,5 billion €).

A huge building project

In 2002, parliament voted in favour of the building nuclear power plant. Construction begun in 2005, infrastructural work has been done earlier. Today, it is expected that the construction will be not probably completed before 2016 (commercial start-up).

In 2006 all significant contracts were given to foreign companies. AREVA is selected to main contractor (distribution: Areva 66%, Siemens 34%). The project involves more than 2000 companies and about 30 000 workers of 60 different nationalities. At most 4700 workers were present in 2010. Labour force is mostly imported from abroad (75% of foreign workers, 25% of Finnish workers).

The scope of the Problems

Technical problems and delay project

The goal was a new power plant in use by the end of 2009. In 2006, serious technical problems delay project several months. The welding works of the reactor's steel cover were started with dated

drawings, whereby holes were made in wrong places. A polish company welded the cover manually, a dated and slow method, and the reactor's pressure vessel had to be remade.

Client TVO and contractor Areva blamed each other for major schedule problems. The Radiation and Nuclear Safety Authority (authority belonging to the Ministry for Social Affairs and Health) nominated a research group to estimate the realization of the safety requirements. After many months of delay, findings were reached: welding work had been done safely and according to regulations. These problems relating to quality and delay provided bad press for the project. NGO:s (among others Greenpeace) complicated the progress of the project. The press and TV spread a negative image of the progression of the site and the quality problems. Citizens were worried and the support for a new nuclear plan has been endangered.

Hard to cope with

- the implementation of the project

Finns have international experience of big project sites. Preceding nuclear plants have been built to a major part by domestic work force. The OL3 project created a new context.

And overall, there is a very little experience in the world about nuclear plant building site requirements.

We have estimated the main following problems:

- subcontracting too extensive,
- schedule too ambitious from the beginning (plans were incomplete when work was started),
- insufficient supervision of (subcontractor') work (Problems are not grasped in time),
- however, not so bad problems with supervision of occupational safety and health,
- how to identify all companies, company chains and also their workers,
- foreign companies: not enough knowledge about Finnish legislation.

- Finnish rules ignored (voluntarily or involuntarily)

A lot of problems related to wages, terms of employment, overtime compensation, accident insurance, organizing occupational health care, accommodation, pension insurances, taxes and obeying Finnish rules on tax registration, lacking or forged A1/E 101 certificates.

In 2008, the union gave a strike warning to reactor building work responsible and its subcontractor (confusion about worker's taxes, social contributions and additional holiday payments). The strike was expected to affect 1700 employees. The subcontractor was an Irish labour leasing employing 400 Polish workers at the site and registered in Cyprus.

- No Finnish organized employer and TU representatives at the site

Reciprocal difficulties

- Cultural differences complicate handling of matters. Foreigners are not familiar with

- Finnish methods of work, collective agreements, law and working conditions
- Management had work experience in Arab countries, under different practices
- Language problems (hard to establish contact)
- Prejudice against authorities and trade union
- Lots of foreign companies posting workers to the site with insufficient knowledge on
- Finnish statutory OSH and labour regulations
- How to work and cooperate with authorities

Frequent circulation of workers

Some foreign employees were changed every six months. A reason amongst others is taxation (taxes have to be paid to country where work is done instead of homeland because of the “183 day rule”). Also, when workers are changed, police can’t hear them in cases of crime, for example discrimination, and cases stay unsolved.

The “invisible village”

Workers’ accommodation is in “remote” places with a series of difficulties: no cars or leisure time activities, missing families, danger of alcohol related problems.

And “no help wanted!” for these “invisible workers” because of need of money, weak working relationship, professional crime involved.

2. Co-operation at OL3 site

The key partners

- o Representatives of the Finnish trade unions (construction, metal, electrical, clericals)
- o Occupational safety and health delegate (work safety delegate) at the site
- o Main contractor’s representative for OSH issues
- o Orderer and biggest subcontractors (consortium): cooperation with authorities (legislation – exchange of information – agreements in control)
- o The challenge is to continuously follow-up at the site and provide background information for inspections

A co-operation between authorities with inspections through joint efforts:

- o Regional State Administrative Agencies of Southwestern and Southern Finland/Areas of
- o Responsibility for occupational safety and health (Labour Inspectorate)
- o The Finnish Police
- o The Finnish Tax Administration

- The Finnish Centre for Pensions
- Radiation and Nuclear Safety Authority - STUK
- Also some cooperation in control measures with The Finnish Customs and The Finnish Border Guard

Regular meetings and cooperation with client TVO and main contractor Areva-Siemens.

3. Main goals

To prevent **shadow economy** in construction sector in real time

To safeguard

* the **minimum level** of terms and conditions of employment

* **equal treatment**

* **employment protection** for employees (= protection against unfounded dismissals)

That means, to prevent **discrimination**, particularly discrimination of foreigners, to prevent enterprises from gaining **competitive advantage from violation** the minimum terms.

Finnish government has prioritized the prevention of shadow economy as one of the top areas. Finland has new legislation for fighting shadow economy on construction sector. For example, every worker in construction must have Finnish personal ID and tax number. Every worker's tax number must be in the tax number register. At site, every worker must have a pictorial identification card with name, picture, tax number and status (worker or self-employed) of the worker and also with the name of the employer company. Collection of information for analyses monthly: Contracts, contract sums, information about workers (with certain content of information)

4. Method components

Of the Labour Inspectorate

Supervision and monitoring

- to monitor workplaces about occupational safety and health and employment matters
- to give advice and guidance to both employers and workers
- to enforce
 - * occupational safety and health legislation, occupational health care legislation
 - * labour legislation, like posting legislation
 - * other relevant legislation (the Act on Contractor's Obligations and Liability, social security, accident insurance, work permits)

* generally binding collective agreements

In Finland, labour authorities do not represent the interests of the parties, but are monitoring that the legislation is obeyed.

Of The Finnish Centre for Pensions

To ensure pension security for employees and for the self-employed:

- Large (annual) comparison of registers, based on information from Tax Administration
- Impulses and other “tailored” information data through the cooperation between different authorities and social partners
- Single inquiries: employees asking about their insurance
- Preventive supervision (information for employers)
- Inspections (if necessary)

Of the Tax Administration

- OL3 counselling group (local Tax Offices)): task such as service to majority of employees and also counseling for the companies, guides, practical matters, tax infos and tax services on site (registration, preliminary taxation, guidance, meetings)
- Separate OL3 supervision project (Tax Audit Unit)
- Joint cooperation groups between different authorities
- Continuous collection of exact information from site
- Cooperation with orderer TVO and main contractors at OL3 (relating to the new legislation about Tax Number and Tax Number Register)

5. Specific actions

TU involvement at the site

Finnish Construction Trade Union negotiated to get a full time chief shop steward and an occupational safety and health delegate to the site.

The first smaller pieceworks were given to Finnish companies.

Client TVO wanted to prevent one union representatives’ entry at the site. A solution is achieved after prolonged negotiations.

Supervision and monitoring through a joint inspection

60 representatives of the 6 authorities conducted a joint inspection at OL3 site in the spring of 2013.

2000 workers were interviewed on the spot. Only around 100 persons were not heard.

6. Feedback and future

- Employing factor for Finnish builders is not as significant as TU hoped for (locally has provided employment though)
- The TU movement was needed to obtain the building decision
- Also extensive real time cooperation with the business world was required
- A real time co-operation between authorities, construction site parties and unions both for employees and employers, highlighting areas for future work and action.

The key lessons

- Co-operation must be launched before actual work starts at site
- Contact persons, regular meetings are needed
- The knowledge of legislation and employment rights must be increased: simple leaflets, websites, easy access, “OSH day”/seminar for advice and guidance to prevent problems, lower threshold of contacting authorities
- There should be more organized employers and employees on the site (like members of the Confederation of Finnish Construction Industries and Finnish Construction Trade Union)
That way trade unions and organizations of employers can influence more on the site.
- Objective is to make it easier for employees and companies to fulfill their obligations and cope with obligatory demands they are facing by guidance, cooperation, dialogue and services
- More effective use of information in control measures

The aims are:

- to continue and deepen co-operation, launch it before actual building starts
- develop new creative thinking together and system solutions
- to plan ahead, to reach agreements
- to use publicity if there is clear benefit
- easy (“electrical”) methods for all parties to fill obligations

*Action sheet n°21 : Social Regulation at a Large Construction Site: the Flamanville (France)
Experience*

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1. Observations and motivations

The EPR construction site was started in 2007.

It was dedicated to the building of a 1650 MW third-generation reactor at a location on the English Channel where two 1300 MW units are already in operation.

The reactor required approximately 460,000 cubic meters of concrete, 120,000 tonnes of reinforcement, 400 km of tubing and 1600 km of wiring.

There were 150 main contracts (after calls for tender according to the European directive), around 600 companies in 2012 and 3,000 employees (in addition to EDF employees) on the site, including 20% of non-French workers who were mainly Portuguese, Romanian and Polish, for a total of 27 different nationalities present.

Along with building the site, there were 58 infrastructure projects to be carried out (road facilities, transportation, building of housing, development of public services such as day-care centres, etc.). These infrastructures were designed to handle the influx of people who would be present during the construction phase and would stay for the operational phase.

Nuclear facilities are not a topic everyone agrees upon. The contracting owner must assume certain commitments of the “major construction site” type:

- manage the “societal” aspect with local authorities in the area where the facility is installed;
- manage the “social” aspect of the construction site with social partners.

As concerns the societal aspect, a major construction site has a strong impact on the surrounding territory and modifies its needs, in particular with respect to human resources:

The idea is to use as much of the local labour pool as possible while taking into account the needs of employees, including when their mission is finished.

But skills which are not available locally, or not available in sufficient numbers, must also be supplied, and it becomes necessary to rely on non-French workers and foreign employees.

The Flamanville construction site required several hundred reinforcing-steel erectors, a thousand formworkers, etc. The company which was awarded the main civil engineering contract thus subcontracted part of this work to foreign companies.

To manage the societal aspect, all participants – EDF, the French government (in particular the Public Employment Service), local authorities and social partners – worked together to draw up a common agreement.

As concerns the social aspect, issues arose from the very beginning which were not handled by the processes or organisations installed at the construction site. They were expressed “outside” the site, in particular within the Local Information Commission of Flamanville, which has the mission of providing information and ensuring transparency on the nuclear project and encouraging discussions by project participants (EDF, the French Nuclear Safety Authority, elected representatives, environmental associations, employee trade unions, etc.).

The CGT trade union, which was present at the site, took regular note of issues concerning working conditions and employment encountered by worksite employees. The CGT also undertook other initiatives:

- installation of a trailer near the site entrance to facilitate contact with employees and welcome them in the absence of a meeting room, which was later provided for the union;
- publication of a booklet in several languages to provide information for foreign workers;
- organisation of press conferences on the importance of employment in the Flamanville area and on working conditions at the site, as well as on issues encountered with respect to subcontracting, living conditions at the site, the severity of working conditions, employees and the status of temporary workers.

In 2011, the construction site was confronted with several critical events which were noted by the media, including serious and mortal accidents at work and suspicion of under-declaration of work (investigations are currently being carried out). A company employing Polish workers was subject to inquiries and procedures related to the non-respect of social law, in particular from the point of view of social coverage for employees. Forty-five Polish workers filed a motion to the Labour Court 1 to obtain the reclassification of employment contracts.

These events were costly in human terms.

In addition, they had an impact on the image of the client, who was also the future operator of the nuclear power station, causing distrust of how the site was being managed and threatening to interfere with timely completion of the planning schedule.

Wishing to reinforce dialogue at the site, the client and the trade unions began a mutually agreed-upon process to better regulate social relations at the site by reactivating and reinforcing a specific monitoring committee created by shared agreement in 2008.

2. Goals

- Better management of the social aspect of the construction site.
- Better management of the “societal” aspect of the construction site and its impact on the local area.

3. Method implemented

3.1 Social regulation of the construction site

Regulation was ensured through a monitoring committee.

This committee was first implemented in **June 2008** through a **protocol signed by the client and the trade unions as a way to reach agreement and provide information on employee working and living conditions at the Flamanville site.**

In June 2012, following difficulties encountered at the construction site, the parties signed a statement of shared position which recalled and re-specified the initial goal of this approach.

Meeting once a month, the committee provides an opportunity to share information on how the project is progressing and on employee living and working conditions (preparation and follow-up of debates by legal bodies, without substitution of responsibility).

The committee has proved to be a conveyor of Large Construction Site dynamism and a creator of lasting links with the local environment, while encouraging social dialogue.

The committee’s role in the regulation of labour relations at the construction site was reinforced and its operational structure was improved:

- enlargement to include the president of the Inter-Company Association in charge of lodging, meals and transportation for construction site employees and the president of the Inter-Company Security Group in order to involve construction site companies;
- enlargement to include government control bodies (Labour Inspectorate, etc.);
- specific means allocated to trade unions (rooms on the premises, means to provide information and other materials);
- development of information for construction site employees and companies;
- integrated approach to working conditions at the construction site, living conditions and support for the after-construction site period.

3.2 Anticipation of consequences on employment after termination of the construction site

July 12, 2010: signing of an agreement to anticipate the consequences on employment of construction site termination and secure the professional development of companies present at EPR. Signatories included the French government, the presidents of the Regional Council and General Council, EDF (the client), professional trade unions (metalworking, construction, etc.), the House of Employment and Training (MEF) and all trade unions representing employees. A group including all signatories was created to agree on employee support at the termination of activity.

4. Type of actions implemented

4.1 Social regulation of the construction site

Action was carried out along three axes:

- Control and surveillance of access to the construction site

Requests for access made by the employee's company required providing:

- a valid ID document,
- an attestation of training on safety,
- a photocopy of the certificate of medical fitness,
- a document attesting to the link between the employee and the company (or the link of secondment for temporary workers),
- for employees of a foreign company and other foreign employees according to the country of origin, all or part of the following documents: posting declaration, residence permit, work authorisation.

A badge was delivered after providing these documents.

To work on the site:

- all employees must have a employment contract and a photocopy of the certificate of medical fitness.
- foreign employees must have a posting certificate or a residence permit with authorisation to work.

- **Information for onsite workers concerning their rights and obligations**

Creation of a website with specific information on the construction site

Publication of a guide to employee rights in five languages listing all of these rights; this guide is given by the client to all employees when they first enter the construction site.

This booklet is a joint creation which has been approved by the Directorate of Labour.

- **Improvement of living conditions on the worksite**

Since March 2010, a recreational activity association at EPR Flamanville 3 offers construction site employees services, leisure activities and easy access to sports and cultural facilities in the surrounding area in collaboration with local associations and communities.

In the spring of 2013, 304 employees of different nationalities (French, Romanian, Portuguese and Polish) have belonged to the association since it was created.

Since April 2011, a conciergerie has existed; it is designed to “facilitate daily living” for all construction site employees by offering onsite services at market rates: laundry and dry cleaning, fresh bread, postal relay, vehicle cleaning, fruit and vegetable baskets and personal services. The conciergerie is managed by a social insertion company.

4.2. The societal aspect of the construction site: anticipating the consequences on employment of worksite termination

This aspect includes four strategic action axes:

- **inform** construction site employees and human resources managers of construction site and territorial companies about recruiting;
- **support** employees and companies with an expanded employment training team to promote the return to employment of targeted groups;
- **prospect** and identify company labour needs and skills by establishing contacts between companies and employees who have finished their mission at the construction site;
- **train** by enabling the acquisition of skills desired by employers through the proposal of individual training and reconversion solutions for employees.

5. Impact of action on issues encountered

Societal aspect

Estimation of reassignment after end of mission: it was estimated that in the spring of 2013, more than half of workers had been offered a reassignment.

Fifty-seven employees were hired under a permanent contract.

Approximately 80% of temporary workers were assigned to another mission at the end of their first experience.

Ninety training programs were funded with approximately one million euros by the French government, training funds and the ESF.

6. Impact on participant dynamics

At large construction sites, a dialogue must be created among participants which keeps in mind two key points:

First, it is necessary to structure the dialogue setting and bring together the companies located at the construction site. This was the reason for implementing an inter-company association which was funded by a pro rata account corresponding to the number of hours worked on the site, in addition to the inter-company committee required by law.

Second, in addition to the employee representative bodies required by law, it is necessary to create a more flexible body to allow passing information on to employees, as well as collecting feedback for better identification of issues arising onsite, in particular as concerns the life of employees, including during non-working hours.

Action sheet n°22 : Preventive action on working conditions for posted workers

The example of forestry work

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1. Motivations

This file results from work done by the transnational workshop dedicated to agriculture. After the presentation of a control by the labour inspectorate of a logging site, discussions led to formulating two questions, as indicated below.

Works in forest are both very strenuous and dangerous, in particular when they involve cutting down trees, as is the case here. The issue of work conditions is therefore essential for posted forestry workers.

- Is it possible to act upstream from the workplaces by basing this action on the evident need for satisfactory work safety in this high-risk sector? <https://osha.europa.eu/en/publications/e-facts/efact29>
- What preventive solutions can be listed?

2. The present case

Context

The owner of forest land located in Dordogne (in the Aquitaine area of southwest France) wanted to carry out an operation to obtain logs to sell. He contacted Company Y, a service provider and forestry company with two employees headquartered in the Rhône-Alpes region (southeast France). Company Y relies on the local relays of an agricultural operator in the greater southwest (Company N) to meet market needs through subcontracting. The subcontractor is Company A, with eight employees, located in Romania; it was created by a former employee of Company Y.

Observations and follow-up

The control led to the hearing of a Romanian citizen working for Company A, which was in charge of cutting the wood. No posting declaration had been sent to the labour inspectorate services. The CODAF (an operational anti-fraud committee at the department level including the police, the labour and tax administrations and social protection bodies; it is presided by the prefectural administration

and the public prosecutor) took on the case. Hearings with the manager of Company A revealed that company activity was located primarily in France. The manager recruited all employees in Romania but had never worked there.

Prosecution was directed toward requesting the registration of a secondary establishment in France. The amount of fiscal and social fraud involved is estimated to be over 218,000 euros. The heads of Companies Y and N, who are obligated to due diligence, incurred criminal responsibility. The forest owner was exonerated.

3. Supply of service and cost reduction

The wood industry is a macro-industry which covers the chain of participants who grow, cut, transport, cultivate, market and recycle or destroy wood.

Upstream in the industry, forestry operations are characterised, at least in France, by the scattering of logging sites and their different types.

The price of raw materials varies and depends on several factors. These include cutting conditions, in particular constraints (flat or sloped land, smooth or hilly, fragile soil, etc.). It also depends on the type of wood and its value and tree quality.

A forest owner may thus decide to sell standing timber (purchase by a forestry company or a converter) or wood logs after cutting the trees down himself. To obtain a sales margin, it is necessary to work on a just-in-time basis to avoid storage expense and ensure lower cutting costs.

Cutting costs are based on the number of employees and social obligations, as well as the time involved in cutting, its technical complexity and the respect of safety standards (appropriate material, secure workplaces). Cutting activity has currently given rise to the development of a transnational service supply in a competitive environment (Eastern European countries), and it is tempting for both contracting owners and contractors to cut costs with the consequence of an impact on working and employment conditions of workers.

At the same time, the forestry and woodcutting trades in France suffer from a low level of attractiveness because woodcutters continue to be perceived with negative social connotations (“he’s a woodcutter because he can’t do anything else”) and because of the danger of the work. The sector is confronted with a shortage of qualified workers and operating conditions are evolving because of the use of heavy equipment which requires a different type of professional skill, a change in the status of entrepreneurs and an intensifying of the right to estovers which reinforces the presence of people looking for firewood in the forests.

4. Work condition determinants

The conditions under which woodcutters work depend on many different factors.

Work varies with the season

Depending on soil and steepness, it is more or less easy to access the logging site, transport tools and do the work of cutting down trees. In addition, related activities have developed in the face of competition (pruning, opening of corridors through the forest) which generate a greater variety of types of intervention. If the plot is heavily forested, activity can be more difficult (branches tend to tangle when a tree falls, for example). The type of vegetation also has an influence, such as high ferns hiding obstacles on the ground or plants which need to be first cut down. Preparing a worksite thus requires taking into account forest density, which affects the amount of workload.

Although the appreciation of seasons in the forest depends on the individual and can be different at different worker ages, the dry cold of winter is appreciated because physical activity keeps the body warm. Rain interferes with work and makes it less easy to stay warm. Windy weather is a problem because it is necessary to know where the tree crown will fall.

The technical nature of work varies with worksite type and preparation

The economic context mentioned above leads to increasing the scope of intervention and neglecting the preparation of the worksite, with consequently less visibility on the scheduling of activities and a longer workday. The length of the workday also depends on the how often it is necessary to move and how far it is to the worksite; accumulated fatigue can lead to more numerous accidents.

Intensified operations lead to the increasingly frequent cutting down of deciduous trees when leaves are still present. This makes work more delicate. Sap present in the tree damages wood quality, which increases difficulty and multiplies maintenance operations on chainsaw chains. To meet volume goals, woodcutters may then decide to do a dangerous disentanglement.

The “cohabitation” of cutting areas with wild animals, hunters and hikers is a source of stress, even if the site has been marked off. Stress is even greater when the worksite is next to a roadway, railway or power line.

In summer, insect bites with itching, allergic reactions or contaminants, which are more or less severe depending on the individual, are another irritant.

Finally, the requirement to systematically use safety equipment rests on an appropriate choice of material (new equipment, personalisation, etc.) to avoid interfering with activity and making work uncomfortable. Workers are often isolated, making it necessary to implement proper alert systems (technical system reliability, telephone network coverage, etc.).

5. Preventive solutions

To ensure effective action, improving work safety upstream thus implies taking into account and including these different factors which negatively affect work conditions.

Which path should be followed?

- **Risk evaluation**

To implement appropriate preventive solutions, an evaluation of risks corresponding to particular conditions and worksite reality must first be carried out. From analysing accident factors, we can see that risk evaluation is often insufficient and/or formal only. It can, for example, fail to take into account geological characteristics (land slope, surface irregularities, bodies of water, springs, etc.) where the trees are found, the health of the wooded area (windfall, dead trees, tangled branches, etc.), the presence of infrastructure equipment (above-ground power lines, quarries, railways, etc.) and biological risks (such as rabies or leptospirosis).

The more this upstream evaluation accounts for worksite specificities, the more useful it is.

- **Organisation and work scheduling at the forest worksite**

Anticipating the organisation of and distance to logging sites is a key point for government authorities, contracting owners and employers.

Worksite organisation should rest on the proper adaptation of the type and scheduling of activities to production goals and the arduousness of work. It should therefore take into account the season, landscape ruggedness, type of work, management of co-activity, scope of employee safety, marking off the worksite to make outsiders aware of its presence, etc.

Conditions of implementation should include the availability of a rescue service. Teams should be stabilised as fully as possible by forbidding isolated work, in particular if means of alert are not operational. Defective material should not be used, and individual protection should be provided.

- **Informing and sensitising companies and workers – the training of forest workers**

Informing forestry employers and employees and making them aware of the situation are also key needs related to work safety. This information concerns both countries which host posted workers and countries which send them for posting.

The same applies to the qualification and training of forestry workers, which is a way for them to acquire knowledge of “the proper way to do things” (respecting safety distances during cutting operations, for example) and learn careful behaviour.

A lack of worker training has been observed whatever the worker’s nationality. However, employees of foreign origin are often familiar with the most common types of forestry work. But without true qualification and initial training, they are more vulnerable if the worksite

becomes more complex. In the absence of legal posting, these employees without social protection must use the amount they receive for food and housing in case of health problems.

In France (with reference to the case presented), new health and safety regulations applicable to forestry worksites went into effect in 2011. These provisions state the contracting owner's obligations (in particular, a formal evaluation of risks in the form of a worksite file with information on the personnel carrying out the work) and subcontracting company obligations (in particular, the organisation of a worksite schedule and the communication of the worksite file to employees).

Although we do not yet have enough distance to evaluate the impact of these regulatory provisions, they offer a framework for intervention by Occupational Health and Safety.

The goals of the "2010-2014 Occupational Health Plan" of the Ministry of Labour mobilise all participants concerned, government authorities, preventive bodies and social partners. More globally, they are a response to the persistence of occupational accidents at forestry worksites (40 serious accidents between 2003 and 2008).

6. Extrapolation to the construction industry

A parallel can be established with the level of accidents in the construction sector, the safety obligations related to the risk of falls from heights and the need for appropriate equipment. Personal Protective Equipment (PPE) is not always systematically available, either at foreign company sites or (less frequently) at French company sites. Upstream anticipation and coordination is crucial to act effectively on working conditions.

In addition, means of action in terms of control and monitoring are more numerous:

- Transparency is greater. Information for the contracting owner on the intervention of a subcontractor is regulated in France and its absence leads to penalties. All participants in a real-estate construction operation are legally bound.
- Administrative services have better knowledge of construction site existence (construction work declaration).

This type of knowledge is more problematic for the forestry sector although here it is mandatory to declare the worksite. Clandestine worksites are found more frequently.

In addition, posting declarations are scarcer.

In addition, control is more difficult because locating forest plots is complicated, and the workers employed are not always present (and even rarely present). Clandestine worksites, which are the ones with the highest rate of accidents, are often not known about until an accident occurs.

The new rules imposed in the forestry sector thus aim to supervise operations more closely and make them more professional in order to leave less room for approximations and risks.

Although this sector is also, and by nature, “isolated,” it is nonetheless essential to provide information to employees in the posting country in order to increase the level of safety requirements.

Action sheet n°23 : Obtaining better worker qualification: SAsEC, a construction sector initiative (Romania)

FGS FAMILIA, a union of employees in the construction, building materials, wood and services (government) sectors

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1. Observations and motivations

Because of the attractiveness of the labour market in Western Europe, employees in Romania have a strong tendency to travel to foreign countries for work.

This attractiveness results from several factors: the salary level (generally 50% higher), as well as better working and living conditions, more favourable health insurance systems, better quality education, more advantageous bank loans (in particular for mortgage loans) and, overall, the market's ability to provide jobs.

Several contextual elements also encourage the mobility of Romanian workers:

- The principle guaranteeing freedom of movement for persons who are European citizens within the EU area and the fact that the “barrier” of labour market restrictions for Romanian workers should be removed in 2014;
- Little or no knowledge of legislation in the host country;
- The establishment of a non-declared contractual relationship, a “fatal attraction” in the relationship of complicity between workers and their boss;
- Weak controls by authorities in the host country and country of origin, combined with a lack of control instruments (cf. the project for a European Worker's Card for the construction industry).

In addition, pressure from the international financial system ensures the maintenance of a low level of salaries in the countries of Eastern Europe (In 2013, the average salary was 450 euros net/month in Romania for the construction sector, increased by about 10% for the building materials sector, decreased by about 25% for the wood sector and with an approximately 5% additional decrease for the services sector. The 2016 estimate is an average salary increase to 600 euros net/month in the construction sector).

2. Goals

Faced with these observations, the main social partners of the construction and building materials industries (ARACO, an employer association, and FGS FAMILIA, an employee union) have created a joint “platform” integrating services comparable to those existing in Western Europe.

The main goals are to:

- Act on the qualification of workers as a lever to develop the performance and quality of human resources throughout the sector;
- Seek for ways to integrate this platform with systems in the European area with similar goals;
- Protect Romanian workers on the Romanian and European labour markets;
- Protect Romanian capital in the construction and building materials sectors on the European market.

3. Method implemented

With the implementation of a **Self-Regulatory Sectorial System in the Construction Sector**, known as SASeC (Sistemul de Autoreglementari Sectoriale in Constructii), the social partners have a platform for developing and funding different services which complement each other.

The platform has existed for fifteen years. Created in 2007 when Romania became a member of the European Union through an agreement protocol for implementing a social fund, it has developed in the form of a sectorial tool which aims to be **structural and multidimensional**.

It currently mobilises a global budget of 125 million euros and concerns nearly 100,000 workers (approximately a third of the sector).

It is organised in the form of six entities, which are jointly managed non-profit bodies:

- The **Social Fund for Builders**, or CSC (Casa Sociala a Constructorilor)

This fund extends social protection within the sector with specific services, such as winter allowances and financial social services in the form of bank-issued letters of credit.

- The **Centre for Building Trades**, or CMC (Casa de Meserii a Constructorilor)

Its goal is to implement a National Qualification Framework (NQF) at the sectorial level and develop the quality, availability and amount of vocational training (*VET*).

www.picas.ro

- The **Centre for Builder Health and Safety in the Construction Industry**, or CASIMMCO, an entity for advice, training, research and study

- The **Joint Committee for Multinationals**, or TT, a tool for establishing a dialogue with multinational groups and promoting the interests of “local” companies

- The **Paid Leave Fund**, or 3C

- The **Joint Committee for Migrant and Posted Workers**, or MM

The Committee aims to **develop** the construction sector in Romania through the use of **resources** provided by the contingents of migrant and posted workers, in particular by regulating the flow of workers who work in the European area and have an impact on the legal contingent of migrant workers in Romania.

The Committee acts within the context of specific goals which aim to “connect” the Romanian construction sector with construction sectors in other member countries by acting in particular on the quantity and quality (quality and attractiveness of employment and working conditions) of labour needs.

4. Type of actions carried out

Actions undertaken by the platform include a set of services designed to be interoperable. They concern both the material services mentioned above and a palette of immaterial services aiming to qualify human resources: recruitment, placement, evaluation and vocational training.

These actions affect **migrant and posted workers** through actions of information and sensitisation in the field, to compensate for their lack information. Many of these workers leave for foreign countries on the basis of personal networks and lack knowledge of both employment conditions in the host country and the possibilities of professional qualification in Romania.

To support their development, SASeC has implemented collaborations:

- at the national level (Ministries of Labour and Education, Labour Inspectorate, National Authorities for Qualification, Romanian Office of Migration, European Social Fund, etc.);

- and internationally, with the aim of an integrated action at the European level (European Association of Equivalent Institutions for Social Protection, or AEIP, European construction federations, FIEC and

FETTB for the European Union, FORMEDIL and CEAV in Italy, the “Fundación Laboral de la Construcción” in Spain, OPPBTP in France and Fbz-fseConstructiv in Belgium).

5. Impact of action in terms of difficulties encountered

The main difficulties are the following:

- The obstacles to recognition of “Romanian Good Practices”;
- Reluctance to work in a true European network with non-profit organisations (NGOs);
- An attitude which tends to be “segregationist” with respect to NGOs in Eastern European countries, notably Romanian NGOs.

6. Impact on participant dynamics

A process for evaluating collaborations has been implemented: we hope to better cooperate in the future with French institutions, especially NGOs.

In spite of financial limits, the effects are positive because of the increasing reciprocal credibility of partners. As for other impacts, we will discover them together by working together!

7. Analysis in terms of feedback

It is necessary to carry out a long-term project at the European level to better integrate the participants who want to take charge of the issues within true and effective continental networks. The credibility and integration of their databases is more necessary than ever. A (European) Construction Worker Card has become a pressing need (we have proposed a project along these lines with partners in Italy (FORMEDIL), France and Belgium (Constructiv)).

Acting at the transnational level

- Acting at the transnational level - Analysis

Promote the Emergence of Transnational Practices

1. An inherent tension in transnational processes

For the public authorities

As we have already discussed in the “controlling and supervising” area, the administrative systems which specialise in the fields of labour conditions, employment, social protection and tax systems, as well as in the distribution of roles between the State and the social partners, are very different from one country to another.

These national systems are locally coherent when faced with “internal” situations, but they are challenged by the development of transnational provisions of services.

The areas covered by the labour inspection systems, the organisations implemented to exchange information with other countries, their methods of internal collaboration with other administrations, supervisory practices, legal frameworks and tools and action, strategies vary from one member country to another, and one of the keys to transnational administrative cooperation is found in the **interplay of these heterogeneous systems**.

For social partners

With respect to the social partners in the construction and agricultural sectors, potential transnational coordination dynamics are also very different from one sector to another.

Although the investment of the European federations in each sector and inter-professional European organisations have developed in a significant way in this respect, their ability to coordinate national target groups nevertheless rests on the way in which the social partners take charge of these issues in the companies and over the territories.

However, the potential of the national social partners to invest in coordination varies greatly from one country to another. It depends on a series of factors, in particular factors tied to the impact of posting on the national economic situation, to competitive strategy for companies and to the collective status of employees.

In the construction sector, several countries have historic practices which are structured at the national level for posting operations; they are most often identifiable and limited in time and space.

In the past few years, the issue of the intervention of foreign companies has thus become a concern for professional and trade union organisations.

In the agricultural sector, depending on the activities concerned, participants find it difficult to characterise the situations.

Between harvesting operations, livestock farming, transformation (meat sector, wood sector) and forestry work... (see [Action sheet n°22](#)), issues are extremely different in the various territories.

Worker mobility on both sides of a border takes various shapes (migration, seasonal work, supply of service), and the issues on which national organisations are mobilised, the context of their actions and their axes of work are different. Consequently, it becomes even more difficult to establish coherency and find ways to coordinate action between the professional or trade union organisations of the different Member States.

Finally, like the public authorities, the social partners run into the difficulty of structuring and coordinating systems with very different participants:

“In each sector, the European social partners in the different sectors represent nationally affiliated organisations operating in different countries, speaking different languages, exposed to different socio-economic realities and with different goals, types of structures and roles in their national system of industrial relations.”

Dynamics of the EUROFOUND European Social Sectorial Dialogue, March 2009.

<http://www.eurofound.europa.eu/publications/htmlfiles/ef08981.htm>

The entire project dynamic is thus criss-crossed by tension which is a source of difficulty (but also of opportunity) for the participants. They must find room to manoeuvre and discover ways to act in an effective and coordinated manner on both sides of the border concerning these situations which are, by nature, transnational, while industrial relations, action strategies, and organisations or administrations which have been built over time according to the economic and social history of each Member State.

2. Identify, analyse and capitalise on emerging transnational practices

The project goal was not to carry out an exhaustive study of the transnational practices concerning posting. At minimum, a working posting operation is a source country which supplies workers and a host country which receives them, and several member countries are frequently involved. One of the basic hypotheses of our approach was therefore that, to be effective in these transnational situations, the participants must **change their framework when taking action by looking for synergies on both sides of the border**.

Changing the frame of reference implies inventing new ways of doing things and developing new skills, and our project was based on the belief that this creativity was already at work.

The particularity of this process is that expertise is built step by step, by doing and by experimenting using a “trial and error” approach. This is why we have attempted throughout the year 2013 to discern as closely as possible the ways in which public authorities and social partners develop responses to the issues facing them.

Several action areas were identified:

First, deployment of administrative cooperation within a supra-national legal framework:

At the European level, Article 4 of [Directive 96/71](#) created a basic legal framework with a directly operational impact by imposing obligations on Member States with respect to transnational administrative cooperation.

On March 21, 2012, the European Commission adopted a proposition to implement [Directive 96](#) which provides for measures to develop, facilitate, support, promote and improve administrative cooperation beyond the results already obtained.

A transnational tool has been implemented: this is the IMI ([Internal Market Information system](#)) pilot application which enables identifying the proper administrative partner in another Member State and communicating with this partner on questions related to posting situations encountered by the administrations making the queries.

The “action sheets” in the “monitoring, controlling” domain describe how the different public authorities involved in the project have taken charge of this context; analytical elements enable shedding light on the evolution of specific and highly supervised “transnational actions” which correspond to administrative cooperation (see analysis “monitoring, controlling”).

Other types of transnational actions have been implemented, either within the context of a transnational legal framework (bilateral agreements between the Member States) or within contexts defined directly between the participants.

Certain practices also aim to move from **occasional cooperation** to **strategies which are more structured and more operational** :

- Implementation of operational steering committees within the framework of the implementation of numerous **bilateral cooperation agreements** (see [Action sheet n°25](#)), see also the “library of bilateral agreements” available under the “Cooperate” tab on the EURODETACHEMENT site: <http://www.eurodetachment-travail.eu/docs.asp?rub=787#>.
- **Multilateral cooperation meetings**, which are organised among the public authorities of Luxembourg, Belgium France, Poland and Portugal.
- **Trade union coordination by European federations**, such as the arrangements organised by the EFBWW and ETUI (see the seminars on “posting reality” held in June 2012 in Brussels and on “The Improvement of Health and Safety Conditions for Migrant Workers in the Construction and Wood Sectors” held in June 2013 in Zagreb).
- **Twinning pacts**, such as the one drawn up by the Hungarian Mesz and Padosz unions from the Paks power plant and the unions from the EPR Flamanville power plant on March 21, 2013.
http://www.fnme-cgt.fr/pages/dossier_mois.php?num=122&id_art=432&lg=fr
- Others aim to **sensitise participants transnationally or to inform them of legal frameworks** with the joint site of the EFBWW-FIEC [social partners in construction](#), or the [stop social dumping](#) site implemented by the EFBWW to denounce abuses.
- Action carried out on both sides of their borders by the FGA CFDT in France and the NFZGS Podkrepa organisation in Bulgaria, which is an innovative and highly informative initiative (see [Action sheet n°2](#)).

Still others **aim to improve administrative cooperation to make it more operational** (exchange of officers with immersion periods inside the “host” administrations, controls coordinated between several public administrations, sharing of tools to aid in supervision, meetings to assess cooperation implementation) (see [Action sheet n°24](#)).

European projects:

- **aim to formulate recommendations**, as was the case for the CIBELES project, which brought together nine labour inspectorates in Belgium, Malta, Hungary, France, Austria,

Germany, Italy, Portugal and Spain (<http://www.eurodetachment-travail.eu/datas/files/EUR/Project%20Cibeles%20Resume%20FR.pdf>)

- **organise areas or exchange and transnational training**, like the present project (ten countries involved) or the precedent EURODETACHEMENT 2010-2011 project involving the labour administrations is six member countries in Europe (Belgium, Spain, France, Luxembourg, Poland, Portugal) (<http://www.eurodetachment-travail.eu/docs.asp?rub=1103>)

3. These approaches encourage the transnational learning process by developing the sharing of knowledge and skills acquired.

The transnational workshops carried out during the project enabled participants to define a few “directional axes” allowing to better ascertain the obstacles and facilitators involved in these emerging practices and to establish some modest methodological milestones offered by the “cases” analysed in the workgroups.

A learning process is being developed in the posting area, and we can currently identify some of the steps, which do not occur linearly but, more often, simultaneously.

The particularity of this process is that participants have only partial knowledge and skills (attached to their territory) and that know-how is built like a puzzle through sharing the knowledge of partners in each member country.

The starting point is the growing awareness by participants that in these types of situations, **they cannot act alone at the national level.**

This realisation takes place slowly, but the approach we have carried out with the EURODETACHEMENT projects since 2010 has enabled us to measure that it nonetheless evolves in a significant way for the public authorities and social partners involved in posting, or, more generally, in the combat against fraud.

Understanding this “interdependence” results from a sometimes difficult examination of the **impact of actions carried out** in order to identify their flaws and limits (need to anticipate for large operations, difficulty of grasping a complex situation, non-coordinated actions by different participants, requests for information by a public authority which have been misunderstood by the authority receiving the request, criminal or civil action without effect, divergence on the legal interpretation of a situation, impossibility of carrying out investigations for a required authority, etc.).

The “reflexive appreciation” built from feedback allows identifying “what is causing a problem” in interactions between participants on both sides of a border when this identification is based on concrete cases.

This joint approach oriented toward solving problems encourages a comparison of legal frameworks (in terms of comparative law), respective organisations, roles and competencies, legal tools, means of action and methods of investigation.

It implies becoming familiar with the other party's legal notions, as well as understanding the meaning of words and terms used to report on and describe a situation and explain the action carried out, its purpose and goals and the means used to achieve these.

Mutual comprehension of the specific ways of acting by each partner is slowly increasing, along with a broader reciprocal comprehension of the national economic and social issues of each Member State in the areas studied.

“Pooled knowledge which can be shared and a body of knowledge” can thus be gradually built through these interactions, which enable each partner to acquire a better understanding of the transnational context within which he or she acts and the diversity of situations in which he or she is involved.

This transnational learning allows individual partners to adapt their personal practices and put them in line with and complement the means available to other partners.

It will then be possible to build areas of mutual trust for establishing room to manoeuvre, sharing information and data and developing collaborations which will be more fully elaborated and long-lasting.

4. Impact on the partner systems and their ability to improve Directive effectiveness

Although the project has enabled observing that the evolution of these practices adapted to the new frame of reference is already underway, they nevertheless remain fragile.

“Acting transnationally” in the posting area is still embryonic.

The outcome of the next few years will depend on the ability of collective organisations, whether public authorities or social partners, to integrate this transnational dimension, measure the impact of their new approach and master what they have learned from these experiences.

*Action sheets in the field of
Acting at the transnational level*

Action sheet n°24 : Implementation of bilateral agreements on administrative cooperation: the “Euro-Phoenix” operation (Luxembourg)

Luxembourg Labour and Mines Inspectorate (ITM)

<http://www.itm.lu/detachement-de-travailleurs>

Luxembourg Liaison Office for Posted Workers

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1. Context and motivations

Four inter-administration bilateral cooperation agreements have been signed since July 8, 2008, on the legal basis of ILO Convention No. 81, between the Labour and Mines Inspectorate and:

- Belgium (SPF Employment / Social Inspection),
- Poland (INT),
- France (DGT – F-L Liaison Office) and
- Portugal (ACT).

The Luxembourg Liaison Office for Posted Workers, or BLLD (blld@itm.etat.lu), of the ITM, which is the competent authority, carries out the legal missions listed in Directive 96/71/CE in each EU member country.

Study visits and **regular follow-up meetings** (annual) have been reciprocally organised with the corresponding liaison offices and/or authorities in EU partner countries (two “trilateral” arrangements).

As of today, **four “high-impact” actions based on shared cross-border controls** with partner inspectorates have been carried out in the “Extended Region” (F/B/D/L) to combat illegal posting, illegal labour subcontracting, etc.

Two were organised by ITM / one by CLS –B / and one by DIRECCTE in Lorraine, France.

The “Euro-Phoenix” operation

Within the framework of an expanded team (of record size) known as “**CIALTI**” (**Inter-Administrative Cell to Combat Illegal Employment**), 47 agents from thirteen supervisory administrations (including ten agents from four other EU Member States) systematically inspected the construction site of the future University of Luxembourg “Maison du Savoir” (House of Knowledge) at Esch-Belval (former steel industry brownfield in the mining area near the French border).

Press release : **The “Euro-Phoenix” International High-Impact Operation, July 2012**

http://www.gouvernement.lu/salle_presse/communiqués/2012/07-juillet/13-itm/

2. Goals

The investigators focused on the respect of safe and healthy working conditions for employees at the site, as well as on all types of illegal cross-border employment, which corresponds to “social dumping” and creates unfair competitive practices against companies legally implanted in the Grand Duchy.

3. Operational partnership and method of implantation

- **A European inter-administrative task force** including agents from labour and employment, social security, tax, customs and police inspectorates:
 - Belgium Social Law Inspectorate: two inspectors
 Social Inspectorate: one inspector
 - France DIRECCTE: (BL F-L): two inspectors
 URSSAF: one inspector
 - Poland INT: two inspectors
 - Portugal ACT: one inspector
 - Luxembourg “CIALTI” team
 ITM: five inspectors / two employees
 Customs: fifteen agents
 Police: nine agents
 Joint Social Security Centre: two agents
 Land Registration and Estates Dept. / Anti-VAT Fraud Service): two agents
 Office for the Development of Employment: two agents

- **A pan-European scope for multidisciplinary control**

Through bilateral agreements between ITM and the corresponding labour inspectorates or similar bodies (e.g., Social Inspectorate) in Belgium, France, Poland and Portugal, ten labour and social law inspectors participated as observers in the international operation.

In anticipation of the territorial introduction of an electronic social ID card (“social badge”), which was decided upon during the “sector-specific tripartite” meeting on April 19, 2013 (following the latest major actions in March 2012), starting in 2013 for all persons, employed or self-employed, who are present on a construction site, this “traditional” interdisciplinary control operation (with sealing off, search and occupation of premises during the investigation) was facilitated by appropriate general confinement (exterior fences) and self-control of access by a security company which keeps a list of real-time check-ins and provides employees with simplified badges. Only their retention of various employee identification papers, and even bank cards, in exchange for badges was criticised.

4. Results

In terms of impact, the evaluation of the checking of 105 employees, including 30 part-time employees and 24 posted workers, at the site enabled establishing the following general conclusions:

Health and safety at work: risk of serious, even fatal, accidents related to the absence of group protection. Immediate compliance ordered by ITM and executed onsite by specialised teams.

- Absence of medical check-up to establish fitness for work for posted and Luxembourg employees working at high risk; the posted employees were 50% over the limit of maximum authorised working time (60 hours/week).
- >> Temporary removal from their work stations by ITM and enforced rest.

In spite of shorter deadlines for temporary labour, the employees present on the site had medical certificates of fitness.

- **Respect for labour law and combat against social dumping**

- Omission of a declaration for three posting companies originating from three different Member States.
- Absence of a notification of posting of services for a subcontractor to a group of European companies.
- >> Injunction of compliance within 24 hours ordered by ITM

One southern European company had not notified about all posted employees.

According to their personal declarations to the labour inspectors present, all employees (including posted employees) were paid (including travel expenses, etc.) in compliance with or above the government-legislated scales for the minimum wage and general collective bargaining rates (10.40 euros for non-qualified workers and 12.50 euros for qualified workers).

>>Complementary investigation by ITM concerning the allocation of different categories of related compensation (travel, lodging, meals).

Social Security

Absence of an A1 form for one posted worker.

Additional verification by CCSS concerning the affiliation of three employees to the Grand Duchy of Luxembourg.

Right of establishment (clandestine labour): verification by Customs and Excise Duty agents of the compliance of companies presenting irregularities.

Fiscal fraud or irregularity

Compliance of the companies present with respect to VAT obligations noted by the Anti-Fraud Service of the Land Registration and Estates Department.

Employment

Compensated or non-compensated job-seekers were not detected and the Office for the Development of Employment checked for companies which did not meet the obligation to declare all vacant positions before publishing a want ad.

Immigration

Luxembourg police, who carried out their mission of maintaining public order and escorting “civil” government agents during the control process, verified that no one present on the site was in an irregular situation with respect to residence.

International tracking and administrative cooperation

Through IMI-Net, ITM called on the services of ACT in Portugal to verify the regularity of the situation of company head offices and to authenticate certain documents supplied by the posting companies (certificates, attestations, diplomas, etc.).

5. Impact on participant dynamics

- **Evolution of collaborations implemented**

Inter-administrative cooperation across borders is the only possible answer to the proliferation of sophisticated international structures using migrant workers who are in precarious situations and are often unaware of the basic rights guaranteed by the laws of the host Member States.

- **Difficulties and limits**

The use of multifunctional intercultural interpreters should be generalised (see the service offered by the Luxembourg Red Cross).

- **Positive effects**

The human aspect: gradual creation of direct and informal professional links and friendships between agents at all hierarchical levels of the different supervisory authorities of the Member States.

Valuable exchanges of methods and the genesis of new ideas: this can lead to useful practices for moving ahead and for reinforcing the European social dialogue.

6. Analysis in terms of feedback

This is a challenge worthy of Sisyphus: the construction sites are constantly evolving and everything must be done and done again in an ongoing process.

For major high-impact actions in Luxembourg, colleagues in surrounding countries are now systematically invited to participate (F / D / B); sometimes colleagues from countries which are more distant but are “bilateral” partners (P / PL) are also invited.

The different specialised participants are undoubtedly now aware that they belong to a sort of pan-European “Social Euro-Corps” and follow an ethical code inspired by the grand themes of the ILO (“decent work = solid work”).

It is necessary to train and guide to maturity a new generation of government agents operating in close synergy with the social partners. These agents must be provided with appropriate opportunities (in particular, linguistic and financial) to exchange information with their peers and counterparts in related sectors in other Member States within an economically “useful” relationship with the supervised host MS in the context of a well-structured and durable process.

Action sheet n°25 : The cooperation agreement between the Spanish Labour and Social Security Inspectorate and the Portuguese Labour Inspectorate

Autoridade para as Condições do Trabalho (ACT)

Work Conditions Authority

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1. Observations and motivations

The **Working Conditions Authority** (ACT) was created on October 1, 2007, within the framework of a public administration restructuring programme and joined the expertise of two bodies: the Inspectorate General of Labour (IGT); and the Institute for Safety, Hygiene and Health at Work (ISHST).

ACT brings together technical skills in targeting prevention and the competency of an inspection service. Its mission is carried out in two main areas:

- promotion of improved labour conditions through prevention and checking that standards are applied;
- promotion of policies to prevent occupational risks.

Agreement to exchange information between the Spanish Labour and Social Security Inspectorate and the Portuguese Labour Inspectorate

An increase in the posting of Portuguese workers to Spain has resulted in frequent irregularities as concerns worker discrimination, work safety and health conditions, salaries, duration of working hours and labour traffic.

On October 3, 2003, the Spanish Labour and Social Security Inspectorate and the Portuguese Labour Inspectorate thus signed an agreement to exchange information and promote cooperation as a way to establish **permanent collaboration** between government authorities in both countries.

2. Agreement goals

The agreement provides for several axes of cooperation, in particular with respect to the exchange of information. These axes concern:

- **prevention of occupational risks** and work accidents; irregularities observed concerned companies in a neighbouring country with activities in Spain or Portugal;
- **company identification elements** and **sanction proceedings** initiated against them; this information is particularly important when it is difficult to identify the head office (especially for small and medium-sized companies and companies in the road transport sector);
- **movement of workers from countries outside the European Union** (work visa when these workers move temporarily to work in Spain or Portugal for companies with a head office in a neighbouring country);
- **companies which post workers** and the **posted workers themselves**, within the framework of cooperation and technical assistance implemented in application of Directive 96/71/CE.

According to the terms of the agreement, the two inspection systems exchange information on the movement of workers across the border between the two countries, in particular in the following cases:

- posted workers in the neighbouring county in the context of supply of services;
- workers who cross the border daily;
- workers who move for two or three months to exercise an activity in the agricultural sector.

A technical handbook on the control of Portuguese companies posting workers was prepared in 2009 by the two institutions.

3. Method implemented

For the practical application of the agreement and tracking of the measures adopted, a **Joint Surveillance Commission** was created. This commission met for the first time in 2004. It is presided alternately each year by one of the two countries.

4. Type of actions

The main cooperation actions concern:

- encouragement of information exchange and distribution of this information within the two institutions;
- intervention of social partners, in particular in areas where supply of services by Portuguese companies or the use of Social Security forms has been previously communicated to Spanish authorities;
- control of law enforcement, in particular through joint inspection visits;
- collaboration of the two institutions to ensure more effective penalty proceedings;
- training of labour inspectors;
- targeted actions to check the situation of companies posting workers.

5. Feedback

In the context of application of the agreement signed in 2003, the two inspectorates have gradually increased their cooperation efforts to improve the flow of information related to workers and companies.

Information published in the press concerning situations of discrimination of Portuguese workers posted in Spain in violation of legal provisions (duration of working hours, salaries and occupational health and safety conditions) led the two inspection systems to a joint decision to target their control interventions on sectors of activity where the most serious irregularities had been noted: agriculture, forestry and construction.

Contact intensification has enabled inspectors in the two countries to participate in joint visits, better understand respective inspection procedures and standardise types of intervention, for example in the way occupational accident inquiries are carried out.

The Accept Project to support competitiveness and improve employment quality (2010) concerning Galicia in Spain and northern Portugal has enabled coordinating interventions between institutions in the two regions.

The two public authorities agreed that medical certificates delivered by occupational health physicians from Portuguese health services would be valid for exercising a professional activity in Spain, on the condition that these certificates correspond to the professional category and the work to be done.

Spanish authorities send ACT the list of Portuguese companies which have notified them about cross-border posting of workers.

The Fifth (Braga), Sixth (Santiago de Compostela) and Seventh (Sintra) meetings of the Joint Surveillance Commission established by the agreement led to operational decisions allowing the reinforcement of bilateral relations:

- appointment of a person from the commission to take charge of the continued steering of cooperation actions;
- centralised collection and analysis of information concerning joint control actions in the border area;
- revision of the technical handbook;
- mutual recognition of professional categories in the construction sector;
- a specific training plan for inspectors in Spain and Portugal;
- transfer of knowledge and skills acquired by participants in the “Euro Posting” project to improve controls.

The partners also agreed on the need to organise information actions (regional workshops) and standardise inspection procedures (control of salaries and services).

6. Axes for developing cooperation

- Development of an exchange of information concerning posted workers by building a communication network and relays at the regional and local levels;
- Intensification of joint control actions, particularly in border areas and in areas where posted workers are concentrated (according to worker flow, geographical area and sector of economic activity);

Identification by partners of initiatives leading to multilateral improvement of administrative cooperation between competent institutions of public administration in the member countries:

- o Implementation of a computer tool for control authorities;
- o Development of a database for identifying the documents necessary for verifying the regularity of a company situation and of workers.

The Role of the Social Partners

- The role of the social partners - analysis

For better regulation of posting: the role of the social partners

Theoretically, social partners are not meant to be participants in regulating posting situations. The existing community legal and institutional framework concerning posting does not include a role for them. However, they act because of existing needs. On the employer organisation side, the idea is to obtain secure service supply for companies. First of all, contracting companies must be able to ascertain the social and fiscal reliability of service providers in order to prevent possible legal and operational risks. The idea is also for employer organisations at the national and European levels to unite against the unfair competition which may result from posting fraud. For the trade unions, the goal is to ensure employee rights and avoid the consequences of social dumping on working and employment conditions for workers in the different Member States.

The social partners have many different roles at various levels and use different means to obtain results.

1. The intervention of social partners in worker posting: various types of action

1.1 Inform posting participants of the applicable legal framework

In the sectors studied for the project (construction, agriculture), the social partners take charge of informing companies and employees. Typically, information concerns the applicable regulations in the host country in a posting situation. It can also concern the rights and obligations of posted employees in the host country.

However, this information can also aim more broadly at employees, companies which provide services and contracting companies. The GATEWAY Guide for foreign employees in Finland <http://www.rakennusteollisuus.fi/RT/Ty%F6markkinat/Opas+ulkomaalaisten+ty%F6skentelyst%E4+Suomessa/>, which was published in Finnish and English, is a good example of this type of initiative.

The way in which this information is supplied to participants in posting situations varies.

Thus, in a context like the Flamanville construction site, a website with specific information exists, along with a guide to employee rights in five languages which is distributed by the client to all new employees entering the site (see [Action sheet n° 21](#)).

Information can also be disseminated through public meetings for workers who are candidates for posting. The collaboration implemented in the agricultural sector by FGA CFDT in France and the Bulgarian NFZGS Podkrepa trade union is an example of this type of action (see [Action sheet n° 2](#)).

1.2 Sensitise posting participants and train employees

In addition to delivering information, the social partners adopt targeted strategies, in partnership with public authorities if necessary. This is the case, for instance, of the Hainaut Province multipartite convention, which provides for the organisation of sensitisation days (see [Action sheet n° 19](#)).

Along with sensitisation, occupational health and safety can give rise to specific actions because of risks present in the sectors analysed; this type of intervention is more related to training. The social partners of the construction industry in Denmark have created a website in several languages (Danish, English, German and Polish) offering attractive learning material for a set of sector-specific trades <http://safe-construction.dk/>

1.3 Support posted workers in the host country

The limits associated to informing posted workers can lead to defining initiatives whose purpose is not always to offer information to be directly used by posted workers. From a different perspective, this is especially the case of trade unions which are positioned as resources which posted workers can call on. In other words, the idea here is to support foreign workers. Initiatives of this type require an appropriate strategy of approach and mobilisation, since posted workers are often barely visible and difficult to reach (see [Action sheet n° 1](#)).

We find an echo of this orientation, which rests on the concrete support of employees, in the idea of more broadly developing information at the points of contact accessible to posted workers or to companies within the host countries, a perspective which has been extensively covered in our workshops. Actions like those initiated by FGA CFDT /NFZGS-Podkrepa are partly based on this way of thinking, which considers the social partners as resources to be mobilised at the side of public authorities, in particular the liaison offices. In some countries (Belgium, Luxembourg), they act to inform and support the participants.

1.4 Alert public authorities to potentially fraudulent practices

This function is essential, especially in host countries, since it is unrealistic to think that public authorities can have more than a partial knowledge of operations involved in worker posting. The

structuring of collaboration between social partners and public authorities can be formalised through agreements, charters or partnership conventions. We have noted traces of this type of formalisation in certain countries involved in the project. In France, this role, which is assigned to social partners, is included within the more general framework of combating undeclared work through the National Partnership Convention to combat illegal employment in temporary work, which was signed on May 10, 2006 (see [Action sheet n° 8](#)).

In Belgium, it has been established through partnership conventions in different sectors of activity (see [Action sheet n° 5](#)).

1.5 Supervise the application of current regulations

The social partners' role in alerting authorities to potential social fraud is proof of their involvement in supervisory actions. In addition to being associated to repressive actions, this involvement can also help prevent illegal behaviour. In this respect, we note that the Hainaut Province Convention provides for an analysis of company contracts. The Convention stipulates that company contracts drawn up between contracting owners and entrepreneurs or between main companies and subcontractors may be examined with regard to rates set, which may reveal a dependence on undeclared work (the "feasibility" of a contract is analysed from the viewpoint of rates as compared to expected delivery dates, taking into account the number of workers employed and the amount of benefits to be provided for these workers) (see [Action sheet n° 19](#)).

Logically, the social partners are naturally involved in this work, although the convention states that company contracts must be communicated to the social partners in an anonymous form only.

However, we find elsewhere in Europe that the involvement of social partners in supervisory activities is much more developed. We can cite significant sectorial initiatives in countries where the level of social dialogue is very high.

In the Netherlands, the SNCU (Stichting Naleving CAO voor Uitzendkrachten) (see [Action sheet n° 17](#)), the office which supervises the application of collective bargaining rules in the temporary work agency sector) was established in February 2004 by the trade unions (FNV Dienstenbond, CNV Dienstenbond and De Unie) and employer organisations in the sector (ABU and NBBU). It was created in accordance with negotiations on the renewal of the collective bargaining agreement applicable to the temporary work agency sector. This office was founded essentially on the impetus of a shared wish to combat unfair competition and wage dumping in the sector.

It aims at several goals: supply information and advice to user companies, temporary workers and temporary work agencies; cooperate with other authorities; encourage compliance with the conditions established by the collective bargaining agreement and with social fund provisions; ensure that these conditions and provisions are complied with; and ensure compliance with the exemptions to the conditions established by collective bargaining. The office has implemented an assistance centre and phone number, a website and a specific site for alerts: www.meldenhelpt.nl

Some Member States have implemented an even stronger level of supervisory actions.

Here, we touch on some of the profound differences characterising the industrial relations systems within the EU. Participants vary, and more or less importance is given to the social partners in the enactment and application of social rules. It should be pointed out that in some countries, in particular Sweden and Denmark, it is the social partners, and not the State, who use collective bargaining agreements to define the rules applicable to work relations. In these situations, the role of the social partners is very important: in Denmark, they are in charge of supervising the application of collective bargaining agreements, which are essential sources for regulating labour relations.

In Finland, the social partners also play an important role. In collaboration with the Finnish labour inspectorate, they draw up collective bargaining agreements, which are generally mandatory, and ensure that they are properly applied.

In this context, the involvement of social partners in posting situations is consequently stronger than in countries where the government plays a central role in social matters. Thus, in Denmark, if a main company affiliated to an employer organisation has signed a contract for supply of services by a foreign company posting workers, and the supplier does not comply with the applicable collective bargaining agreement, the trade union can, within 48 hours, convoke a meeting on the site to begin the process of negotiating the application of the collective bargaining agreement with the supplier company. The supplier must also prove that the collective bargaining agreement has been properly applied.

1.6 Act on the labour market

Along with the “traditional” means of regulating posting situations, the project has enabled revealing and discussing other ways to act. These ways assign a leading role to the social partners. This is the case of sectorial arrangements implemented in some EU countries, in particular those which are preferentially worker-supplying countries. We can mention here the actions which may be deployed by joint sectorial funds to develop the attractiveness of the sector and ensure worker qualification (see [Action sheet n° 23](#)).

Tools like these provide potential ways to regulate posting. First, developing the attractiveness of a sector through training offered to workers is a way to guarantee higher skills and thus increased competitiveness for companies in the worker-supplying countries, particularly as concerns subcontracting markets initiated by major ordering parties. This gives rise to the installation of what we could call a counter-incentive to relying on subcontracting through unscrupulous intermediaries, whether they propose services directly or act as mere labour suppliers.

Second, we can expect training actions to encourage a certain “empowerment” of workers who will be posted by reinforcing their ability to avoid certain “professional risks,” whatever the legal support for posting, as well as to resist unscrupulous propositions, thus promoting the conditions for a transparent call for subcontracting by companies.

We find the same type of orientation when we consider the development of transnational training projects on occupational health and safety initiated by the social partners in certain sectors; this type of training aims to better arm workers who are candidates for posting in Europe.

2. Developing synergy between social partners and public authorities

Action by social partners is being developed :

- at the European level, with the creation of a site by the EFBWW / FIEC social partners for the construction industry; this site is designed to inform companies and employees of the applicable legal regulations (duration of work, minimum wage, etc.) in the different Member States. <http://www.posting-workers.eu/>
- at the national level, with initiatives in several action areas, as mentioned above, which complement actions by public authorities.

We should ask ourselves whether this complementarity can lead to the development of synergies even further upstream. Concerted action between the different participants was at the centre of our project. This is why most of the examples mentioned above reveal collaboration between different participants. It is, however, possible to go further than merely observing a “bias” related to the goals of our project. Although certain areas of involvement which we have identified can, effectively enough, be based on either the “unilateral” action of a particular participant (such as an information campaign designed for posted workers or companies) or on “joint” action, our project shows that the action of social partners is even more pertinent and has greater positive effects if it is combined with the action of other participants, in particular the public authorities in charge of posting.

Overall, the practices discussed in our workshops show that collaboration between the social partners themselves and/or between social partners and public authorities enables:

- facilitating the identification of at-risk situations and therefore of reinforcing public supervision (see the examples listed under the alerting role);
- define more effective action frameworks and tools to prevent abuse (example of the elaboration and use of access control badges on construction sites in different countries; in Belgium, example of the Hainaut convention on the analysis of company contracts) (see [Action sheet n° 18](#)).

- act on social regulations at major sites in the construction area (example of the concerted actions of trade unions and contracting owners) (see [Action sheet n° 20](#), [Action sheet n° 21](#)).

Finally, we must not naively plead for more cooperation. We cannot help but recognise that in this respect, many interesting initiatives have arisen from the contexts which they are part of. This is especially the case of practices in certain countries such as Finland, where the participant/industrial relations system encourages continuing collaboration between participants. This is undoubtedly a preliminary condition for joint mobilisation in specific situations on specific worksites (see [Action sheet n°7](#)).

Methodological milestones

- **Share pertinent and useful information between public authorities and social partners, in particular by collaborating on the design of data to be supplied.**
- **Develop the fundamental alerting role of the social partners by reinforcing ties between professional organisations and trade unions and public authorities to act upstream.**
- **Develop preventive approaches by establishing the conditions for a dialogue between participants as far upstream as possible to promote transparent contracting.**
- **Study the access of social partners to the IMI database and develop access to information on supplier companies.**
- **Reinforce transnational collaboration between social partners.**

Actors' viewpoint

Actors' viewpoint

Viewpoint of construction sector employers

1. Sensitising - Informing - Supporting

Information is one of the central elements for ensuring the respect of legislative provisions in general, and, in particular, of provisions concerning the posting of workers, where the transnational aspect creates an additional difficulty.

Therefore, it is important that the different players – employers, employees and controlling bodies – have access to this information, which must be easy to find, precise, understandable and reliable.

Before posting, employers must be aware of the administrative steps to be taken and the legislative provisions to be followed in the host country. If necessary, they must be able to verify information concerning an employer in another member state with whom they might wish to collaborate.

Employees must be aware of their rights as concerns working conditions in the country to which they will be posted.

Before any posting operation, organisms in charge of verification must know which company will be coming to their territory, for how long, where, with which workers and so on. They must also be able to have access to information concerning a company and its employees in their country of origin.

This is why construction sector employers:

- Favour the support of initiatives by social partners as concerns access to information (e.g., the FIEC-EFBWW website: www.posting-workers.eu).
- Encourage Member States to implement systems which notify before posting takes place.
- Encourage public authorities to actively collaborate in the development of existing tools for the exchange of information (e.g., the IMI systems, the internal market information system or EESSI, which is the system for the electronic exchange of social security information) or

bilateral agreements with the possibility for service providers to use these information channels to verify certain data concerning a potential partner or other Member State. The development of these tools should be continued and completed with an automation of the transmission of certain information. Over the longer term, the interconnection of national business registries would also be very useful, both for service providers and for controlling bodies. This should, of course, be done while ensuring the protection of personal data.

- Favour the idea of a "single window" for accessing information, as suggested in the proposal for a directive related to the "execution of the Posting directive" and, in addition to initiatives by social partners, emphasize that public authorities are mainly responsible for making this information available.

2. The role of social partners

Employer representatives have an important role to play with respect to legislators, to their respective members and to their employee representatives.

With respect to legislators, it is primordial to develop a dialogue as far upstream as possible to ensure that measures which will be taken are appropriate to the goals to be reached, as well as to the specificities of each sector, and that they can effectively be applied by those who must ensure they are followed.

In particular, this is why Article 154 of the EU Treaty makes it mandatory for the European Commission to consult with social partners at the European level in a number of areas.

On the national level, social dialogue also plays an essential role because it enables social partners to develop and implement instruments which are appropriate and adapted to the specificities of each country.

Together, the social partners can also develop initiatives and their corresponding tools, which can then be taken into account more easily by their respective members.

In light of the issues of posting and the combat against undeclared work, on the national level, this collaboration has given rise in several countries to different measures, such as the creation of verification cards for accessing worksites or, at the European level, to the website developed by FIEC and EFBWW, which are social partners for the construction sector (www.posting-workers.eu).

Finally, collaboration between social partners in most Member States in Western Europe also takes the form of "matched social funds" (unfortunately, this type of fund is almost nonexistent in the countries of Eastern and Central Europe, except for Romania). Through these bodies, it is also possible to develop tools which enable supervising construction companies on the national market and, through bilateral agreements with similar bodies in other member states, supervising cross-border operations. Construction sector employers support the development of funds like these in countries where they do not yet exist (mainly in Central and Eastern Europe).

The EFFAT Viewpoint

The project carried out with INTEFP is part of a long-standing study by the EFFAT agricultural sector on mobility and illegal work. The three-part framework has enabled enlarging the perspective to other sectors, as well as obtaining more in-depth knowledge on the posting of workers. Discussions have been very productive and have enabled establishing a shared outlook between countries which send and those which receive migrant employees.

Agriculture is the sector which employs the greatest number of migrants in Europe, approximately have of four million seasonal workers. Agriculture is also known as a sector with a very high rate of undeclared work.

1. The relevance of posting for agricultural employment in Europe

We have been concerned with this question throughout the study.

Indeed, the different forms of posting are not relevant to agriculture:

- Provision of services does not exist for seasonal work. In France, verifications by the Labour Inspectorate of agricultural companies have shown that, in reality, situations are based on illegal labour subcontracting.
- Posting through the intermediary of temporary work companies has appeared in the last few years in France and is undergoing strong growth.

Discussion has brought to light the fact that other partner countries do not know about this type of employment in agriculture. In addition, agricultural operations in France have never called on temporary work companies inside France, which are more expensive than direct hiring.

This type of employment appeared with foreign companies which are specialised in transnational placement. Indications point to the fact that this is in reality a specific arrangement to avoid controls and to better hide certain abuses, such as non- or under-declared work or payment below the minimum wage and collective bargaining agreements.

We have observed that trade union organisations and supervisory services have great difficulty in grasping the situation of employees. In most cases of extra-Community origin, they are vulnerable, isolated and do not speak French well.

Under these conditions, it is impossible for the trade unions to establish contact with them.

2. Transnational control and coordination

Discussions have allowed observing that the coordination of work between services does not function well, although progress has been made and is continuing to be made. This is because certain countries do not respond to the requests of their counterparts or do so in an incomplete way only.

Is it a coincidence that these same countries are the ones which habitually offer a framework of social or fiscal optimisation?

We have also observed that the means available to trade unions and supervisory bodies are insufficient to respond to these complex situations, especially in a context of budgetary constraints.

In conclusion

Throughout Europe, agricultural employment is a matter of a direct relationship between employers and employees. If there is posting, this is because of the ease with which legislation can be circumvented.

Better coordination between social and supervisory partners cannot compensate for inadequate national and European legislation on posting and undeclared labour.

3. The role of social partners and government authorities

The European Union of 27 countries has given rise to the freedom to travel and work within an area where there are major differences in income.

Social partners and the government have a key role to play in building an effective economic area with coordinated and harmonised social regulations for competition which prevent social dumping.

For fifty years, we have had a European social dialogue for agriculture which is supported by the European Commission.

In this context, we provide support for social partners in the new member countries to develop their national social dialogue by sector. Constructive social dialogue ensures social regulation, limits the negative consequences of mobility and promotes economic development.

Within this framework, we also develop ways to facilitate and secure the mobility of migrant employees:

- A computerised transnational placement platform is being developed. It should allow establishing contacts based on skills and aptitude between an employer and a job applicant from a different country. This service will be included in EURES, the platform for coordinating European governmental placement services.
- An Agripass for seasonal workers should enable securing their activity by keeping a record of their professional experience. It could be completed by tracking the situation of workers with respect to their social protection and retirement rights.

Two Internet platforms with information on the rights of seasonal migrants have been created by EFFAT: Agripass and Agri Info.

The sharing of means within a dual or three-part framework would undoubtedly enable improving these platforms.

Finally, another challenge for the different participants, government services, employer organisations and trade unions is to build a European and transnational action framework.

The FGA and Podkrepa project is one example of this, and the relations between supervisory services in the context of this project is another.

In conclusion

We cannot leave transnational placement in the hands of placement companies based on social and fiscal optimisation. The legal framework of posting currently offers them the possibility of taking advantage of the differences between countries to avoid supervision.

EFFAT feels that the creation of a European labour market and the securing of migrant activity is the affair of the government and the social partners and that maintaining social dialogue is the appropriate way to do this.

The longevity of our European social model rests on the success of this mission.

Expert's viewpoint

Expert's viewpoint

Posting of workers: enforcement problems and challenges - Jan Cremers, CLR-expert

Posting of workers as part of a provision of services is not new. A decision to subcontract other undertakings can be motivated by: the search for expertise and know-how not belonging to the own core activity; labour shortages, efficiency seeking; a traditionally evolved division of labour, with partners based on mutual trust, routine or historical reasons. In one of the first assessments dedicated to the implementation of the Posting Directive¹, a team of the European Institute for Construction Labour Research (CLR) undertook in 2003 an evaluation of both the legal context and the practical functioning of the PWD in the framework of the free provision of services.² The findings clustered around the key characteristics of posting:

1. *The existence of a direct labour contract in the home country and the maintenance of the employment relation.*

Not all Member States had implemented the notion ‘maintenance of an employment relation’ directly into national law, and a grey area of economically-dependent workers existed. The fact that under the rules applicable for the coordination of social security, the decisive authority as to whether a person is self-employed or employed is the sending state, whereas under the Posting Directive it is the receiving state, causes misunderstandings and a lack of clarity. The verification of whether labour regulations were really applied was and is an arduous path.

2. *The posting company should be a genuine undertaking that normally carries out activities in the home country (and that temporarily performs services abroad based on a commercial contract).*

Checking whether the undertaking in the home country was a genuine undertaking, pursuing economic operations on a stable basis turned out to be very difficult. Host countries had to rely entirely on information of the home country and the crucial cooperation and mutual exchange therefore were absent.

¹ Directive 96/71/EC of the European Parliament and the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services, OJL 18 of 21 January 1997.

²Cremers, J. and P. Donders, eds., 2004. The free movement of workers in the European Union. Directive 96/71/EC on the posting of workers within the framework of the provision of services: its implementation, practical application and operation, CLR Studies 4, Reed Business Information.

3. *The posting is temporary and the posted worker stays subordinated to the posting company while performing work related to the commercial contract between the posting company and the user undertaking.*

Posting is temporary and workers do not seek permanent access. In practice, most Member States applied the posting periods which are used in the social security co-ordination Regulations. But, whether the posting was just workforce supply or in fact a service contract was not easy to control in the host country.

The CLR-research in 2003 found that the measures taken by Member States to ensure compliance with the posting rules were not very well developed. Both the liaison offices and responsible institutions in the Member States suffered from a lack of staff and were lacking information to give real content to the posting rules. Awareness campaigns, for instance by organising seminars where collaborators of the competent bodies meet and exchange experiences were recommended.

Based on this research the European, the social partners in construction (FIEC and EFBWW) formulated a joint statement and pinpointed several fundamental problems. The partners noted that the grey zone of economically-dependent work was (and remains) a growing problem in the sector. A good definition of ‘employees’ and ‘self-employed’ in national law can avoid problems with the application of the implementing legislation of the Directive. Furthermore it is important to be able to verify, legally and in practice, if a worker is correctly posted and falls under the scope of the Directive, and about liability in cases of fake self-employment and/or fake posting. Without these, whatever the apparent regulation of posted workers’ rights, these are unlikely to be enforceable in practice.

FIEC and EFBWW recommended implementing a provision to define who is deemed to be the real employer and thus can be held liable in such cases as fake posting by letterbox companies or fake self-employment. The social partners in construction also referred to the desirability of providing ‘transparent’ and ‘accessible’ necessary information on the applicable labour conditions for a good application of the Directive. For the construction industry a European portal website with links to national websites and/or databases was suggested (and in the meantime realised: www.posting-workers.eu). The social partners’ joint statement noted that much was needed to improve the Directive compliance, especially administrative co-ordination. While the notification of the provision of services is a useful instrument to enforce the Directive, labour and social inspectors needed to be fully authorised to check and investigate whether the labour conditions of the posted workers were respected. Fraudulent service providers – who abuse the posting to distort the construction market and create social

dumping – exploit the national borders of administrations in order to avoid being caught and sanctioned. A more effective execution of sanctions in cross-border situations should be ensured and national social and labour inspectors should step up their co-operation.

A team of CLR-experts, across twelve country cases, reinvestigated in 2010 the functioning of the principles formulated by the Posting Directive.³ The focus was on the social and economic disparities between the formal legislative or conventional rights and the real wages and remuneration, working time, paid leave, living conditions and health and safety. Two basic methods were exploited: fact finding based on available national sources, control related data and statistics and prominent cases, best practices and the use of an indicative list of research items on compliance, and experiences with monitoring, enforcement and sanctioning. The experts concentrated on compliance related evidence and succeeded in reporting the available facts in the field of control. A logical part of the national investigation was to use information from the liaison offices and authorities responsible for monitoring the terms and conditions of employment. The final report, an overview of actual posting in theory and practice, was built on three important pillars: the results of the preparatory work, a research synthesis and summaries of the national reports.

Compared to the assessment of the 2003 study, greater divergence in transposition and actual application was identified. As the Directive was concluded in the early 1990s it was not foreseeable what the consequences of the 2004 enlargement would be, with a high proportion of these states not offering commitment to collective bargaining as a means of labour standards regulation. A second development has been the extension and intensification of agency work, subcontracting and outsourcing in numerous labour market segments. Both developments have had a serious impact on how posting is actually organised in practice. Nowadays the use of the posting mechanism ranges from normal and decent long-established partnership between contracting partners to completely fake letterbox practices of labour-only recruitment. In the 2011 CLR-report, four applications of posting-related cross-border recruitment were distinguished.

1. Normal posting with specialised subcontractors providing temporary services in another EU Member State with well-paid skilled workers or qualified staff both belonging to the posting companies' core workforce.

³Cremers, J., 2011. In search of cheap labour in Europe, working and living conditions of posted workers, CLR-Studies 6, International Books, Brussels/Utrecht.

2. **Legal posting** in the form of labour-only subcontracting where the calculation is made between engaging a domestic workforce or bringing in a workforce from abroad under the ‘free provision of services banner’. The reasoning followed is that a supplier providing workers from a country with low social security payments is cheaper than a domestic supplier. The legal character of the posting can be questioned if this is combined with long working hours and poor living and working conditions.
3. **Questionable practices of ‘legal’ posting** where the recruited workforce that is legally posted is confronted with deductions for administrative costs, for lodging and transport, tax deductions and the obligatory refunding (after the return back home) of (minimum) wage payments. These practices are clearly in breach of the PWD.
4. Finally, different types of **‘fake’ posting** which varies from the copying and distribution over a whole work gang of falsified E 101/A1 forms; the recruitment of posted workers who were already in the host country, or workers turned into bogus self-employed; recruitment via letterbox companies and unverifiable invoices for the provision of services.

The use of posting in labour-intensive segments of the labour market does not necessarily lead to a deterioration of working conditions, but it has created an opening for new forms of recruitment not intended by the legislators. The problem arises as soon as cross-border labour-only subcontracting is presented as a provision of services. This is especially the case when companies transfer the recruitment of labour to small subcontractors, leading to the use of agencies, gang masters and other intermediaries. These agencies become the go-between for the worker and the user undertaking or the specialised subcontractor. Distortion of the labour market is potentially substantial as minimising labour costs may be very attractive by bringing in an undocumented element for part of the official work. The lower stratum of posting is then an illegal supply of cheap labour via agents or gang masters. Groups of workers are recruited via letter box companies, advertising and informal networking. Posting thus becomes one of the channels for the cross-border provision of cheap labour in the single market without reference to the free movement of workers and the rights that can be derived from the EU law related to genuine labour migration.

Based on the CLR-research it can be concluded that monitoring of posting rules is difficult and hampered by the ECJ limitations, enforcement lacks strong sanctioning, fines are weak in an extra-territorial context and in most countries there are no specific posting-related enforcement instruments. Examining the phenomenon in detail leads to the conclusion that a concentration of posted workers in the lower echelons of the labour markets and in specific regions, segments and sectors implies serious

risks (distortion of competition, erosion of workers' rights and evasion of mandatory rules). Employment conditions, wages in particular, offered to posted workers, if not subject to proper monitoring and enforcement, may undercut the minimum conditions established by law or negotiated under generally applicable collective agreements.

There is some evidence that the ending of transition rules on labour market access for EU8 citizens has led to a significant substitution of letterbox postings, by individual direct temporary agency recruitment. Since they no longer need a work permit, workers are coming in through more direct forms of work, such as temporary or self-employed workers. Thus, next to the (ab)use of posting rules also cross-border agency work and the provision of services by (so-called) self-employed can function as methods to circumvent the rights based labour migration. In these cases the posting rules have been used as a transitional method and channel of recruiting temporary workers from EU8 countries by circumventing the applicable labour market restrictions with an invisible workforce on site that is settled through an invoice of the service supplier to the main contractor or the client. The EC has admitted that if such divergence takes place on a large scale, this might undermine the organisation and functioning of local labour markets.⁴

The project *Posting of workers – Improvement of collaboration between public bodies and both sides of industry*, organised in the period July 2012 to the summer of 2013, led to several new insights and to the confirmation of practical problems that were partly already identified in the referred CLR-literature.

The preparatory stage signalled the necessity of enhanced cooperation between all stakeholders (public and competent bodies, social partners) during the whole process: before the cross-border provision of services starts with posted workers and in the period of the workers' stay in the host country (and in case of breaches, even after the service provision has ended). The project has led to the formulation of fields of action that fit (to a certain extent) in a chain of activities with shared partnership and cooperation models.

The EU treaties underpin the right to work, residence and labour rights, plus equal treatment for EU citizens. Although posted workers are supposed not to seek access to the labour market of the host country the posting principles enshrined in the EU Posting Directive can be seen as an effort to guarantee posted workers these rights enshrined in the EU treaties. The starting points in the field of the posting of workers for the legislator were the relationship that was kept upright with the basic social security in the home country and the respect by the employer, who delivers services by posting workers from their (normal) employment in one member state to another member state (temporarily),

⁴European Commission, 2008. Employment in Europe 2008, chapter 3: Geographical labour mobility in the context of EU enlargement, Brussels. <http://ec.europa.eu/social/main.jsp?catId=119&langId=en>

of a large part of the labour standards applicable in the host country. This presumes the existence of reliable databases (to check compliance of the social security rules and to find the necessary information with regard to labour standards, just to mention two key areas) and the installation and adequate functioning of institutions that supply the information, prevent fraud and monitor the regularity.

The notion that fraudulent use of posting is often shaped as a circumvention of the national regulatory frame of pay, labour and working conditions and social security in the host state has been confirmed in the findings of the project. Forms of circumvention can be:

- Cross-border recruitment via (temporary) agencies.
- Sham self-employment in cases where differences between a commercial contract (for the provision of services) and a labour contract are blurred.
- Fake posting because control is inadequate or easily bypassed.
- Shift to other industries (regime shopping).
- Manipulation with free establishment (fictitious companies and arrangements) and country of residence.

Abuse of entitlements that are guaranteed by the posting rules (working time, minimum wage, pay scaling not in line with skill level, absurd deductions).

Control of the regularity of posting and the collection of evidence and supporting documents are hindered by poor registration and the lack of the necessary competence in the host country. It is relevant to memorise that participants in the project often had to conclude that an accumulation of breaches and circumvention was the rule rather than the exception once irregularities were detected. This, of course, raises not only the question how to find justice. Even more relevant is the question where the competence lies for the overall compliance control. As long as registration and notification in the host country are seen as an administrative burden and not as an essential tool to control compliance a proper solution will not be found.

The INTEFP-project has generated important findings related to the provision of information, at sectoral, national and European level. The strength and the weakness of the flow of information have been discussed (easy access, how to keep information reliable and updated, language problems and terminology). Given the fact that the information has to come from different relevant authorities and actors, more coordination in this area is a must. At European level very positive experiences have been gained with the website/database elaborated by the European social partners in construction. It is worthwhile considering how these experiences can be linked to and brought into an initiative with other stakeholders (public and competent bodies at national level, the legislator).

The aim of the European legislator has been to install a legislative frame for a genuine process of cross border service provision. In order to avoid social dumping and distortion of competition (for domestic service providers) and with the aim to establish a level-playing field for these service providers a policy of prevention of fraud and anticipation of undesirable practices is needed. However, such a policy is still in its infancy. In some countries a relationship has been established (or even a full integration) with the migration policy or with the fight against illegality. Given the strong link with labour recruitment in general this is not very logical. Posting of workers in the case of the cross-border provision of services is more and more (as also has been demonstrated in the CLR-studies) an alternative way to recruit labour. Therefore, prevention and anticipation has to come from instruments that are labour market oriented and are shaped with and borne by the institutions and bodies that have created the conventional and legislative frame for our industrial relations.

Monitoring the process of posting and controlling the regular character of the cross-border provision of services with posted workers has proven to be a problematic area. The INTEFP-project has confirmed the problems with compliance, the lack of cooperation notably in this area, the difficulties to trace circumvention in cross-border situations and the weakness of the existing sanctioning mechanism. One of the additional joint frustrations for the competent institutions, and in fact for all stakeholders, is the difficulty to bring cases of breaches to a righteous end. This imposes obligations to the (national and European) legislator. Implementation that is poor makes legislation a paper tiger, legislation that is powerless is worse than no legislation.