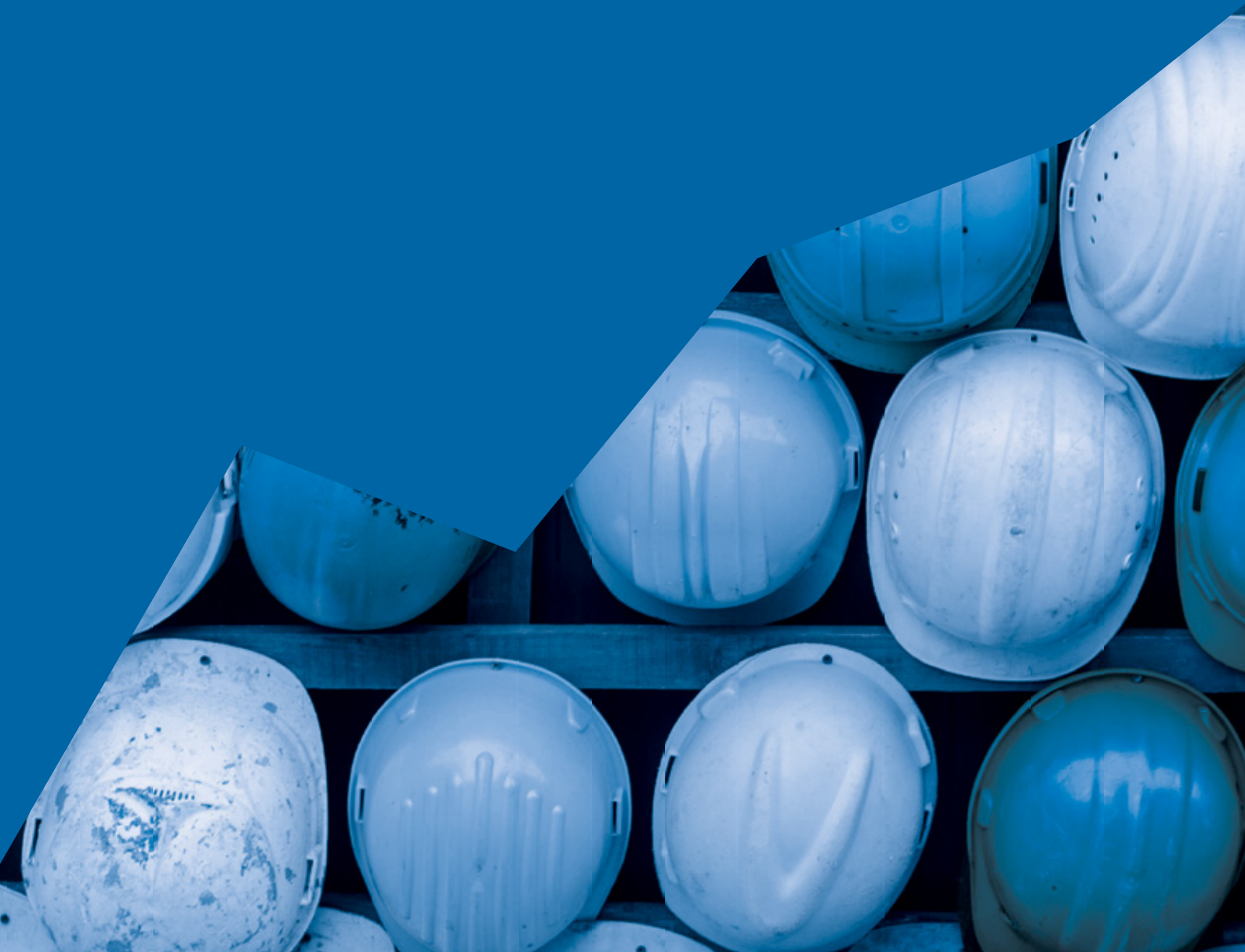


EU Post Lab

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

FINAL REPORT



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INTRODUCTION

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

The project stems from the findings of the Post-Lab project, which assessed a set of practices capable of easing compliance with rules concerning the posting of workers, as well as for detecting fraud. The results of Post-Lab, which suggest pathways for improving cooperation and data sharing in the field of posting of workers in the construction sector, are detailed in the related Guidelines and Final Report¹.

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

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

Running between October 2016 and September 2018, its core activities can be summarised as follows:

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

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

1. FEATURES AND USE OF ADMINISTRATIVE DATABASES RELEVANT IN THE AREA OF POSTING

1.1 SCOPE OF THE ANALYSIS

The desk and field research led throughout the project provides for an extended overview of datasets potentially useful to identify cases of fraud in the area of posted workers.

In particular, without having the pretention to be exhaustive, the analysis screened, described and assessed key databases covering a set of information addressing both the features and activities of companies and those of workers.

To this aim, the research departed mainly from the provisions of the Enforcement Directive, this setting out a list of elements necessary to test whether the establishment of an undertaking in a country is genuine (Article 4(2)), and whether workers are posted for a temporary period (Article 4(3)).

In particular, Article 4(2) requires Member States to make an overall assessment of all the features affecting the performed activities, including:

- (i) the place where the undertaking has its registered office and administration, uses office space, pays taxes and social security contributions and, where applicable, in compliance with national law has a professional licence or is registered with the chambers of commerce or professional bodies;
- (ii) the place where posted workers are recruited and from where they are posted;
- (iii) the law applicable to the contracts concluded by the undertaking with its workers on the one hand and with its clients on the other;
- (iv) the place where the undertaking performs its main business activity and where it employs administrative staff;
- (v) the number of contracts performed and/or the size of the turnover occurring in the Member State of establishment, taking into account the specific situation of, *inter alia*, newly established undertakings and small and medium-sized enterprises (SMEs).

These elements closely resemble those used for assessing whether, in case of posting, the compliance with the social security system of the sending country, allowed by Article 12 of Regulation (EC) No. 883/2004, is lawful and can therefore be certified by national authorities of the sending country by releasing the A1 'certificate of applicable legislation'.

Similarly, Article 4(3) requires the assessment of the temporary nature of posting to take into account comprehensively the following issues:

- (i) the work is carried out for a limited period of time in another Member State;
- (ii) the date when the posting starts;
- (iii) the posting takes place in a Member State other than the one in or from where the posted worker usually carries out their work according to Regulation (EC) No. 593/2008 (Rome I) and/or the Rome Convention;
- (iv) the posted worker returns to or is expected to resume working in the Member State from where they are posted after completion of the work (or the provision of the services) for which they were posted;
- (v) the nature of activities;

- (vi) travel, board and lodging or accommodation is provided or reimbursed by the employer that posts the worker and, if so, how this is provided or the method of reimbursement;
- (vii) any previous periods during which the post was filled by the same or another (posted) worker.

Finally, Article 9 of the Enforcement Directive entitles Member States to impose on undertakings posting workers to their territory the obligation to submit a declaration covering a range of information basically meant to identify the establishment, the posted workers themselves and the temporary nature of posting.

Declarations may include:

- (i) the identity of the service provider;
- (ii) the anticipated number of clearly identifiable posted workers;
- (iii) contact person(s) for the competent authorities and unions;
- (iv) the anticipated duration and the expected beginning and end date of the posting;
- (v) the address(es) of the workplace;
- (vi) the nature of the services justifying the posting.

Starting from these premises, and drawing from the knowledge basis of the Post-Lab project, the project partners drafted a questionnaire aimed at finding out the following information for each involved country: (i) the availability of databases covering information on the payment of wages and social security contributions, workers' careers and occupations and activities of companies in the construction sector; (ii) the availability of databases containing information on workers posted from/to their countries; (iii) the availability of a list of company-level information useful to verify the lawfulness of posting².

In particular, the first part was meant to inquire about the existence of data useful to tackle the hot issues of misconduct in the payment of wages, which shall be aligned with the rates of pay applicable in the host country, and in the payment of social security contributions, generally due in the sending country. By seeking information on workers' careers and occupations, it also meant to glean information necessary to ascertain compliance with Article 3 of the Posting of Workers Directive, requiring posted workers to be normally employed in the sending country, and to verify whether the wage complied with the minimum rates applicable to a specific occupation or level of experience.

The second part addressed the existence of the declaration on posting, referred to in Article 9 of the Enforcement Directive, and of other relevant data on posting taking place from or to each covered country, as well as how this information is stored. Whenever in place, such databases can ease data matching if a request about a posted worker or a posting undertaking is made.

Finally, the third part took into account the elements listed in Article 4(2) of the Enforcement Directive with a view to identifying whether relevant variables are available in the covered countries' administrative databases, and whether they are accessible online to users other than the staff of the managing authority.

These include:

- (i) place of registration of the company: first and foremost, it is necessary to check whether an undertaking is registered in the sending country. Whenever a company is posting workers without them

² A second part of the questionnaire, which is dealt with in the Assessment Report, focused, instead, on the structure of the minimum wage in the country, on the use of administrative data to detect irregular employment, and on evidence of fraud. This part was meant to assess especially any gaps in the level of minimum pay across countries, and the misalignment between administrative data and factual reality.

being registered in the sending country, this may reveal a fraud, especially whenever, as is the case with construction workers, teleworking is hardly an option;

- (ii) location of offices/plants: the location of offices/plants is an indicator to determine where the company is actually established. In the case of construction companies, which may operate without plants and have one or more administrative offices, this information gains relevance more with respect to the enforcement of duties or sanctions than to monitoring. On the other hand, the same office may be registered as the place of establishment of many letterbox companies³;
- (iii) turnover taking place in the country: similarly, the Enforcement Directive calls for the assessment of the share of turnover occurring in the country of establishment. Clearly, a company carrying out most of its turnover in the country of establishment can hardly be deemed a letterbox company, especially as far as the construction sector is concerned, whereas a low share of turnover in the country of establishment may suggest a weak link with the declared country of establishment;
- (iv) overall turnover: as information under point (iii) may already require a good level of disaggregation, the research also investigates on the overall turnover, which may be a useful starting point for inspection purposes;
- (v) regular payment of taxes/ social security contributions in the country: these indicators help to reveal whether a company does pursue activities in a country, as it is supposed to pay taxes in the place of establishment, and social security contributions in the place of employment;
- (vi) employment of the staff in the country: also the place where the staff is recruited shall be taken into account, as this should normally operate in the sending country;
- (vii) payment of wages: information on the payment of wages is necessary to identify whether the remuneration declared/paid in the sending country complies with the minimum rates of pay applicable in the host country, as set out in Article 3 of the Posting of Workers Directive.

The analysis was implemented in a set of selected EU countries directly covered by partners, including: Belgium, Bulgaria, France, Germany, Italy, Poland, Portugal, Romania and Spain. Selected information has been provided also for Austria, thanks to the support of the sectoral fund Buak, associate organisation in the project.

Interestingly, as further detailed below, this sample provides for a balanced view of old and new Member States, as well as low wage and high wage countries, fitting the debate over problems which might arise from divergences in wage and social security contribution levels.

³ A letter box company is a business that establishes its domicile in a tax friendly country with just a mailing address while conducting its commercial activities in other countries for purposes of minimizing its tax liability.

1.2 OVERVIEW OF SELECTED DATABASES

The table below provides for a summary of the screening exercise, dividing databases according to country and coverage, i.e. whether the focus of information is on companies, on workers, or both. A residual category, 'other', is also included to distinguish those databases covering very specific yet relevant fragments of information. Cells distinguish those databases which are available on-line to external users (marked in green) from those whose access is restricted to authorised organisations, generally those managing the databases plus, possibly, those having an agreement with them (grey).

By clicking on the link, it is possible to reach the web-page where each database can be consulted or, in the absence thereof, the page where relevant contact information can be found.

As a general remark, it shall be mentioned that albeit many databases are accessible on-line, allowing for a quick and preliminary check of information, they are often available only in the home language.

Despite the focus was on the construction sector, generally databases cover workers and companies regardless of their sector of employment. For this reason, information in brackets specifies whenever data cover only a specific set of companies or, as for the 'other' column, which kinds of data are covered.

A complete description of each database is provided in the Preliminary Report.

Table 1: Summary of screened databases according to country and coverage

Country	Workers	Businesses	Other
<i>Belgium</i>	DIMONA	Crossroad bank for enterprises	Checkinetwork (Accesses to large construction sites)
<i>Bulgaria</i>		Database on employment agencies (only temporary work agencies)	
		Bulstat	
		Central Professional Register of Builders (only construction companies)	
<i>France</i>	SEQUOIA	Commercial Court Register (RCS)	
	Database of Declarations prior to Hiring (DPAE)		
	Social Security Declarations Database (DSN)		
	Information System on the Professional ID Card (SI-CIP)		
<i>Germany</i>	SOKA-BAU databases (only construction companies)	SOKA-BAU databases (only construction companies)	
		Register of Companies	
<i>Italy</i>	INPS databases	INPS databases	National Database on Irregular Companies (only payment of contribution to sectoral funds by construction companies)
		Business Register	
	Database on Seniority Pay (APE Database) (only construction companies)		
	PREVEDI Database (only construction companies)	PREVEDI Database (only construction companies)	
<i>Poland</i>	ZUS registers	ZUS registers	
		Knowledge basis of the National Tax Administration, legal acts, and Database on Tax Payers	
		National Court Register (KRS)	
		National Register of Official National Economy Entities (REGON)	
<i>Portugal</i>	Staff Members Database (QP)	Staff Members Database (QP)	
		National Information System of Inspection Activities (SINA)	
<i>Romania</i>	REVISAL	REVISAL	
		Database of the National Chamber of Commerce and Industry of Romania	
<i>Spain</i>		Central Business Register (CBR)	
	General Affiliation File (FGA)	General Affiliation File (FGA)	Professional Training Card (TPC) Database (construction workers' qualification, career and attendance of trainings)
			Register of Accredited Enterprises (REA) (only construction companies meeting requirements to work as contractors/subcontractors)

Legend:

	The database can be freely accessed by users other than officials of the managing authority or allied organisations, albeit access may be subject to registration and to the payment of a fee
	The database cannot be accessed by people other than authorised officials. Requests of information can be forwarded to the managing authority, but this may be restricted due to privacy issues or lack of mandate to share data.

Databases on workers are usually based on declarations concerning social security payments, employment contracts or, as it is the case of SOKA BAU and PREVEDI databases, on files concerning contributions to sectoral funds. Generally those are not openly available, due to restrictions concerning privacy. Yet public authorities often use these databases if a request is filed in the framework of the coordination of social security or of requests filed through IML.

As to databases managed by sectoral funds and paritarian organisations - SOKA BAU database (Germany), SI-CIP database (France), APE database, PREVEDI database (Italy), TPC database (Spain) - their data cannot generally be made available in the absence of relevant laws or collective bargaining provisions. As of now, selective sharing of information between funds from different countries takes place, as well as cooperation between most of these funds and some national monitoring and enforcement bodies. Yet the managing authorities are not allowed to provide third parties for data access.

For instance, pursuant to collective agreement, SOKA BAU is obliged to provide relevant information to the Federal Employment Agency, and to the Central Customs Authority, which is necessary for the assessment of the lawful participation in the holiday leave scheme managed by the fund.

As to the SI-CIP French database, it is worthy to mention the database, linked with information submitted to obtain the Professional ID card, is compulsory for construction workers and represents a very comprehensive set of data. Apart from demographic information on workers and on their employment contract, the database includes information on the construction sites where they are to be employed, proving particularly interesting to check whether the worker is or not normally employed in France. The obligation to have the card applies also to workers posted to France. Despite being managed by the coordination body of French sectoral funds in the construction sector (UCF), the related database is freely accessible to French supervisory bodies. Indeed, the card has been made mandatory by law following the experience of a voluntary card introduced by UCF (for further references, see the Post-Lab Guidelines).

Databases on companies are basically Business Registers plus the same archives covering workers for tracking employment contracts and social security contribution records, whenever they cover also relevant information on employers. Also in this case, the screening reached two cases concerning payment of contributions to sectoral funds (Soka Bau databases and the Database on Seniority Pay). Remarkably, a database on temporary work agencies is freely accessible for Bulgaria, including names and contacts of registered agencies, and the project partner BCC runs an openly accessible business register covering specifically construction companies, including detailed information on their activities. Unfortunately, both databases are available only in Bulgarian.

Finally, the last column covers four databases storing quite peculiar information.

The Belgian Checkinetwork registers the presence of employees, temporary agency workers, self-employed workers and posted workers in construction sites having a value equal to or higher than € 500,000.

Registration can take place through a range of different devices, from a smartphone to a gateway.

Nevertheless, even in this case, data cannot be considered fully reliable. The database can track the presences on the sites, as well as the presumed working time of all workers. Yet, inputs from social partners received during the events of the project pointed out that the system might overlook the presence of non-monitored 'back-doors', where undeclared workers are supposed to access the construction site.

On the contrary, the National Database on Irregular Companies, managed by CNCE, specifically focuses on payments made by construction companies to the Italian sectoral funds intermediating wage elements of construction workers (Casse Edili). Interestingly, this information, adequately filtered, is already shared with Italian public authorities to verify the companies pay contributions meant to cover a relevant share of wage, including seniority pay and holiday pay.

Pursuant to law provisions, in order to be authorised and be paid public works, as well as to be authorised private works by Municipalities, construction companies should be in line with: (i) social security contributions due to the National Institute of Social Security (INPS), insurance premiums against accidents at work due to the National Institution for Insurance against Accidents at Work (INAIL), and to contributions for wage elements due to Casse Edili and certified by CNCE.

The process, duly explored and assessed in the Post-Lab Guidelines, enables public bodies in charge of authorising or paying works to query the databases related to the three covered bodies through a web interface. Following a request, they receive only a positive or negative feedback from the system, whereas, in case of missing payments, the relevant body is automatically informed in a way that appropriate checks can be carried out.

As to Spain, the Professional Training Card was included due to its focus on workers' qualifications and attended training courses. As already detailed in the Post-Lab project Guidelines, the card appears to be a very interesting experience to keep track of key information in order to identify: (i) the real skills and occupation of a worker, relevant to understand the proper pay scale level when posted; (ii) the previous presence and activity in the country.

Albeit, Fundación Laboral, the paritarian fund responsible for the database, is not allowed to share related data with other bodies, its features prove certainly interesting for other experiences of professional cards.

Table 2: Professional ID cards and systems for registering accesses to construction sites: a cross-country comparison

	Belgium Checkinetwork	France Professional Card	Spain TPC Card
<i>Compulsory/voluntary</i>	Compulsory (for construction sites having a value of at least € 500,000)	Compulsory	Voluntary
<i>Coverage</i>	Employees and self-employed (also if posted)	Employees (also if posted)	Construction workers employed in Spain regardless of the employment contract (not posted workers)
<i>Demographic information on the employee</i>	Yes	Yes	Yes
<i>Information on the employer</i>	Yes	Yes	Yes, as for the worker's CV and pay slips
<i>Information on attendance of trainings</i>	No	No	Yes
<i>Information on presences in the construction site</i>	Yes	No, yet employees must wear the card when at work	No

Finally, the Register of Accredited Enterprises enlists only companies being authorised to work as contractors or subcontractors in the construction sector, pursuant to a set of criteria defined by law.

The database does not provide either a wide ranging storage of information or a comprehensive coverage of all companies in the construction sector. Yet, the presence of a firm in the database may well support the assumption that it is not a letterbox company.

1.3 POSTING OF WORKERS: RISKS FOR CROSS-BORDER FRAUD

The research identified a set of common drivers of fraud in the area of posting of workers, focusing on aspects concerning wages and letterbox companies.

As a premise, the analysis addressed 'basic' types of non-compliance concerning the rules regulating posting, such as the failure to comply with:

- The requisite of being normally established in the sending country and of normally employing there the worker to be posted abroad, allowing to pay social security contributions in the sending rather than in the host country (i.e. cases of letterbox companies);
- The requisite of raising pay up to the minimum rates entailed in the host country⁴.

These cases of clear infringements can mainly take advantage of cross-border information gaps.

Concerning 'letterbox companies', they may even fail to pay social security contributions in the country where they are formally established, possibly drawing the attention of enforcement bodies. Yet, they may fulfil their social security contributions duties in the sending country and be registered there for some time, despite pursuing no effective activity there or employing only administrative staff. Whereas social security institutions shall be aware of any missing payments by domestic companies, they might need a thorough and lengthy check to ensure that each company requiring the A1 'certificate of applicable legislation' actually pursues some activities there, as this may be not detected by information available from databases. Therefore, the risk is that, as arisen in some disputes brought before the European Court of Justice, the certification takes place on the basis of formal controls.

In addition, especially whereas administrative databases are spread in several bodies or at manifold levels of governance, the answers to requests filed by foreign authorities may take time, whereas letterbox companies can rather easily close a business and set up a new one in another country in the meantime.

In this respect, some interviewed experts, especially from social partners, pointed out the (re)introduction of obligations to obtain certificates in order to open a business in the construction sector, or, at least, to successfully attend courses concerning health and safety at work can reduce room for letterbox companies and bogus self-employment, while triggering possible benefits in the areas of workplace safety and quality of works.

⁴ This obligation, stemming from Article 3 of the Posted Workers Directive, has been recently reshuffled by Directive 2018/957/EU, replacing 'minimum rates of pay' with the wider concept of 'remuneration'. Member States are required to adapt their legislation by 30 July 2020.

Box 1 – The case of letterbox companies – Extract from the interview to a Bulgarian labour inspector

It is known that the practice of “letterbox companies” consists in looking for strategies to pay lower taxes and lower wages as well as establish poor working conditions. ‘Letterbox companies’ often do not have real offices and staff, and do not perform works in the country. Employment contracts can be registered online by an accounting office and often there is not an authorized contact person for the supervision body. The scheme is compounded by the fact that these so-called “subcontractors” exist for a very short time. Then, the employees are transferred to a newly registered legal entity and the previous one is immediately sold to a person with no property. The key feature of letterbox companies is that they can be set up very quickly, simply and cheaply and close down over a few hours, making supervision and control very difficult.

Clearly, identifying this type of fraudulent schemes is a very hard task to accomplish. However, this may be eased by reports to the Labor Inspectorates, media articles or official requests by a competent authority from another Member State. The access to national data on employment contracts is essential in terms of improving the controls against undeclared work.

As a result of active cooperation with Member States’ Labour and, also sometimes, Social Security Inspectorates it is possible to carry out more in-depth investigations in order to put an end to the above-mentioned fraudulent schemes.

Those problems are being addressed by the European Commission through the proposal to establish a European Labour Authority.

Should the proposal be approved, the Agency would be expected to smoothen cooperation between Member States, also by providing a framework for joint inspections and by intermediating and supporting cross-border requests for information. In this regard, the Authority should also employ personnel seconded from national authorities.

For what concerns the minimum rates of pay, the project compared the amount of minimum wages (as of 2018 across the countries,) with the presence of some additional wage elements deemed compulsory.

In order to implement the comparison, some simplifications were necessary. Whereas the preliminary report provides for a full description of the different wage setting mechanisms in place in the different countries, the comparison of minimum wages stayed with the lowest level applicable in each country according to law or, if generally binding, to collective bargaining. Some further methodological changes were necessary, as detailed below.

With regards to Germany and Belgium the monthly minimum wage was computed by multiplying the hourly rates for an expected number of monthly hours computed on the basis of the standard weekly working time (173 hours and 175 hours respectively).

As to Italy, given the presence of several collective agreements, which apply depending on membership and size of construction companies, the example took as a benchmark the agreement affecting large enterprises, albeit values do not differ significantly when compared with other sectoral agreements. In this case, the choice followed the instructions of the web-site on posting of the Ministry of Labour and Social Policies, which adopted this ‘leading’ agreement for minimum rates of pay to be complied in the construction sector.

In Spain and France instead the minimum levels may differ depending on the area of employment. Concerning Spain, the comparison took as benchmark the national minimum wage, set by social partners and binding as well decentralised bargaining implemented at provincial level. As to France, the comparison con-

sidered the national minimum wage as the minimum value: in France indeed the national statutory minimum works as a floor for collective agreements, which are further extended by means of a ministerial order. Nevertheless, minimum values of several regions are in line with the amount of the national minimum wage.

The comparison highlights a wide gap between countries, featuring a 1-to-9 ratio between the lowest (Bulgary) and the highest amount (Belgium).

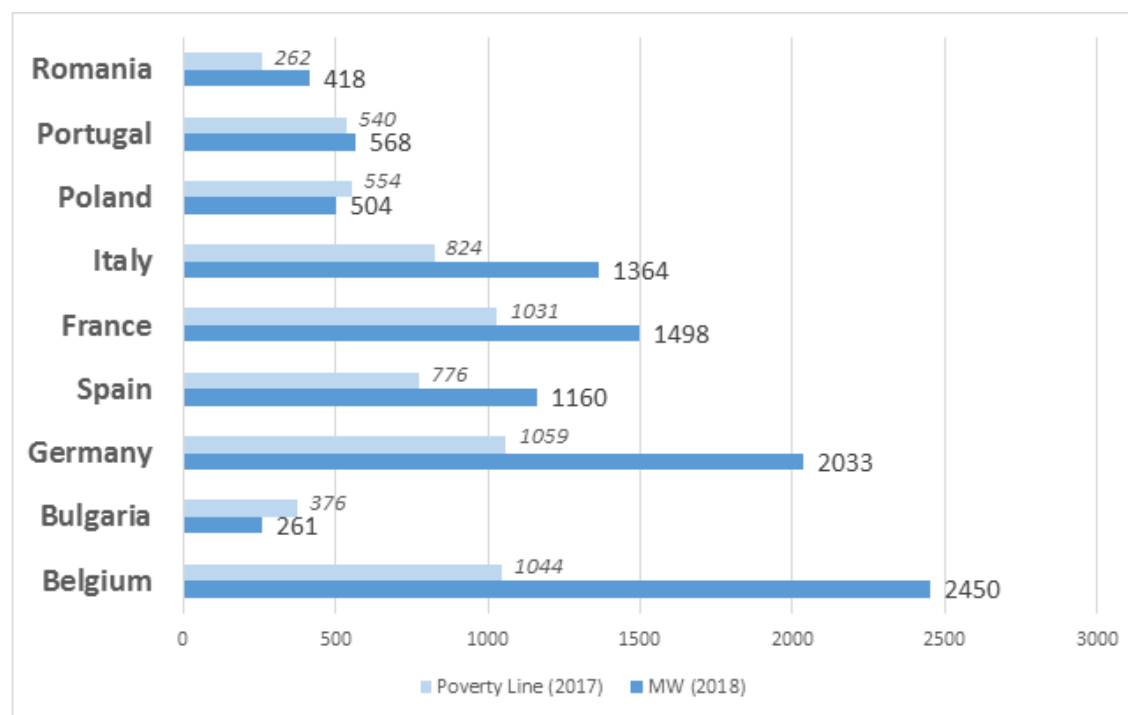
The sample can be divided in three clusters, with Bulgaria, Poland, Romania and Portugal in the group of 'low-wage countries', performing gross minimum wages lower than € 600 per month, Spain, France and Italy in the middle-wage group, with values ranging between € 1,160 and € 1,498; and Germany and Belgium classified as 'high wage countries', performing values above € 2,000.

Countries with higher wages are also those where minimum wages can take higher values according to the job occupation. This is the case of Belgium, Germany, France, Italy and Spain.

Among the low wage countries, Portugal has also pay scales growing in line with qualifications, reaching € 865.50 at the highest level, whereas pay scales set by sectoral collective bargaining in Bulgaria apply only to employers and workers who joined the signatory organisations. On the other hand, there are no binding pay scales in Poland and Romania.

In order to compare values of the minimum wages with the actual income levels in each country, the following table illustrates jointly the lowest level of the minimum wages in the covered countries as of 2018 and the poverty line for the latest available year (2018). The latter accounts for 60% of the median wage in each country, representing a possible benchmark to assess how the minimum wage fares to prevent in-work poverty given the different national standards⁵.

Table 3: Minimum monthly wage of a construction worker and poverty line (€)



⁵ In this regards, the Principle no. 6 of the European Pillar of Social Rights is inspiring, recalling that: 'Adequate minimum wages shall be ensured, in a way that provides for the satisfaction of the needs of the worker and his/her family in the light of national economic and social conditions, whilst safeguarding access to employment and incentives to seek work. In-work poverty shall be prevented'. The Commission did not go further in detail by specifying a given amount to be achieved in each country, whereby the European Parliament recommended wage floors should gradually attain at least 60% of average wages (Resolution of 14 September 2016 on social dumping in the European Union), a level which is generally higher than 60% of median wages, due to the influence on the average of the income of top-earners.

The ratio between the lowest and the highest poverty line shrinks to 1 to 4, facing this time Bulgaria with Germany.

In this regard a process of wage convergence would undoubtedly reduce the scope for non-compliance with minimum rates of pay in force in the host country. The low gaps between the poverty line and the minimum wages in the low-wage countries suggest the current minimum wage levels fail to prevent workers from falling into poverty, apart from being a potential threat in the area of posting.

The cross-country gaps even increase once other wage elements are analysed.

Whereas all the covered countries grant paid holidays or equivalent allowances to workers, in line with Article 7 of the Working Time Directive 2003/88/EC, the thirteen month pay is envisaged only in Belgium, Germany, France, Italy, Portugal and Spain, whereas the bad weather pay is guaranteed only in Belgium, Germany, France and Italy (in this latter case not covering posted workers).

Table 4: Minimum monthly wage of a construction worker, existence of selected wage elements and related coverage by sectoral funds

Country	Minimum monthly wage	Holiday pay	13 th month pay	Bad weather pay
Romania	€ 418			
Portugal	€ 568 +			
Poland	€ 504			
Italy	€ 1,364 +	(sectoral fund)	(sectoral fund)	(sectoral fund)*
France	€ 1,498 +	(sectoral fund)	(sectoral fund)	(sectoral fund)
Spain	€ 1,160 +			
Germany	€ 2,033 +	(sectoral fund)	(sectoral fund)	
Bulgaria	€ 261			
Belgium	€ 2,450 +	(sectoral fund)	(sectoral fund)	(sectoral fund)

* Generally not applicable to posted workers

After showing these differences, the analysis went further to address which other cases of undeclared work are common in the construction sector through analysis of the literature, a web survey and interviews to stakeholders from inspection authorities and social partners.

The hypothesis underlying the analysis is that even once formal compliance with the payment of minimum rates of pay entailed in the host country is ascertained, a number of fraud may still allow to circumvent rules through false declarations concerning employment status, job occupation and working time. Research car-

ried out throughout the project, as summarised in the Assessment Report, highlighted common mismatches between declared terms of employment and real working conditions, which can be listed according to the following categories:

- bogus self-employment (i.e. workers perform their working activities as employees but are registered as self-employed. As a result, they are not covered by the Posted Workers Directive, nor by the prescription to align wages with minimum rates of pay entailed in the host country);
- bogus part-time contracts (i.e. workers declared less hours than those they normally work, therefore receiving a lower wage than they should);
- over-reporting of allowances not subject to social security contributions (i.e. the wage of workers is artificially fuelled by means of undue meals or rent allowances not subject to taxes and social security contributions; such a process can be coupled with others replacing due wage with non-taxed allowances or reimbursements);
- repayment of a share of wage (i.e. payslips are correctly filled in, but workers either pay back a share of their wage to the employer in cash or are unduly deducted costs for transport and lodging);
- underreported overtime/weekend work (i.e. similarly to bogus part time, workers are pushed to work overtime hours or during weekends without this being accounted for in the payslip);
- over-reporting of absences (i.e. the wage is artificially reduced by accounting for in the pay slips inexistent absences).

In addition, the results of the web survey seemed in line with findings from literature and interviews, highlighting in particular complaints by posted workers failing to have their holiday paid and working above the maximum working time.

The analysis of fraud also concerned fully undeclared work (i.e. workers without any formal employment contract), whereby administrative declarations are simply missing. In theory undeclared work shall not relate with posting itself. Yet, this can be combined with the falsification of A1 forms.

Box 2: Undeclared work in the construction sector – a comparison with Austria – extract from the interview with BUAK officials

Each company established in a EU or EEA Member State or Switzerland posting workers or hiring out workers to Austria has to notify the Austrian Central Coordinating Agency Charged with Investigating Illegal Employment (Zentrale Koordinationsstelle für die Kontrolle der illegalen Beschäftigung), and to notify any change, like those concerning the place of work, the end of employment relationships or the hiring out of additional employees. This is particularly relevant in the construction sector where the beginning of works can be delayed due to various reasons. Non-compliance with notification requirements is subject to heavy fines, ranging from € 1,000 to € 10,000 for each employee, rising respectively to € 2,000 and € 20,000 in the case of a repeated offence. Yet, many employers fail to submit declarations or submit false statements.

About 50% of the construction sites employing posted workers inspected by officials from BUAK seemed to be idle. Some employers report wrong posting periods, fewer working hours or report wrong data regarding the qualifications of their workers.

Several cases of manipulation of wages and underpayment in Austrian construction sector have been reported. In some cases, allowances for overtime or shift work are not paid. In case of posting, some employers deduct the related costs (like accommodation, travel etc.) from workers' wages in the sending country. Suspicion of underpayment has risen in about 44% of all posted workers in construction sector controlled by BUAK inspection authorities. Yet, employers sometimes bring forward new relieving documents or employees withdraw their testimony before courts.

In case of posting in construction sector, employees are sometimes declared as 'associates' even though they do not carry out their work independently. We have therefore cases of bogus-self-employment. For instance, some Austrian construction firms contract exclusively with small limited-liability companies established abroad, having about three shareholders. Yet, in many cases only these three shareholders carry out work in Austria, and that makes very hard for Austrian authorities to scrutinize cases of under-payment or bogus-self-employment.

Other relevant cases, which are not directly related to wages, are: (i) misuse of fixed-term contracts, used to fill permanent positions; and (ii) bogus subcontracting and illicit intermediation of labour, whereby, in turn, workers employed through the 'contractor', 'subcontractor' or gang master may be subject to the previously mentioned forms of abuse (especially fully undeclared work and bogus self-employment) or having to pay back a share of their wage to the gang-master. Such circumstances overlap with cases of more or less severe labour exploitation or even trafficking, whereby the posted worker or, more in general, the migrant worker may be subject to multiple forms of exploitation or deprivation, reaching the areas of lodging, meals and transport to/from work.

Box 3: Gang-mastering and living conditions of mobile workers: extracts from the interview to a Labour inspector from Portugal:

We do not really like referring to as ‘social dumping’. Our language is about the dignity of work and decent working conditions because most issues do not relate to wages themselves. Some workers posted from Portugal live on the streets, so their problems are not about wages but about living on the streets, lacking support for inclusion. Our concern is to address this perspective, whereas the debate on posting often hides protectionist attitudes... When we have international meetings, we try to present the other side, that of ensuring decent work and living conditions for people. Our workers have the right to work, they must know that. Since we are in a common space, they have the right to look for a job where it exists. This is our reasoning, even if it was not effective, but we try to make a difference... Our workers employed abroad have no roots there, so they might undergo everything!

This complicated framework makes the detection of fraud related to posted workers even more difficult to be accomplished.

For instance, if a bogus self-employed is posted, the worker is not protected by provisions of the Posted Workers Directive. The ‘client’ can continue to pay them according to what agreed, while certifying its attachment to the social security system of the sending country would fall under the provisions of the A1 form.

If the Labour Inspectorate of the host country found out the worker is a ‘bogus self-employed’, it shall formulate a request of reassessment of the A1 form to the competent authority for coordination of social security purposes in the sending country. Whenever they either disagree, do not get quick access to information or fail to cooperate, the process might last for several months.

Before a decision on the worker’s status for social security purposes is taken, the Labour Inspectorate of the host country may still reclassify the worker as an employee limitedly to the purposes of Labour Law. Yet, this is not always advisable, also since the A1 form may still be used as a proof to certify the self-employment status of the worker.

In a way, whereas lengthy information sharing procedures may facilitate cross-border contamination of fraud existing across the EU, quick and efficient detection of fraud may also work the other way around.

As far as the setup of more efficient data sharing processes simplifies the information flow from companies to relevant authorities and between authorities themselves, the case may be law-abiding companies can easily access the EU common market, while those implementing fraud run the risk of having their irregular practices being detected abroad thanks to the cooperation between monitoring and enforcement bodies.

Box 4: Transnational bilateral agreements between Italy, Germany, Austria and France

This case proves very interesting to understand how empowering monitoring on the behaviour of companies may go hand in hand with simplification of information flow and reduction of administrative burden for both monitoring bodies and companies.

Such a process applies to three similar bilateral agreements in place between CNCE, i.e. the Italian coordinating body of the sectoral funds of the construction sector (Casse Edili) and similar national institutions active in other countries, namely in Germany (Soka Bau), Austria (BUAK) and France (UCF).

All these bodies are responsible in their home countries for wage elements considered as part of the pay rates posted workers shall be entitled to as per host country's provisions, like bad weather pay, holiday pay and the thirteen month pay. The amount these contributions can reach is roughly 30% of the payroll, making a difference both in the labour cost for employers and in the pay workers are entitled to, increased by the funds.

From an administrative viewpoint, in line with the prescription of adapting wages to the provisions of the host country set by the Directive 96/71/EC, undertakings sending their workers abroad shall register at the relevant fund in the host country, suspend the payment in the sending country for the posted workers, and contribute to the sectoral fund of the host country for the period of posting.

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

Having ascertained the similarity of minimum rates of pay and of the level of contributions rates applied by sectoral funds across the borders, the agreements allow companies posting workers not to contribute to the relevant sectoral fund of the hosting country: these companies instead stay attached to the sending country in a way similar to what occurs in the area of social security.

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

The sectoral fund of the sending country carries out the task of checking the compliance of the requesting companies with payments due to the fund. In case of positive verdict, the request is passed on to the institution of the host country, which approves the exemption and informs its local fund/branch.

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

At the same time, information flow on the regularity of posting between sectoral funds take place at the onset of the posting period and can continue during the posting, easing the detection of cases of non compliance.

For instance, in case of posting from Austria, and if an exemption is granted, the BUAK checks on a monthly basis that payments for wage elements intermediated by BUAK are made. Similarly, in the framework of cooperation between CNCE and SOKA-BAU, CNCE is informed on the number of Italian workers enrolled in the German construction site and check if their amount matches with the declared one.

Adapted from: Post-Lab Guidelines

1.4 ADMINISTRATIVE DATA AND THE FIGHT AGAINST UNDECLARED WORK

The way administrative databases are used to detect fraud varies to a great extent across the covered countries.

The Assessment Report provides a country by country review of the issue, including a final overview.

The comparative exercise provided in this report starts off from this analysis and summarises the strengths and the weaknesses identified across the countries.

Strengths

- **(Selective) cross-checking between different administrative sources**

Examples from Belgium, Germany, Italy and Romania prove inspectors cross-checking and matching different administrative sources to ease the screening, identification and monitoring of suspect companies.

Cross-checking can be implemented in different ways. Inspectors of an authority can be granted full or selective access to the databases of other organisations, or information might be summarised and filtered before being shared.

Box 5: Belgium – Cross-checking administrative database to detect fraud - Extracts from the interview to a social security inspector

Databases and field inspections complement each other. Cross-referencing two or more databases and statistical analysis makes it possible to select those files representing a fairly high risk of irregularity or fraud. In this way the inspectors in the field lose less time when searching the people or firms they have to examine. So, the data mining and data matching of databases make it possible to carry out more targeted field inspections. (...)

Most available databases can also be converted into an Excel file making it easy to forward and to consult them.

- Use of Artificial Intelligence to discover fraud

The emerging digital technologies can prove particularly helpful to discover fraud. In Belgium, the DATA MENTALIST programme do use artificial intelligence to implement data mining across a set of relevant database and support identifying companies having behaviours at risk of fraud. Yet, this is the only case detected by the project.

On the other hand, albeit sounding as a pretty interesting and cost-efficient option, Artificial Intelligence and other automatized methods of monitoring should be implemented quite carefully and as a preliminary and complementary tool to target inspection, as far as they can be biased by human prejudices or by the partial information they rely on. Similar concerns have been raised, for instance, about the adoption of similar methods for checking social fraud by people receiving social benefits in USA and, limitedly to the coverage of the project, in Belgium.

Box 6: Belgium – Debate over the effects of automatized controls

The use of automatized methods to check social fraud has been strongly criticized by a network of unions and NGOs in Belgium, deeming these methods not in compliance with law provisions on European Citizenship.

As a premise, it shall be considered the Directive 2004/38/EC allows the withdrawal of residence right to certain categories of EU citizens residing in a foreign country under a restricted set of circumstances. For instance, people having worked for less than one year in a Member State shall keep their residence right for at least six months once they lose their job. Afterwards, they may lose their residence right provided that they lack a genuine chance of being engaged. In any case, have the right to lodge an appeal and the decision shall be taken against an assessment of personal circumstances and not following an automatic process.

As of 2011, the Belgian Immigration Office was granted access to more and more employment and social security databases, including some of those addressed by EU Post Lab project, like the Dimona and GOTOT databases, gathering data on unemployment spells, access to social benefits and further relevant information.

As a consequence, the number of expulsions of foreign citizens rose significantly.

Whereas the Belgian Immigration Office argues detailed and individual assessments are carried out before an expulsion order is made, according to the network of unions and NGOs, the Belgian Immigration Office uses a set of stereotyped and paradoxical motivations to prove the absence of a 'genuine change of being engaged', like having attended language courses or vocational trainings.

Sources:

INCA CGIL, FGTB/ABVV, EU Rights Clinic, Bruxelles laïque (2016), Plainte concernant la violation de la Directive 2004/38 et du Règlement 882/2004 par l'État belge, Brussels.

Giubboni, S., Iudicone, F., Mancini, M. & Faioli, M. (2017), Coordination of Social Security Systems in Europe, European Parliament, Brussels.

- Proactive interaction between administrative data and inspection reports (PT, BE)

The overview arising from administrative datasets themselves is naturally subject to the risk of incompleteness or biases, as far as they reflect only a partial reconstruction of business reality.

Some inspectors mentioned sudden peaks in turnover or high shares of turnover occurring abroad may reveal the presence of letterbox companies. Yet, the databases and the functions or algorithms used to detect cases at risks of fraud may remain blind to other unknown or underestimated circumstances.

For instance, as remarked by an Italian social security inspector during an interview: 'we faced the case of a company invoicing all its services to German companies. Yet, following inspections, we found out the company devised plants in Italy, which were then installed at the premises of its German clients, therefore performing no substantial activities in Italy'.

As showed by the experiences reported in Belgium and Portugal, by filling the results of inspections in the databases themselves, inspectors can avail of a more complete set of information, while software themselves can better 'learn' or help detecting fraud.

- Sanctions and joint liability measures push companies to adopt their own data platform

Policy provisions concerning joint liability between the client and contractors can limit scope for fraud. Whereas it is hard to track and sanction a letterbox company, a mechanism of joint liability can prevent employers from contracting work out to providers failing to guarantee lawful terms of employment.

In this respect, the existence of such clauses in the Spanish legislation and of effective sanctioning mechanisms pushed companies to adopt their own digital platforms to monitor contractors and subcontractors, keeping track of employment contracts they enter, as well as of their wage and social security payments.

The role of joint liability provisions has been stressed also by interviewees from Italy and Germany.

- Transparency of business data

Information released by companies is generally publicly available in the covered countries, disclosing for free or upon payment a set of key information, e.g. the headcount, the turnover of a company or the whole budget sheet. The accessibility of these data can have intangible benefits, as far as companies can be accountable to a wider set of stakeholders, including competitors, social partners and academicians or journalists, who can freely access these data and work on them.

- Attempts to ease data sharing at transnational level to ease/monitor posting

As anticipated in the previous section, sectoral funds active in Italy (Casse Edili, through the coordinating body CNCE), Austria (BUAK), Germany (Soka Bau) and France (UCF) negotiated and successfully finalised agreements simplifying procedures necessary to post workers abroad, while making sure employers are in compliance with the payment of due wage elements (like the holiday pay), and easily allowing to check relevant information in the sending country if the need arises.

Weaknesses highlighted in the Post-Lab project, i.e. the rather manual flow of information, based mainly on e-mails, have been addressed by EU Post Lab, through which a prototype of web database has been built. This is meant to speed up the information flow, while easing the tracking of previous records.

Weaknesses

- Weak cross-checking between different administrative sources

Despite some remarkable experiences, in many countries strategic data sharing and matching between different authorities is still weak. The reason for that may be that privacy or technical issues hamper data sharing or also that policy makers do not perceive possible positive outcomes in terms of contrast to undeclared work.

Problems in this field have been reported especially in France, Romania and Poland. As to Poland, fragmentation of data across local authorities is also an issue, significantly slowing down inspections.

- Risks of false declarations by companies

An inherent risk of relying on administrative database lies in the provision of false declarations. Whenever inspections are rare or ineffective, the presence of compulsory declarations on hirings, wage and social security payment and turnover alone cannot make sure the related information is correct.

Formal controls on the presence of requisites for posting workers abroad

- Some interviewed experts remarked controls on the presence of requisites for posting workers abroad may take place only formally. Albeit the functioning of cross-border administrative cooperation between public authorities has not been thoroughly addressed in this project, these warnings recall some failed cases of cooperation brought before the European Court of Justice, such as the A-Rosa case (C-620/15), the Altun case (C-359/16) and others, with which it was dealt during the project meetings.
- Time lags in data availability/inaccuracy of data

Whenever data are inaccurate or unavailable at national level, transnational cooperation may also fail to work. Many databases suffer from time lags, which makes impossible to detect the just in time situation of the company, which may be particularly necessary in case of letterbox companies existing for a short time frame.

Sometimes information may not be complete or up to date. For instance, the Portuguese SINAI database has proved very interesting insofar it gathers results from field inspections, helping the use of these data to target inspections. On the other hand, it may include companies which have ceased their activities for years, while failing to include those that have been established for a short time.

2. EU POST LAB AND THE STRATEGY TO IMPROVE TRANSNATIONAL COOPERATION

The core phase of the project focused on the development of a prototype database covering information sharing between sectoral funds active in Italy, Germany, France and Austria. The agreements underlying the process have been shortly outlined above, in box 4, and have been assessed in the Post-Lab Guidelines.

The goals of the database are the reduction of the time needed for uploading data and the improvement of the quality of data by means of a shared web interface to be used by companies posting workers abroad and the involved sectoral funds. This can replace the current functioning of the exemption procedure, which takes place through mail exchanges and sending forms, implying the risk of delays and mistakes, and making monitoring of companies over time more difficult.

In particular, the prototype entails:

- The adoption of a common IT system for all the involved organisations,
- The reduction of data entry and manual operations;
- The possibility to make information necessary for the exemption procedure immediately visible on web;
- The possibility to export information in standard formats;
- The adoption of a modular system, in a way to allow for possible enlargements to other countries or other contents in the future.

Furthermore, it is worthy to mention the use of IT protocols allows to merge information from systems having a different structure. Therefore, it is not necessary to have the same modules for the exemption in all the covered countries, making it possible for each involved organisation to keep its own rules and set of information on the top of those strictly needed for posting.

The system entails two modules, a web interface and a database for information storing. It also includes a system of user management, with users having different levels of access depending on their role as company officials of the member organisations. Moreover, 'read-only users' are also envisaged in order to guarantee access for research purposes while guaranteeing data cannot be modified.

Any information inputted in the database by any user, i.e. by a company, or by any relevant organisation of the sending and host country is immediately visible to all the involved users, streamlining the process of communication.

Finally, the history of each company is tracked in the database, simplifying and speeding up monitoring activities.

The database is ready to be used by the sectoral funds in place in Italy, Austria, France and Germany, becoming their infrastructure for cross-border data sharing in the area of posting.

If further agreements between the relevant organisations from these countries and similar bodies active in other EU countries are signed, there will be room to enlarge the process of information sharing and to grant the exemption from contributing to the funds of the host country, provided that the wage levels and contributions due to the funds have similar amounts.

The dissemination of EU Post Lab and the setting-up of a Multilanguage tool to share information serve also this goal, which needs a political commitment by the involved organisations and similar institutions active in other Member States (mainly in Northern Europe).

Starting from knowledge of the existing fraud and by capitalizing on field experience of partners and of inspectors contacted throughout the project, partners also elaborated a set of guidelines meant to raise awareness on what administrative databases can do to support the fight against fraud in the area of posting of workers and of undeclared work at large, while proposing some efficient way forward. These recommendations are explained in detail in the second section of the recommendations, targeting three core areas of possible intervention: (i) to ease access to information and information flow; (ii) to upgrade and link national administrative databases; (iii) support transnational administrative cooperation.

These recommendations, shared through the network of partners' contacts and communication channels, are meant to raise awareness on which steps can be taken to improve the effectiveness of inspection activities, benefiting in turn cross-border activities.

They are enriched by 'tips' and examples from some of the covered countries, meant to explain how each recommendation can be put in practice or what benefits it can trigger.

3. EXPECTED BENEFITS OF THE EU POST LAB PROJECT

The EU Post Lab project pursued a both theoretical and practical approach to provide multiple benefits to its target audience, namely Sectoral Funds, Labour Inspectorates and social partners active in the construction sector. In addition, the recommendations represent a valid reference also for other sectors. In fact, while considering the peculiarities of construction, they build extensively on practices of administrative sharing and databases often covering the whole or a wide spectrum of economic activities.

The benefits of the project can be summarised in four aspects.

Knowledge on construction workers wage and circumvention of rules

The Preliminary report and the Assessment Report provide in depth knowledge on the different wage structures applicable throughout the covered countries, working also as indicators of on which kind of information is relevant when assessing the compliance with minimum rates of pay in a given country (i.e. workers wage may vary because of seniority at work or of the job tasks depending on the country).

The reports combine this knowledge with an overview of frequent cases of fraud, purposing to help inspectors and stakeholders to better understand where to look for and which information to ask when facing suspicion or unclear cases and documentation.

These contents have been summarised and compared in the Final report, recapping the key findings of the project.

Knowledge on administrative databases and their contents

Once suspicion about a case of cross-border fraud arises, quick access to information on the involved foreign company is crucial. Has the company been established for a long time or only recently? Does the company perform works in the sending country or not? Does it employ staff other than administrative personnel there? These are examples of questions which can be asked when a suspect letterbox company is identified.

The project provides an analysis of the features and reliability of different possible sources to the extent relevant information was disclosed, including links to the web pages of relevant authorities and, whenever available, to the on-line databases.

This is meant to allow stakeholders to quickly gather first hand data on companies they are to monitor, and to tailor their requests to the relevant authorities of the country where they are established. Together with the description of the mechanisms of wage settings, wage structure and cases of fraud, this equips transnational cooperation with better understanding of the different national contexts, speeding up the information flow and therefore increasing the chances to succeed in the enforcement of rules.

Improvement of transnational administrative cooperation

By means of the prototype database, the project capitalised on inputs from partners and on knowledge of features and limits of existing practices of cooperation between sectoral funds to create a tool meant to ease and improve the way they cooperate. The database represents a powerful tool not only with regards to the sectoral funds involved in the project or the bodies managing them, but also for sectoral funds in place in other countries.

Upon a duly assessment of the wage structure and amount of contributions due to these funds, processes similar to those undertaken in Austria, France, Germany and Italy can be undertaken possibly leading to improve monitoring of posting while reducing administrative burden on employers.

Recommendations to improve use of administrative databases

Guidelines first deal with the strengths and weaknesses of the analysed databases as well as from further inputs arisen during the events of the project to pinpoint some concrete suggestions to improve the role administrative databases can play in tackling fraud. Most of these measures do not actually require significant financial efforts, as being capable of unleashing the potential of already existing technologies to support and learn from the activity of inspectors.