

# POST-LAB

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



FINAL REPORT

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in the framework of posting of workers



notus



LATINA



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The opinions expressed in this report reflect only the authors' view.

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# 1. INTRODUCTION

## 1.1 THE POST-LAB PROJECT

The Post-Lab project aims at fostering administrative cooperation between public authorities and social partners in the field of posting of workers in the construction sector.

The project has been implemented by a group of 5 organisations, covering four European countries (Italy, France, Spain and Romania).

The lead applicant of the project, the CNCE, is the coordinating body of the Italian historical paritarian institutions of the construction sector, the Casse Edili. These institutions, jointly established by social partners at local level, intermediates several wage elements of construction workers, including holiday pay and the thirteen month pay. For several years, CNCE has cooperated with organisations that manage sectoral funds which are active in neighbour countries (Austria, France, and Germany). More recently, CNCE has signed transnational bilateral agreements on posted workers with these organisations which have been assessed as part of project's activities.

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

**IR Share** is a research and training centre working closely with social partners at national and EU level. IR Share regularly organises workshops and provides information and training to managers and employees' representatives on industrial relations and employment law issues. Since 2010, it has been the national correspondent of Eurofound for France.

**FGB** is a research and cultural centre performing research and policy evaluation activities on working conditions, industrial relations, and social policies at local, national, and European level. FGB regularly takes part in technical assistance and capacity building activities targeting public authorities, and supports policy making in the covered fields.

**Latina** is an association born in 2007 to tackle the socio-professional and economic problems of the Italian citizens in Romania and of the Romanian citizens in Italy. Latina works very closely with Italian and Romanian national social security institutions, and provides day-by-day technical, legal, and administrative assistance to workers moving from/to Romania.

**Notus** is a research centre created by Spanish experts with a long career in the fields of the analysis of employment and labour market policies. Notus's main services include the development of studies and reports, as well as technical assistance services for the evaluation of policies and programmes.

Post-Lab activities, running from December 2015 to January 2018, have been developed along three main research phases, namely:

- the preliminary analysis, identifying and describing the features of administrative cooperation or anti-fraudulent measures by means of desk research and interviews with authorities implementing such measures;
- the 'Cooperation Labs' phase, where such measures were presented and assessed by means of workshops with stakeholders; and
- the concluding analysis, summing up evidence of the project in: (i) a final report, describing the project methodology and findings; and (ii) a set of guidelines suggesting pathways to enforce posted workers' rights while also reducing the administrative burden on employers.

As for the goals of the project, enhanced cooperation should contribute to tackling letterbox companies and to ensuring compliance with the requirements set out by Directive 96/71/EC and by Regulation (EC) 883/2004 in the area of the posting of workers, primarily: temporariness of posting; payment of minimum rates of pay set forth in the hosting country; and payment of social security contributions in the sending country.

## 1.2 TARGET AND AIMS OF THE FINAL REPORT

To ensure a lasting impact of project results, the final report gives an overview of project activities and of their core results.

The report provides:

- an analysis of the role played by social partners in France, Italy, Romania, and Spain in the fields covered by the directive, mainly in terms of support to activities meant to prevent, monitor, and contrast fraudulent posting;
- a synthesis of the practices assessed in the guidelines, including a short assessment on how the activities of social partners' organisations can better connect at transnational level, as well as on how they can support the exchange of information between national inspection bodies;
- the description of the methodology adopted in the project to screen, analyse, and disseminate these measures, including the assessment taking place through the Cooperation Labs; and
- final remarks on the role social partners can play in the field of the posting of workers.

Beyond providing information on the solutions suggested by social partners with regard to their own experience of cooperation and how they can be improved, the report is intended to stimulate a wider reflection on cooperation opportunities at transnational level for the proper monitoring and enforcement of rules on the posting of workers. In particular, it is intended to encourage the implementation of cooperation initiatives at transnational level between social partners, as well as between them and inspection bodies both in the construction sector and in other sectors experiencing significant flows of posted workers, like the road transport sector.

This means the report does not only address trade unions and employers' organisations, but also:

- paritarian institutions and bodies administering sectoral funds: due to the strong presence of temporary employment in the construction sector, in many countries some elements of workers' pay are intermediated by sectoral funds, often managed by social partners on a paritarian basis. For this reason, these funds may own relevant data on construction companies and workers, and have a stake in the compliance with the payment to posted workers of minimum rates of pay set forth in the host country, which may include allowances intermediated by the fund;
- relevant public authorities having a stake in the posting of workers, namely: liaison offices and authorities, designated by each Member State pursuant to Directive 96/71/EC, usually within their ministry of labour or labour inspectorates, and in charge of cooperating with foreign institutions when issues around posting arise; social security institutions, in charge of certifying the existence of conditions justifying the attachment of posted workers to the social security system of the sending country; and labour inspectorates, possibly set up as a branch of social security institutions, and in charge of monitoring and enforcing terms and conditions of employment.

## 2. OVERVIEW OF THE PRACTICES ANALYSED BY POST-LAB

### 2.1 OUTCOME OF THE PRELIMINARY OVERVIEW

The preliminary overview of practices highlighted the limited involvement of social partners in initiatives aimed at detecting fraud or at easing compliance with rules concerning the posting of workers. Indeed, the primary actors in the field are public institutions, such as labour inspectorates and social security institutions.

At the same time, France, Italy, and Spain feature measures that do involve social partners and can potentially be used to identify cases of bogus posting, through the overall goal of increasing the regularity of employment in the construction sector.

The table below lists the measures initially screened by the project, specifying whether they: (i) specifically address the issue of the posting of workers; (ii) address posting within a set of measures concerning various employment-related aspects; and (iii) fall beyond the scope of easing compliance with rules concerning posting but have a potential to do so.

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**Table 1: Mapping the measures of cooperation between social partners and public authorities, relevant for the posting of workers in the construction sector**

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*Addressing the posting of workers only*

**Italy:**

- Transnational bilateral agreements between Italy, Austria, France, and Germany
- 

*Addressing the posting of workers and other employment-related aspects*

**France:**

- National Agreement to Fight Social Dumping in the Construction Sector
- CGT Network *Réseau européen pour un détachement équitable et responsable – European network for fair and responsible posting of workers (Reder)*
- *Introduction of a compulsory ID card in the construction sector*

**Italy:**

- Decentralised bargaining in the Region of Lombardy for the monitoring of employment conditions in the EXPO Milano 2015 construction sites
- 

*Potentially addressing the posting of workers*

**Italy:**

- Online Unified Document Certifying Labour Compliance (Online DURC)

**Romania:**

- ID card of the construction worker
- System of sectoral paritarian institutions for pensions and the 13<sup>th</sup> month salary, and related data collection

**Spain:**

- Professional Construction Card (TPC)
-

In terms of countries, social partners appear to play a central role in France and Italy, and a more limited one in Romania and Spain.

This seems to be linked with strong concerns of social dumping arising at national or local level, calling for joint action by trade unions and employers' organisations and, especially in France and Italy, by sectoral funds intermediating wage elements of construction workers. In France in particular, sectoral funds are managed by the *Union des caisses de France* (UCF), set up by employers' organisations, while in Italy this task is assigned to the *Casse Edili*, established at local level by social partners on a paritarian basis, and coordinated at national level by a paritarian body, the *Commissione Nazionale Paritetica per le Casse Edili* (CNCE), the Post-Lab lead applicant. According to collective agreements, sectoral companies are obliged to register with these funds and pay the related contributions. Notably, the role of these funds is recognised by the law, and they contain data relevant in the case of the posting of workers.

Indeed, although paritarian organisations exist in Romania and Spain, they play a much different role.

As to Spain, the *Fundación Laboral de la Construcción* (FLC) does not intermediate wage elements. Instead, it supplies training for construction workers, and implements initiatives aimed at promoting health and safety at work, as well as construction workers' employability.

In Romania, over the last decade, social partners have jointly created several paritarian organisations; and a minor share of construction workers' pay is also intermediated by a sectoral fund. Social partners furthermore agreed to introduce an ID card giving access to information on a construction worker's qualifications, employer, and pay intermediated by the fund. Yet, this project remains unapplied at the moment of writing. In fact, most of these paritarian organisations are no longer operational following disputes among their founding members.

For this reason, in the absence of measures undertaken by social partners, the main data source used to provide information about workers posted from Romania abroad, the Register of Employees in Romania (Revisal), was analysed for the purpose of this study, instead of the national measures initially screened.

As for Spain, it was decided to include in the assessment also the **Cooperation Agreement between the Employment and Social Security Inspectorates of Spain and Portugal**.

This measure, in place since 2003, proved interesting in the light of the structured path of transnational cooperation it created between the two signatory inspectorates, meant to address especially cases of cross-border workers and posted workers. In addition, over the 2008-2010 period, it entailed the direct involvement of social partners, which wished to contribute to defining the topics and activities covered by the cooperation agreement.

The next section summarises the features of each selected practice, distinguishing, for the sake of clarity, between those directly concerning the posting of workers, and those that, albeit meant for other purposes, feature promising aspects in the light of the covered information.

A complete description and assessment of the practices can be found in the guidelines.

## 2.2 PRACTICES DIRECTLY CONCERNING THE POSTING OF WORKERS

### Italy

#### ***Transnational Bilateral agreements between Italy, Germany, Austria, and France***

This practice is essentially aimed at easing posting in the construction sector by exempting companies that post workers abroad from complying with wage provisions in force in the host country. The exemption is granted upon verification of compliance with payments due to the relevant sectoral fund in the sending country before and during the posting period.

In order to understand the practice, two circumstances shall be highlighted: (i) in all the covered countries, sectoral funds, usually managed by paritarian institutions like the Italian Casse Edili, guarantee those wage elements that are part of the minimum rates of pay, like the holiday pay or the bad weather pay, through levies on wages paid by employers; and (ii) the overall weight of these levies is similar in all the covered countries (about 30% of the payroll), and the amount of the remuneration in the sector is as well rather close across the four countries.

In the absence of the agreement, a law-abiding company posting workers abroad should ask for the suspension of the duty to pay contributions to the sectoral fund in the sending country, and register the posted workers with the relevant fund abroad for the period of posting.

The posted workers, too, should liaise with the foreign sectoral fund to obtain the wage elements guaranteed in the host State, like their holiday pay.

Pursuant to the agreement, companies can choose to keep their posted workers covered by the fund in the sending country, as is the case for social security purposes.

To do so, they shall send their fund a certificate specifying: the details of the client in the host country; the names of the workers to be posted; and the place and period of posting.

The exemption is then authorised only upon verification of compliance with payments due by the company to its sectoral fund, and upon approval by the relevant fund of the host country. During the period of posting, the funds also cooperate in case further information is necessary or the company stops paying contributions for intermediated wage elements in the sending country.

#### ***Decentralised bargaining in the Region of Lombardy for the monitoring of employment conditions in the EXPO Milano 2015 construction sites***

This practice concerns measures meant to ensure the regularity of employment in the framework of construction works for pavilions and infrastructure related to EXPO Milano 2015, gathering enterprises and workers from all around the world.

To this aim, unions, employers' organisations, the largest companies involved, and local authorities entered into several agreements before the beginning of works.

In order to prevent undeclared work and other forms of irregular employment, including the bogus posting of workers, the agreements set out all companies wishing to work for EXPO Milano 2015, once authorised by the Prefecture, had to:

- communicate to the relevant sectoral fund of the construction sector (i.e. the Italian Cassa Edile), the number of workers to be employed in the construction sites;



- register employees with the Cassa Edile, notifying their working time; and
- specify whether they intended to employ also self-employed or workers not covered by the collective agreements applicable to the construction sector.

Optical readers at the gates of construction sites registered entries and exits, and detected whether workers accessing the site were not registered with the Cassa Edile. Workers were identified to this aim by means of their health insurance card or, in the absence thereof, by a badge.

Furthermore, with a view to avoiding fraud, vigilantes monitored the gates, and unionists were active within construction sites.

Data on entries and exits were registered automatically in a database, which was accessible to the contractor of the construction site and to relevant stakeholders. In addition, summary data were also available to the parties to the agreements, and regularly assessed in monitoring tables.

Although the measure successfully managed to avoid fraud and brought about interesting outcomes also in terms of prevention of accidents at work, it was devised for large construction sites and would need adjustments if it were to be deployed on a large scale.

For instance, other local-level agreements currently in force in some provinces of Lombardy, rather than envisaging the use of optical readers and vigilantes, set out data matching activities between different administrative sources, including the Business Register, to identify whether there are gaps in the number of workers declared to the Cassa Edile by construction companies.

## France

### ***National agreement to fight Social Dumping in the Construction Sector***

The agreement set forth commitments by sector-related employers' organisations, on the one side, and by the French government, on the other, to fight social dumping in the construction sector, including misuse of the posting of workers.

In particular, the government has committed to strengthening inspection bodies and to organising labour inspections in a way to ease the detection of irregularities and of undeclared work. Among others, pursuant to the agreement, labour inspections may occur during weekends or outside the scheduled working time (evening) instead of during the day or the working week, as this should help to detect irregularities.

The government also committed to promoting communication and awareness-raising campaigns against undeclared work and fraudulent practices, targeting relevant employers and clients (mainly public local authorities).

Employers' organisations also committed to duly informing their members about their duties, especially when they contract out work, including declaration duties in relation to posting.

Although the agreement represents a framework for action and does not trigger tools for easing the detection of fraud, or compliance with rules, the actions described therein are essentially aimed at promoting awareness on both rules and sanctions concerning the regularity of employment and, this way, at preventing intentional or unintentional misconduct.

Employers' organisations did share this goal, clarifying that the proper enforcement of provisions intended to protect workers is key to ensuring fair and sustainable competition between companies.

### ***CGT Network - Réseau européen pour un détachement équitable et responsable – European network for fair and responsible posting of workers (Reder)***

This practice brought together unionists and labour inspectorates across seven EU Member States (Belgium, Bulgaria, France, Italy, Poland, Portugal, and Spain) in joint initiatives concerning the compliance with rules on the posting of workers, including: cooperation activities; exchange of best practices; organisation of joint visits; and simulations on already solved cases of abuse of rules on posting.

These activities have been initially implemented through the Reder project, led by the French union FNCS-BA-CGT, and funded by the DG Employment, Social Affairs, and Inclusion in 2015.

Beyond equipping the participants with relevant skills, the project created a cooperation network gathering unions from different countries, as well as unions and labour inspectorates, thus easing access to relevant information and making it possible to detect fraud.

As was the case with transnational disputes leading posted workers to have their rights recognised, thanks to this informal network, unions from the sending country may reach out to a company irregularly posting workers abroad, following initiatives by the union in the host country. Unions may also quickly share key information that is not directly available in the host country.

Indeed, due to confidentiality obligations, information sharing from labour inspectorates to unions is actually more limited.

The network is currently developing an app for smartphones with a list of pre-translated standard questions in different languages. The app is meant to help unionists overcome language barriers when collecting information on the employment conditions applied to posted workers seeking support.

#### ***Introduction of a compulsory ID card in the construction sector***

With a view to tackling undeclared work, the French government has recently introduced the obligation for construction workers to wear an ID card when at work. The duty covers also posted workers, temporary agency workers, and posted temporary agency workers.

The obligation stems from the previous experience of an ID card implemented, on a voluntary basis, by the body in charge of managing the sectoral bad weather funds (UCF), which is currently tasked with managing the new compulsory card.

The card allows inspectors to identify the worker and access relevant information, such as the type of employment contract, through an electronic code.

In the case of posted workers, the card is linked with information to be declared by the sending undertakings before the beginning of posting.

The declaration covers:

- information necessary to identify the company, and relevant contacts;
- information about the principal, the co-contractor, and the client established in France;
- information about the working and living conditions of posted workers (working time and coverage of meals, transport, and lodging costs); and
- information about posted workers, including names, period of posting, qualification, and wage.

This way, any control authority is able to check whether the employee is correctly declared as posted worker.

Yet, the card does not cover self-employed workers, missing therefore a potential channel of fraud, nor does the declaration contain reliable information on posted workers' wages, since it is self-declared by the posting undertaking.

Some stakeholders also deem the card unable to tackle fraud in open worksites, like in the construction of roads, as workers may easily leave in case of inspections.

During the Cooperation Labs, the advisability of providing inspectors with other strategic information, such as the blueprint of buildings to be erected, was pinpointed in order to assess whether the declared number of workers in a construction site is reliable or not.

## **Romania**

### ***The Revisal system***

Revisal is a register equipped with administrative information on employees, self-employed workers, and employers active in Romania.

The register covers data from compulsory communications by employers concerning the hiring of each employee, and including personal details, occupation, working time, and type of employment contract.

Employers registering for the first time must also provide a copy of the document certifying their registration with the Trade Register, a copy of the tax registration certificate and, if they are individual employers, a copy of their identity document.

In addition, the employer must notify the conclusion of a service contract, providing details on service providers, and communicate information on workers sent abroad or hosted in the country.

The register is regularly used by the liaison office when answering requests on posted workers, submitted by foreign liaison offices.

As the register is digitalised, it can be easily used to find out information on employment, as well as to retrieve details from the Trade Register concerning employers' activities in the country.

Yet, information is not matched with other relevant registers, as cooperation between the body administering Revisal (the Labour Inspectorate) and other relevant national institutions remains weak. Furthermore, as it contains very little administrative information provided by employers, the register does not manage to tackle cases of fraudulent forms of contracting of works, for instance cases of bogus self-employment, which allow companies to circumvent the provisions of Directive 96/71/EC on posted workers.

Some problems have also been experienced with keeping the structure of the register up to date, especially concerning the classification of occupations.

## **Spain**

### ***Agreement for the exchange of information and cooperation between Spain's Labour Inspection and Social Security and Portugal's General Inspectorate of Labour***

The practice is a relevant case of structured cooperation implemented by the labour inspectorates of Spain and Portugal, pursuant to an agreement signed on 3 October 2003.

The agreement allows the labour inspectorates to clearly identify the contact points for cooperation requests and smooth information sharing concerning workers posted between the two countries.

It is worth noting that cooperation requests are not strictly limited to information exchange. They can also involve the implementation of research and verification activities in the other country, such as joint inspections.

To ensure the proper functioning of the agreement, a Joint Monitoring Commission that meets periodically was created. Moreover, campaigns were launched to prevent occupational accidents, both in the agricultural and in the construction sectors.

Labour inspectorates share information on several issues including changes to labour legislation, the organisation and functioning of the labour inspectorates in both countries, as well as the innovative actions carried out.

The practice appears promising as a cross-border case of cooperation between labour inspectorates, and the Spanish Labour and Social Security Inspectorate is signing similar agreements with the inspectorates of other EU countries with a view to strengthening information sharing.

Interestingly, from 2008 to 2010, the most representative social partners in the construction sector in Spain and Portugal were invited to a series of meetings held prior to the sessions of the Joint Monitoring Commission. Yet, since 2010 onwards, the social partners of the two countries have not been reconvened to any new such meetings.

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

## 2.3 OTHER PROMISING PRACTICES

### Italy

#### ***Online Unified Document Certifying Labour Compliance (Online DURC)***

DURC is a unified certification on companies' compliance with mandatory payments in the field of social security and insurance against accidents at work. For construction companies, DURC also certifies their compliance with the payment of contributions due for wage elements intermediated by the Casse Edili, covering holiday pay, the 13<sup>th</sup> month pay, and seniority pay of sectoral blue-collar workers.

Following a query by authorised bodies through a web portal, the system instantly gives a positive feedback (green light) if the company is compliant with all due payments. In case some payments are missing, a relevant notification is sent to the company and to the requiring body, while the system shows the status of the company as 'under verification' (yellow light).

The company can regularise its position within a 30-day time span. In case this does not occur, its status is automatically converted into 'not in compliance' (red light). Under this status, a company cannot be awarded or paid for public works, nor can it obtain authorisation for private works.

The entry into force of the practice allowed the Casse Edili to identify many companies fraudulently avoiding registering at Casse Edili, for instance by claiming not to be construction companies or by registering construction workers as white-collar workers for the sole purpose of evading the contributions due for blue collars.

As of now, information released by the system is not a real-time picture on the regularity of companies, but it refers to the position of companies as for payments due from the beginning of their activities up to three months prior to the date when the request is made. Once applied and if the company gets a 'green light', this outcome remains valid for 120 days.

Currently, despite some attempts to do so, the system is not matched with other information sources potentially allowing for the detection of incongruences in the number of workers declared by the company and, therefore, for the identification of cases of undeclared (posted) workers; these sources include: authorisations for works, released by local authorities; declared value; and expected length of works.

Potentially, information available through DURC databases could prove useful to inform foreign competent authorities about compliance, by Italian companies, with the payment of social security contributions, as well as about the existence of the employment relationship in Italy. This information could also prove useful to check posted workers' previous employment records through the payment records of the Casse Edili.

## **Spain**

### ***Professional Construction Card (TPC)***

TPC is a card applying on a voluntary basis to construction workers, and managed by FLC, the sectoral paritarian vocational training body. TPC covers employees, self-employed workers, and temporary agency workers, but not posted workers.

The main task of TPC is to ensure workers are adequately trained for health and safety purposes. The introduction of TPC was prompted by some concerns about the authenticity of the certificates attesting workers' attendance of training courses on these topics.

TPC is also intended as a tool aimed at improving workers' employability in the sector.

When applying for TPC, construction workers are required to submit all official documentation attesting the training courses they attended, the centres where they completed them, the contents of the training itself, the duration, etc. FLC is in charge of checking and validating these trainings through a process of accreditation and monitoring of training centres.

In order to apply for and subsequently obtain the card, workers shall have worked at least one month in the last five years in the sector and have attended a minimum of eight hours of training in the prevention of occupational hazards.

Workers shall also prove their professional category and sectoral experience through payrolls, this way certifying the jobs they have carried out throughout their professional career.

Upon verification by FLC, this information becomes part of the CV of the worker, which is accessible through the card by means of a personal code, and can be regularly updated by the worker himself/herself.

For the time being, TPC is not relevant to posting owing to its different aims, as set by social partners, and to the lack of competence by FLC in this field.

Yet, the idea to include in a single document a worker's employment records, his/her skills and, if any, his/her attendance of courses in the area of health and safety at work appears interesting when compared with the ID card used in France in the construction sector, as well as with the system adopted for EXPO Milano 2015 construction sites to register workers (both have been analysed in the framework of the Post-Lab project).

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

# 3. THE METHODOLOGY OF THE PROJECT STEP BY STEP, AND THE ROLE PLAYED BY STAKEHOLDERS IN THE COOPERATION LABS

## 3.1 THE STEPS OF THE POST-LAB PROJECT

The Post-Lab project has been developed along three main steps, starting from a wide-ranging screening covering practices potentially interesting for the project, passing through a preliminary assessment of the selected practices and, finally, further exploring possible improvements of the practices by means of transnational workshops.

The initial **screening** was implemented in each covered country by means of: (i) desk research; and (ii) *ad hoc* requests addressed to social partners.

Desk research included literature available on the posting of workers, articles in specialised journals and press, as well as reports published by relevant public institutions, like labour inspectorates, social security institutions, or tripartite and governmental bodies covering employment-related aspects.

For each covered country, partners reached out to the most representative unions, employers' organisations and, whenever in place, the sectoral funds or paritarian institutions/bodies in the construction sector. In turn, these organisations were asked to report whether they (or their local federations and branches) had been involved in relevant practices.

The screening addressed measures having a national or transnational scope, and dealing with two core aspects, namely:

- the use of **letterbox companies** meant to reap benefits from the low labour cost or from leaks in the enforcement of rules in some countries; and
- **non-compliance with the payment of minimum rates of pay** set forth in the host State, as set out in Article 3 of Directive 96/71/EC.

In line with the overall aim of the project, i.e. to support administrative cooperation in the field of the posting of workers, the partnership decided to enlarge the field of observation to practices that are potentially helpful to the said aims (although intended to attain other goals), such as the detection of undeclared work, or the validation of workers' trainings.

More in detail, in order to be eligible for the study, a practice had to (potentially) contribute to detecting core provisions concerning posting, as per Article 3 of Directive 96/71/EC (detailing a core set of employment rights to be aligned with provisions of the host country in case of posting) and Article 12 of Regulation (EC) 883/2004 (setting out criteria allowing posted workers to remain insured in the sending country).

In particular, the following aspects were considered: the regular payment of social security contributions in the sending country; the temporary nature of posting; the existence of an employment relationship in the sending country; and compliance with the host country's applicable legislation on working time, parental leave and other paid leaves, health and safety at work, and non-discrimination.

Project partners also drafted a non-exhaustive list of **measures** meant to guide the screening, namely: **transnational agreements** signed by social partners and relevant authorities (for instance, agreements aimed at simplifying information flows); **codes** (such as those identifying the elements constituting the minimum rates of pay applicable in a country); and the adoption of **information exchange procedures**

**and methods** (such as databases and electronic cards allowing for an easy sharing of information on workers' wage and working career).

The selected measures were analysed by means of interviews with stakeholders, primarily the bodies implementing the practice, and complemented by desk research covering all the documents related to the measure, such as: texts of the law or agreements introducing the measure; reports or grey literature concerning its actual implementation; and any relevant module or form helping to understand the possible ways data could be inputted and shared.

The interviews adopted common questionnaire guidelines and were reported in 'fiches', whose structure was agreed in advance by project partners. The guidelines and the fiche covered the same set of topics to be investigated, namely:

- organisations involved;
- type of measure;
- relevant provisions addressed;
- general description of the practice (including data possibly collected and shared);
- rationale and process of adoption; and
- assessment.

The first three aspects were addressed by means of closed sets of answers, while the description of the other topics was guided through open-answer questions in the questionnaire, as well as through subsections in the fiche, meant to steer the synthesis of findings.

The fiche also included a section concerning an overall assessment, by partners, of the strengths, weaknesses, threats, and opportunities (SWOT) of the practice with regard to its contribution to tackling fraud and simplifying procedures for posting workers abroad.

After the conclusion of this preliminary analysis, three transnational workshops (the Cooperation Labs) were held to present and discuss, with selected stakeholders, the practices and any opportunities for their improvement.

The Cooperation Labs took place in Paris (16 December 2016), Rome (24 February 2017), and Madrid (21 April 2017), and were hosted by project partners or directly by social partners' organisations of the construction sector interested in the project.

The Cooperation Labs were structured as follows:

- a first round of interventions from partners was meant to introduce the project and the aim of the meeting, making sure each participant understood the contribution expected;
- each practice was presented by the body managing it or, in the absence thereof, by the partner studying it in the preliminary phase; it was then discussed with participants; and
- participants drew overall conclusions by discussing how the practices contributed to: (i) tackling the phenomenon of letterbox companies; (ii) ensuring compliance with the requirements of temporariness of posting, payment of minimum rates of pay set forth in the host country, and payment of social security contributions in the sending country; and (iii) reducing the administrative burden on employers by sharing data at transnational level.

In a way to ensure an active involvement of all participants, project partners made sure to: (i) select and involve stakeholders and experts with an interest in the issue, as well as with knowledge of the topic; (ii) take

into consideration the interests and competences of the expected audience, as well as room for crossover between the practices when choosing the ones to be presented at each meeting; and (iii) inform participants in advance about the aim of the meeting and the practices to be discussed.

In order to further enrich the discussion and the assessment, experts presenting two practices not covered by the project were invited to take part in the third Cooperation Lab. Both practices, addressing Sweden and Germany respectively, featured interesting insights in terms of data matching for the purposes of detecting cases of undeclared work or undeclared posting of workers.

These phases have been accompanied by: (i) project management; (ii) monitoring and evaluation; and (iii) dissemination activities.

Project management entailed periodical meetings between the partners, as well as ongoing follow-up by email. Key project management tasks for the successful implementation of the project were: sharing, discussing, and agreeing upon a time schedule entailing internal deadlines for each phase and output of the project; and core aspects concerning methodology, such as research tools such the fiche and the questionnaire guidelines meant to describe the measures.

As part of the monitoring and evaluation activities, the research tools and the outputs were assessed against the goals and expected results of the project. Any proposal of deviation from the initially envisaged activity was evaluated by the partnership in the light of the contribution it could bring to achieving the overall aim of the project. For instance, when selecting the practices to be assessed in Romania and Spain, project partners preferred to enlarge the scope to include those not directly involving social partners. This choice was targeted at: (i) guaranteeing a proper coverage of these countries; and (ii) involving the stakeholders of these countries in the workshops, in which these practices were discussed and assessed along with others implemented in cooperation with social partners.

As concerns **dissemination**, project outputs were published on partners' webpages, and advertised on social media, reaching out to policy makers, sectoral employers' organisations and trade unions, employers, and workers.

Outputs include the guidelines, this final report, as well as brochures specifically created as part of dissemination activities.

Brochures were targeted mainly at employers and workers, complementing a brief overview of Post-Lab with key information and contacts relevant in case of posting.

This was meant to make the brochure more attractive to the final beneficiaries of the project, and to help to raise awareness on labour and social security rules covering posted workers.

With the aim of further enhancing the ability of the project to reach stakeholders, information on the main findings was disseminated through newsletters targeting HR managers of transnational companies, and unionists, as well as through *ad hoc* press articles.

For instance, CNCE wrote about project activities and goals in its specialised magazine 'EdiliNews', the main information tool on the construction industry in general in Italy and, more specifically, on activities implemented by the related paritarian bodies. The magazine keeps its readers updated on the activities carried out, at national and territorial level, by the sectoral paritarian bodies, presenting their initiatives in the field of welfare services, professional training, occupational safety, and supplementary pension schemes. It is also a reference point for employers and unionists concerning updates on sector-related legislation.

The project also envisaged a **final conference**, which was thought as a way of further disseminating the results at local level.

In this respect, CNCE opted to include the conference within the 40<sup>th</sup> anniversary celebrations of the body. The event was held on 14 and 15 December 2017 at the Auditorium Parco della Musica in Rome. This way,



without incurring additional costs for the project, the partnership was able to reach out to the 115 local Casse Edili spread throughout the Italian territory, whose representatives had been invited to take part in the event, as well as to sectoral trade unions. The budget earmarked for the accommodation of external participants was used to host stakeholders from abroad, such as representatives from organisations implementing the analysed measures, liaison offices, and foreign sectoral funds.

All the participants were provided with copies of the guidelines and the brochure with a view to disseminating the project findings to a larger extent.

The event was attended by the Italian Minister of Labour and Social Policies, Giuliano Poletti, who remarked the interest raised by the project results, as well as their relevance to the aim of promoting regular employment.

## 3.2 FURTHER DEVELOPMENTS

In consideration of the main results of the activities, the Post-Lab project leader successfully applied for new funding with a view to extending and deepening the research implemented under Post-Lab.

The new EU Post-Lab project, which started in October 2016 and is due to come to an end in September 2018, has a wider geographical scope, covering eight EU Member States plus Turkey, while it focuses on the role administrative data can play in increasing compliance with rules on the posting of workers.

The key role played by administrative data, and the way they are collected and matched are indeed core to most of the practices covered by Post-Lab.

Yet, the assessment of these practices also highlighted administrative data alone may hardly help to identify sophisticated forms of fraud, unless they are: (i) adequately supported by field inspections; and (ii) matched in a way to reveal when formal compliance may hide fraud. Post-Lab highlighted that, in spite of possible benefits, the potential in this area remains untapped.

To this aim, EU Post-Lab develops across two strands: one of them addresses contextual information on the wage structure in each country, as well as evidence of different forms of undeclared work and non-compliance with provisions on pay; the other analyses how administrative data are used in each covered country for the purposes of enforcing terms and conditions of employment. This includes a thorough analysis of the structure and contents of relevant databases, as well as of their reliability and actual use.

The final report of the project will describe how well national-level data and inspections tackle abuse and circumvention of the Posted Workers Directive. The aim is to support the uptake of strategies to improve the strategic use of data for both (i) simplifying posting by employers, and (ii) properly monitoring cases of non-compliance.

To the same aim, the partners committed themselves to creating a prototype database meant to share selected key data at transnational level, based on existing national databases.

The very foundation of the prototype database will be the improvement of the data sharing already taking place in the framework of the transnational bilateral agreements (assessed as part of Post-Lab project activities) that are in force between Italy and other EU countries. Yet, the prototype will be built in a way to allow the inclusion of data from other relevant institutions.

## 4. CONCLUDING REMARKS: THE ROLE SOCIAL PARTNERS CAN PLAY IN RELATION TO THE POSTING OF WORKERS

The Post-Lab project explored a number of inspiring examples illustrating the ways social partners can contribute to easing compliance with provisions concerning the posting of workers.

Whereas any such practice features achievements and drawbacks, duly considered in the project and highlighted in the guidelines, taken together they show a variety of approaches to be considered.

The National Agreement to Fight Social Dumping in the Construction Sector (France) and the Reder network share the attempt to **raise awareness on workers' rights**. While the agreement targets employers and has a focus on sanctions envisaged for those that do not comply with law provisions, the Reder network reached out to workers through brochures meant to provide detailed information about pay and workers' rights in the host country, also through links to relevant websites.

Indeed, the Post-Lab project, by means of its dissemination activities and outputs, especially the brochure, falls under the initiatives aimed at increasing knowledge on terms and conditions applicable to posted workers as a leverage to increase compliance therewith.

On the unions' side, while awareness-raising activities may contribute to reaching out to workers in need for further information and support, access to information on the employer established abroad, as well as the need to communicate in a foreign language, may represent a further obstacle.

In this respect, the Reder project built up an informal network whereby unions could support each other at transnational level, and overcome these hindrances. For instance, unions in the sending country cooperate with unions in the host country in order to identify relevant information on the employer and to reach out to the latter in case of a refusal to answer requests filed by the host country. In addition, as is the case with the Internal Market Information System (IMI) set up by the European Commission, Reder members are currently creating an app with pre-translated sets of questions concerning working conditions, which are intended to ease communication between unionists and workers.

A second most relevant contribution stays with the creation and sharing of information and data.

In the case of the National Agreement to Fight Social Dumping in the Construction Sector (France) and of the Reder network, social partners contributed to identifying risks of fraud thanks to their activities on the ground. A similar approach was initially taken also in the Agreement for the exchange of information and cooperation between Spain's Labour Inspection and Social Security and Portugal's General Inspectorate of Labour. Yet, cooperation currently takes place only between the inspectorates.

In cases in which social partners set up sectoral funds or bodies, usually on a paritarian basis, they hold information assets that are significant when it comes to the monitoring and enforcement of provisions concerning the posting of workers.

The contribution administrative datasets can provide has been explored in a number of practices addressed by Post-Lab, and is at the core of the new EU Post Lab project.

Depending on the practice, data managed by the sectoral fund can potentially help to: (i) identify whether a company is established in the sending country; (ii) identify whether the employee is normally employed in the sending country; (iii) identify the qualification of the posted worker, necessary to determine which wage is applicable in the host country; and (iv) monitor compliance with the payment of some wage elements.

Obviously, as far as information about these aspects is accessible and shared, it can be used not only to identify cases of fraud (as is the case with the French ID card), but also to reduce the administrative burden

for employers that post workers (as is the case with the transnational bilateral agreements). The key aspects of these experiences stay with the digitalisation of data, which become easily accessible for monitoring purposes. Social partners backed options easing the accessibility of relevant data may be particularly interesting also for other sectors where posting poses issues of accessibility to information on employment contracts, like in the road transport sector.

Obviously, the solutions adopted shall take into account privacy and data protection issues. In the cases of DURC and of the transnational bilateral agreements, these hurdles were overcome by sharing single aggregate pieces of information. In both cases, it is up to the body managing the database to check whether a company is compliant with its obligations, while the requesting body is notified only the positive or the negative outcome of the investigation on either a manual or an automatic basis.

Yet, administrative data alone may fail to provide the actual picture of employment in a company. For instance, administrative data fail to identify whether a company is misusing self-employment contracts, is underreporting working time, or employs more workers than those actually declared. All these aspects shall be verified only through adequate field inspection activities, possibly supported and steered by the smart use of administrative files.

A first attempt to discourage fraud by combining the advantages of inspections, on the one side, with available data, on the other, has been made with the use of ID cards, which ease inspection activities by allowing them to quickly identify relevant information on workers' status and personal details, or any undeclared workers within the site, i.e. those not wearing the card.

Nevertheless, from the meetings held during the project, it emerged that there is still much to do to exploit the potential of data matching. For instance, data from different sources concerning employment may help to reveal the presence of workers not correctly declared; or matching employment data with information on the type and size of construction works can contribute to directing inspections towards companies hiring a low number of workers compared with the expected work input.

As long as social partners' organisations, such as paritarian sectoral funds, have data, they can play an active role in agreeing on protocols for structured data sharing with relevant public institutions.

Indeed, as was the case with decentralised bargaining in Lombardy and with the French and Spanish ID cards, collective bargaining itself may represent a powerful tool.

In all these cases, concerns from social partners led to the adoption of tools meant to monitor some aspects of the employment relationship. In the case of France, the same tool was adopted later on by the State, which made the ID card compulsory. In addition, thanks to the use of electronic or digital tools, such experience may result in a reduction in the administrative burden placed upon employers.

Yet, experiments based on collective bargaining face two kinds of obstacles lying at the heart of European rules on posting.

As per the case law of the Court of Justice of the European Union, provisions increasing employment standards and employers' obligations above the terms set by Directive 96/71/EC are likely to constitute an infringement of the freedom to provide services, which provides the legal basis for the directive.

This means that these provisions may be subject to a legal test to assess whether they are necessary and proportionate to attain the pursued public interest.

The applicability of collective agreements themselves to posted workers may also be challenged, as was the case with the much-debated judgment in the Ruffert case (C-346/06, EU:C:2008:189), in which a German collective agreement covering the public sector was ruled not to meet the requirement to be 'universally applicable' because it covered only public works and not the whole construction sector. In this respect, the recalled attempts to increase protection of posted workers by means of collective bargaining may face legal obstacles in countries where its structure and role are weak or have been weakened in the framework of austerity measures, as was the case with many southern and eastern European countries over the last decade.