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Fraudulent Contracting of Work: Abusing the Posting of Workers (Belgium, Finland and Italy)

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Fraudulent Contracting of Work: Abusing the Posting of Workers (Belgium, Finland and Italy)

Abstract

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Although posting only affects around 1% of the workforce in the EU, it has generated extensive debate due to fraudulent practices hampering the enforcement of, and compliance with, existing regulations. Changes in the location of work, raise various questions – namely, who is the employer and which national regulations apply. The use of temporary agencies, subcontracting and posting of self-employed workers gives rise to additional problems (Eurofound, 2016).

Keywords

fraudulent contracting, worker posting, abuses

Comments

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Fraudulent contracting of work: Abusing the posting of workers (Belgium, Finland and Italy)

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Introduction

Regulated at European level, the posting of workers is a practice used between companies located in different countries. A worker is posted when their original employer sends them to work, for a temporary period, in another company. Posting has been defined as a specific form of labour mobility within the EU (Eurofound, 2014).

Although posting only affects around 1% of the workforce in the EU, it has generated extensive debate due to fraudulent practices hampering the enforcement of, and compliance with, existing regulations. Changes in the location of work, raise various questions – namely, who is the employer and which national regulations apply. The use of temporary agencies, subcontracting and posting of self-employed workers gives rise to additional problems (Eurofound, 2016).

Reasons for posting of workers

There appear to be two key reasons for the incidence and prevalence of posting among particular sectors:

- increased market competition
- the difficulty of finding workers with appropriate skills.

Market competition calls for cost reductions – in particular, reductions in labour costs. The existence of differentials in social security contribution rates across EU Member States could lead companies, especially in labour-intensive sectors such as construction, to use posted workers (generally from Member States in eastern Europe) in order to benefit from lower social security contributions and so become more competitive.

Additionally, the posting of workers can be a consequence of a shortage of workers with specific skills in the labour market. According to the Finnish Metalworkers' Union (Metalli), the country's metalworking sector has not been able to attract enough native workers: for instance, Finnish workers are sometimes reluctant to move to the region where jobs are offered, which increases demand for posted workers from abroad (mainly from Estonia and Poland).

European regulations regarding posting of workers

Posting was primarily devised as an international/cross-border practice and therefore the main relevant regulations are European. Through Directive 96/71/EC (Posting of Workers Directive), European institutions have sought to strike the right balance between favouring freedom for businesses offering services across Europe and the protection of workers' labour and social rights when posted. The directive establishes that workers posted by undertakings providing temporary services in a Member State (the host state) other than the Member State where they are established (the home state) are covered by a 'hard core' of protective rules in force in the host Member State, namely:

- (a) maximum work periods and minimum rest periods;*
- (b) minimum paid annual holidays;*
- (c) the minimum rates of pay, including overtime rates; this point does not apply to supplementary occupational retirement pension schemes;*
- (d) the conditions of hiring-out of workers, in particular the supply of workers by temporary employment undertakings;*
- (e) health, safety and hygiene at work;*

(f) protective measures with regard to the terms and conditions of employment of pregnant women or women who have recently given birth, of children and of young people;

(g) equality of treatment between men and women and other provisions on non-discrimination.

(Directive 96/71/EC, Article 3, paragraph 1)

The directive also allows Member States to extend to posted workers the application of ‘terms and conditions of employment’ (Article 3, paragraph 10) as set out in national collective agreements that ‘have been declared universally applicable’ (Article 3, paragraph 8).

The legal framework is completed by Regulation (EC) No 883/2004 and Regulation (EC) No. 987/2009, which require the application of the social security contribution regime of the home country if the duration of the posting does not exceed 24 months.

Several discussions – prompted by various Court of Justice of the European Union (CJEU) decisions, including the 2007–2008 Laval case (CJEU, 2007) – highlight some of the key difficulties in monitoring and controlling the posting of workers, mainly in terms of the following:

- the definition of the duration of the posting
- the enforcement of minimum rates of pay, especially in reference to decentralised collective bargaining agreements that are not universally applicable
- the definition of establishment, based on criteria aiming to determine whether there is a genuine link between the undertaking and the sending Member State.

To tackle these problems, the European Commission has introduced a number of initiatives, including Directive 2014/67/EU (Enforcement Directive on the posting of workers), aimed at supporting cross-border administrative cooperation and promoting the accessibility of terms and conditions of employment. The directive specifies the tests that should be used to determine whether the worker ‘carries out his or her work, in the territory of a Member State other than the one in which he or she normally works’, for ‘a limited period’, taking into account, for instance, whether ‘the posted worker returns to or is expected to resume working in the Member State from which he or she is posted, after completion of the work or the provision of services for which he or she was posted’. In addition, the European Commission put forward, in March 2016, a proposal for a targeted revision of the Posting of Workers Directive, which is still under discussion and which specifies the definition of rates of pay and duration of posting.

National definitions and prevalence

Genuine posting of workers

The transposition of EU directives has been the main source of national regulations. All three countries studied in this information sheet have transposed the Posting of Workers Directive, adopting the possibility offered in Article 3 to extend to posted workers the terms and conditions of employment set out in the national legislation and in ‘universally applicable’ collective agreements. More recently, the three countries all transposed Directive 2014/67/EU (Enforcement Directive on the Posting of Workers) into their national regulatory framework.

Posting of workers is mainly a phenomenon of neighbouring countries. Its prevalence remains difficult to determine because quantified data are not exhaustive or fully comparable.

Although there is a rising trend, posted workers still account for a very low share of employment in all three (and mainly concentrated in few sectors), according to the A1/E101 social security certificates issued by and received in these countries (necessary for identifying which social security system applies).

Belgium: Of the 134,340 workers posted to Belgium in 2013 and the 159,753 in 2014, most came from France, Germany, Luxembourg, the Netherlands and Poland. Most of the workers posted in 2014 were employed in the construction sector (58%) (Pacolet and De Wispelaere, 2015).

Finland: Finland hosted 19,917 workers in 2013 and 16,589 in 2014. In 2014, 80% of these came from Estonia, with the majority of these (55%) providing services in the construction and metalworking sectors (Pacolet and De Wispelaere, 2014, 2015).

Italy: A total of 47,445 workers were posted to Italy in 2013 and 52,485 in 2014, most of them from Romania (12%), France (10%), Spain (9%) and Austria (8%) (Pacolet and De Wispelaere, 2015). The posting of workers mostly affects the construction, logistics and transport sectors (Ministry of Labour and Social Policies, 2014).

Fraudulent practices

The three countries examined in this information sheet share similar concerns and experience similar fraudulent uses of the posting of workers.

Sector-driven practices

The concentration of posted workers in specific sectors and the abuse of the status of posted workers raise concerns among policymakers and social partners in all three countries. The misuse of the posting of workers is currently a major challenge in **Belgium** and a key priority for the government and social partners, especially in the sectors of construction and transport. As a result, studies to measure the impact of fraud have been conducted, and measures to tackle the problem have been launched. Similarly, the fraudulent use of posting of workers is a key issue for the **Finnish** labour inspectorates and trade unions in the same sectors; they express concern regarding the difficulties and challenges they face in guaranteeing equal treatment and preventing fraud. The **Italian** social partners in the sectors most affected (construction, logistics and transport) have also expressed great concern and developed initiatives to tackle the problem.

Main types of fraudulent practices

There are three main types of fraudulent practice:

- the use of ‘letter-box companies’ and subcontracting
- misuse of employment agencies and bogus self-employment
- the circumvention of working conditions regulations, including those on minimum pay.

Letter-box companies

The first type of misuse is the hiring of posted workers through letter-box companies and fraudulent subcontracting. In **Finland**, the Construction Trade Union (Rakennusliitto) and the National Bureau of Investigation (KRP) have pointed to cases where ‘inactive’ Finnish companies were established in Estonia, with the sole purpose of hiring and posting workers to Finland in the construction sector (see for example Alho, 2013). In **Italy**, according to the representative of the National Labour Inspectorate, the most common fraud is perpetrated by means of letter-box companies that are established in other EU Member States (mostly in eastern Europe, where social security contribution rates are lower) in order to save on social security costs. In order to evade legal and collective bargaining provisions, these foreign companies in reality hire workers who are usually resident and working in Italy (in contravention of Article 3 of the Posting of Workers Directive). In **Belgium**, common frauds are associated with subcontracting practices, through which company A subcontracts some activities to company B, with the latter having been established abroad, but in reality being wholly owned by company A.

Misuse of employment agencies and self-employment

A second type of fraudulent practice combines posting of workers with misuse of employment agencies and self-employment contracting. The fraudulent use of employment agencies represents a clear abuse of EU legislation.¹ Van Hoek and Houwerzijl (2011) provide the example of a Belgian company that dismissed its workers and signed an agreement with an employment agency from the Netherlands to post workers from Poland to the Belgian company, with a view to saving labour costs. The abuse of self-employment to disguise the posting of workers has also been on the increase; it is particularly difficult for public authorities to identify. The assumption is that the employment status indicated on the A1/E101 certificate determines the nature of the work and the worker’s status. This means that the definition of the employment relationship depends on the Member State in whose territory the person concerned normally works, as it is the state responsible for issuing the social protection certificate.

Hence, the nature of the work in question should be determined in accordance with the law of the host state. For labour law purposes a comprehensive judgmental view on an individual basis is necessary in each country.

(Van Hoek and Houwerzijl, 2011)

The burden of proof can be particularly demanding. A fraudulent case associated with bogus self-employment was reported in **Belgium**, in which workers in bogus self-employment were hired through a multiple subcontracting chain and then posted by foreign companies. Belgian or foreign companies thus subcontract foreign workers as self-employed, who are then posted to Belgium. This fraud was assessed both as the most prevalent in Belgium and as being very difficult to detect.

Circumvention of working conditions regulations

A third type of fraud is linked to the working conditions experienced by these workers, mainly due to the disregard for regulations, either affecting the posted workers directly or combined with other fraudulent practices, such as letter-box companies. Non-compliance with

¹ The Posting of Workers Directive contains two separate provisions regarding the activity of temporary work agencies) and the provision of staff. Article 3(1)(d) makes it clear that provisions regulating the activities of temporary work agencies are part of the nucleus of the directive. Article 3(9) allows Member States to extend the protection offered to temporary agency workers in order to create equal treatment.

minimum working conditions (in the form as underpayment or non-adherence to working time regulations or wages agreed through collective bargaining) is reported to be common among posted workers in the construction, metalworking and transport sectors in **Belgium**, **Finland** and **Italy**. This is as a result of obstacles preventing trade unions and labour inspectorates from enforcing existing regulations.

Occasionally, circumvention of regulations is the result of using letter-box companies. For instance, in **Italy**, it was reported that employers try to avoid paying employer contributions, specifically contributions to the funds managed by both sides of industry. Owing to the characteristics of employment in the sector, contributions to the Construction Workers' Welfare Fund (*Casse Edili*) are levied on the wages of construction workers, accounting for about 30% of their wage. These contributions are intended to guarantee holiday pay, bad weather allowance, sickness pay, 13-month pay and seniority-based wage increases to registered workers. Unscrupulous employers try to circumvent this obligation by using letter-box companies established abroad; the latter avoid the obligation to make these contributions to the fund for construction workers posted in Italy. As workers in letter-box companies are often not registered with these funds, they are in consequence denied such allowances. Moreover, because such companies are not listed in other Italian administrative registers, it is difficult to detect the irregularity.

Moreover, in **Italy**, similar frauds are committed within national borders, with companies taking advantage of the weaker monitoring activities of these funds in some provinces. For instance, in order to avoid paying employer contributions, employers submit false declarations stating that these contributions are paid into the welfare fund of the area from where the posting is alleged to take place. Or employers may dismiss workers after they have been posted, even though they continue working for the 'host' company. These cases are close to being undeclared work.

As noted by Voss et al (2016), all this evidence suggests a growth in the number of 'creative' abusive and fraudulent practices concerning posted workers.

Drivers and enablers

Reducing costs as main driver

In the three countries studied, employers largely abuse the practice of posting workers in order to reduce labour costs, by avoiding social security contributions, wages or other employment conditions established by law or collective agreements. This stems from the wish to provide services at the lowest price possible and to remain competitive, particularly in labour-intensive sectors where the cost of labour is a key factor.

Enabling factors

Several institutional and structural conditions make fraud possible in the posting of workers. In all three countries, the authorities noted that they encounter serious difficulties in checking and/or revising the employment status of posted workers, as well as in assessing whether the agreed labour conditions are observed. Trade unions also emphasised the obstacles they face in supporting posted workers and enforcing their rights. Several features explain these difficulties, such as the complexity of monitoring the current work environment and the vulnerability of most posted workers.

Difficulties in organisation, monitoring and control

The research confirmed that there is a problem of administrative cooperation between Member States in a context characterised by the hypermobility of workers and companies. Moreover, innovative fraudulent practices, such as those associated with the use of bogus self-employment (reported in **Belgium** for instance), make recourse to international administrative cooperation even more necessary. According to the representative from the employers' confederation for the construction sector in Belgium, Construction Confederation (CC/CB), the Belgian authorities have no power to question an A1/E101 certificate stating the status of employment of its holder; for instance, no re-qualification is possible when the certificate delivered in the country of origin declares the worker is self-employed, even though there is evidence that the worker is actually an employee. Thus, cross-border cooperation is essential to combat this kind of fraud.

Stakeholders from Belgium and Italy identified the lack of resources for labour and social legislation inspectorates, as being an enabler of fraud. The **Italian** National Labour Inspectorate considered that the lack of inspections (characteristic of some areas of the country) helps to explain the difficulties in detecting and tackling fraud. In **Belgium**, employer organisations from the transport and construction sectors also noted that the existing measures against social fraud (the non-payment of social contributions and/or taxes) are not correctly implemented because of the lack of inspectors. In 2014, the Federal Public Service Social Security (SPF/FOD) employed 250 inspectors (Federal Public Service Social Security, 2014). According to statistics from the National Social Security Office (ONSS/RSZ), in 2014 the Social Legislation Inspectorate's responsibilities covered 220,620 companies employing as many as 3,377,089 workers. This means that each inspector should potentially monitor around 882 companies and 13,508 workers.

Difficulties in the structure of regulation

Further enablers relate to the limitations posed by the complexity and lack of clarity in legislation, and the nature of the operating environment, which makes it difficult to detect and combat fraudulent posting of workers.

Lack of clarity in regulation: The interviewees in **Italy** deemed 'national legislation on posting limited and blurry' (in relation to the loopholes in EU and domestic regulation; see also Nadalet, 2008). Furthermore, no monitoring system specifically focused on posted workers exists. In **Belgium**, respondents also highlighted the complexity of EU legislation in terms of posting of workers, especially in the road transport sector.

Fragmentation of work processes: As reported in **Finland**, the fragmentation of work processes, which is exacerbated by the use of posting, makes the union's operating environment more difficult for monitoring working conditions and detecting fraud. As a union officer from the metalworking sector pointed out, it is difficult for trade unions to guarantee equal treatment and to detect fraud in terms of non-compliance with – for instance – work-related healthcare and security, when workers from many different companies work at the same workplace. It was also noted that it is difficult for them to enforce existing regulations due to the language barriers that exist between posted workers and union representatives.

Worker vulnerability: The overall weak position of the workers, who are sometimes not aware of their rights, also makes detecting fraud more difficult. This leads to underreporting by posted workers, who fear losing their jobs and being sent back home. Workers who are fraudulently posted might prefer not to file a lawsuit or undertake collective action because they are anxious about the negative consequences in the short term.

Consequences of fraudulent practices

Impacts on business competition

Threats to business competition have been highlighted at different levels, such as impacts on the reputation of the businesses and the effects of unfair competition.

Some employer organisations are very concerned about the negative image and consequences of fraudulent practices in terms of business competition. According to the **Belgian** employers' Construction Confederation and the professional association for transport and logistics (UPTR), foreign companies employing posted workers in Belgium create the conditions for unfair competition even when they comply with the rules, because they benefit from reduced social security contributions.

Several employer organisations noted that fraud also leads to major losses in terms of jobs, and to a high number of bankruptcies. For example, the **Belgian** employers' Construction Confederation calculated that the sector has lost around 17,000 jobs since 2011 due to increased competition from foreign companies and the misuse of posting. The federation forecasts an additional loss of 20,000 jobs by 2019 (Chancellerie du Premier Ministre, 2015). In the road transport sector, the UPTR representative claimed that the sector had lost 610 companies between 2009 and 2014 and around 6,000 jobs between 2008 and 2013, the main reason being the misuse of posting of workers and unfair competition. For these reasons, employer organisations have committed themselves to informing their members about the negative consequences of fraudulent posting for the entire sector, the main one being bankruptcies.

According to the **Italian** Joint National Committee for Construction Workers' Welfare Fund (CNCE), fraudulent practices generate social dumping at the expense of 'honest companies', which have to shoulder labour costs amounting to more than twice those incurred by irregular businesses. This grants irregular companies the opportunity to offer lower prices (so ensuring that they are awarded public tenders), which may also affect the quality of public works: workers may not be qualified to carry out the required tasks, or the contracted 'dishonest company' may seek other cost advantages by saving on the quality of the materials used.

The effects on competition have been also discussed in **Finland**. For instance, Kouvonen (2012) estimated that the use of foreign and posted workers has impeded wage increases in the construction sector in the Finnish capital region. It is, however, difficult to assess to what extent this is a consequence of explicitly fraudulent forms of contracting work, as collective agreements allow for some degree of negotiation between employers and employees regarding wage levels. It is also impossible to assess to what extent the claimed effect on wages is linked to posted workers, since not all foreign workers in the construction sector are posted workers. Nevertheless, stakeholders underline that 'posting of workers often gives an unfair economic competitive advantage to companies "exploiting" [abusing] this possibility'.

Impacts on working conditions and workers' rights

As fraud associated with the posting of workers is usually linked to circumventing employment and collective bargaining regulations (as in the three countries studied), the negative impacts for workers can be seen in different areas such as working time, pay, security, and health and safety.

Negative effects on pay and wages (noted in all three countries) are of particular concern in the construction sector in **Italy**. As workers of letter-box companies are often not registered with the Construction Workers' Welfare Fund, workers posted through these companies are denied the wage elements managed by the Fund and so are remunerated 'below domestic standards' (that is, below the minimum wage level set out in collective agreements). Similarly, according to the experience of **Finnish** labour inspectors, posted workers are commonly not paid in compliance with collective agreements, although the latter apply to posted workers and their employers in Finland (Alho, 2013). Real wages and working

conditions are often worse than the ones set out in the formal written contracts entered into by posted workers, which makes fraud detection very difficult for inspectors.

In terms of health and safety, posted workers fare quite badly, as various sector representatives from **Belgium** underlined. For instance, the representative from the employers' Construction Confederation claimed that posted workers are more likely to work without protective equipment, while the UPTR representative highlighted the occurrence of posted drivers sleeping in their truck for weeks, without any opportunity to – for instance – take a shower.

Finally, it is worth noting a particular fraudulent practice that leads to the stratification of different forms of fraud, consequences of which are observed in both the sending and the receiving country. This is the practice in **Belgium** of 'self-employed' workers who are in reality employees posted by foreign companies. This fraudulent form of contracting directly affects workers in two ways. First, if a worker is posted to Belgium as 'self-employed', they have more limited access to social protection rights in their country of origin, including pension benefits, health insurance and unemployment benefits. Second, since they do not qualify as an employee, collective agreements on terms and conditions covering subordinated work do not apply to them in the receiving country.

Judicial and collective actions

Judicial remedies are rarely pursued by posted workers. Collective action is also difficult, and particularly challenging for trade unions, not least because of language barriers between posted workers and union representatives.

In **Italy**, the main stakeholders recognise that the ways that are usually open to workers to pursue the implementation of their rights – filing a lawsuit or undertaking collective action – are particularly difficult for posted workers. Indeed, although there might be a chance of eventually obtaining justice, such an approach would expose posted workers to the risk of losing their job in the short term. Therefore, they may prefer to accept lower remuneration and more limited social security protection instead of challenging their unequal treatment.

In **Finland**, while some of the most severe cases of fraud have been settled in court, labour inspectors underlined that posted workers seldom report problems they encounter in terms of working conditions, for fear of retaliation, being dismissed and sent home. Tackling the fraudulent use of posted workers through judicial proceedings is problematic. The judicial path is very time-consuming, particularly in cross-border situations: given their complexity, trials can last for years. Moreover, companies availing of posted workers are very mobile and are registered outside the country to which the workers are posted. However, the judicial route may be the only option since it is particularly difficult for labour inspectors to verify that employers are complying with all the applicable regulations on posting of workers.

Collective action remains difficult also and particularly challenging for trade unions, facing among others, language barriers between posted workers and shop stewards. According to **the Finnish Metalworkers' Union**, the fragmentation of work processes due to posting makes the union's operating environment more difficult as regards monitoring working conditions and detecting fraud. It is difficult for the union to guarantee equal treatment and to detect fraud in terms of non-compliance with, for instance, work-related health care and security, when workers from many different companies work at the same workplace

Measures to prevent and tackle fraud

The research identifies several measures and initiatives aiming to prevent and tackle fraud; measures mainly come from governments while social partner organisations pursue various initiatives.

Government actions

Regulation and monitoring

The first approach relies on the implementation of the posting of workers regulations and the transposition of Directive 2014/67/EU (Enforcement Directive on the posting of workers), as a tool to monitor the posting of workers.

In **Belgium**, transposition of the directive was effected by an act passed on 11 December 2016. In **Italy**, the transposition into the national legislative framework of the 2014 directive (through Act no. 136/2016) was referred to by Italian labour inspectors as ‘the main measure adopted on this issue’. In **Finland**, a new Act on Posted Workers transposing the directive entered into law on 18 June 2016. According to the labour inspector interviewed, the act will potentially make it easier to monitor the working conditions of posted workers.

Combating fraud

Government commitment to combating fraud is paramount. In this field, the **Belgian** example also underlines the need to sustain the effort over time, addressing several aspects simultaneously. Since May 2014, the new right-wing government of Prime Minister Charles Michel made the fight against social fraud and social dumping a priority. Many companies, especially in the sectors challenged by the low prices offered by foreign companies (in construction, road transport and agriculture), are suffering from social dumping and unfair international competition. In 2015 and 2016, annual plans with specific measures to combat social fraud were published. In 2016, four priority actions were identified to combat undeclared work, the fraudulent use of social benefits, the misuse of posting of workers and bogus self-employment.

In **Belgium**, the Social Legislation Inspectorate was asked to enhance its checks and to focus particularly on certain sectors (construction, meat, industrial cleaning, road transport, security and the food service industry (hotel/restaurant/catering)). An online single point of contact for fair competition was established on 1 September 2015, which allows a citizen, a company or an organisation to report any suspicion of fraud.² This simplifies the reporting process, the website permitting direct contact with the inspectorate (unlike the complex formal complaints process through the courts). The complaint cannot be anonymous, but the identity of the informant may remain confidential, even when the case is brought to court.

Nevertheless, striking the right balance remains challenging. While Belgium can be praised for having developed initiatives to strengthen administrative controls and monitoring, these have been questioned by companies that deem them too restrictive. The Act of 5 March 2002, which implemented the Posting of Workers Directive, obliged posting companies to obtain and retain Belgian documents concerning each posting and the computation of wages applied to posted workers. These documents were to be made available in Belgium during the whole duration of the posting, and for a period of five years after its termination. A derogation was proposed for a maximum period of six months, upon submission of an ad hoc declaration, to be approved by the Belgian authorities, five days before the beginning of the posting, where documents certifying the pay level required in the sending country were made available in Belgium. However, the CJEU considered that these rules limited the freedom to provide services, especially in the case of urgent work and (where they duplicated obligations already set out in the home country) to limit competition (CJEU, 2010).

² See <https://www.meldpuntsocialefraude.belgie.be/en/index.html>

The obligation to provide data to identify the declarer, the posted workers and the sending company by electronic means (the LIMOSA system)³ was also questioned in 2008 by an industrial company found to have hosted workers from Poland without having submitted such a declaration (CJEU, 2014). In this case, the CJEU stated:

although such a requirement represents a limitation to the freedom to provide services, it can be justified as a control measure necessary to ensure compliance with overriding reasons relating to the public interest, such as protection of workers, safeguarding of the financial equilibrium of social security, and combating of social security fraud.

Social partner involvement

Tripartite initiatives

Several tripartite initiatives have been launched to combat fraudulent posting at sectoral level. On 8 July 2015, the **Belgian** construction sector concluded a tripartite framework of action, involving employer confederations, trade unions and the Belgian government. The tripartite framework includes 40 measures aimed at fighting unfair competition, including the creation of the ConstruBadge card. This is a form of visual identification for every blue-collar construction worker, designed to make it easier for inspectors to access data on workers employed by Belgian and foreign companies. The framework also plans to limit the maximum number of subcontractors to two for the same activity. Similarly, on 3 February 2016, the Belgian government and social partners in the road transport sector signed a ‘framework of actions for fair competition’. This includes rules restricting access to the profession of driver and strengthens monitoring activities, especially for vehicles under 3.5 tonnes.

Bilateral and cross-border cooperation

In the three countries studied, formal or informal bilateral cooperation and partnerships have been established with social inspectorates and social partners, principally from neighbouring countries.

In **Finland**, the interviewees stressed the benefits of cooperation between labour inspectors with authority in other EU countries, especially those from Estonia. Labour inspectors stressed the use of the International Market Information system (IMI) to simplify information-sharing with authorities in other EU countries. In addition, the labour inspection authorities are planning to provide information in foreign languages to posted workers through digital channels; it remains to be seen what effect this measure will have. The trade unions interviewed also praised cooperation between unions and employer organisations, this cooperation facilitating the detection of frauds (see also Alho, 2013).

In **Belgium**, bilateral cooperation agreements were established with social inspectorates from France and the Netherlands. Civil servants from the Federal Public Service – Social Security also participate in initiatives at EU level, such as the project Implementing Cooperation in a European Network against Undeclared Work (ICENUW), the main goal being the collection and exchange of best practice in the framework of the European Commission’s PROGRESS programme. In addition, the Federal Public Service Social Security is involved in the development of the European network Social Integrity Europe. This network is currently active on frauds related to healthcare, and is extending its activity to any fraud related to social security.

³ LIMOSA is the Social Administration’s Cross-country Information System for Migration Research (*Landoverschrijdend Informatiesysteem ten behoeve van Migratie Onderzoek bij de Sociale Administratie*).

In **Italy**, CNCE has reached bilateral agreements with similar institutions active in Austria, France and Germany that are addressing posting in the construction sector. The agreements set out procedures aimed at simplifying the process of posting from and to neighbouring countries, and enhancing the exchange of information to better detect fraud.

Social partner initiatives

Collective agreements and information-sharing are features of social partner initiatives that aim to combat the fraudulent use of posting.

Collective bargaining initiatives

In **Belgium**, a collective agreement of the road transport sector, concluded in March 2014, envisages enhanced cooperation between social partners and the Social Legislation Inspectorate, highlighting the fact that foreign employers have to comply with Belgian working conditions and EU rules.

Social partners' measures

With respect to social partners' own measures, the **Finnish** Metalworkers' Union Metalli pointed out that the union has shop stewards who try to control posted workers' working conditions in the workplace. The effectiveness of this measure depends on the characteristics of each local area. Interviews also highlighted the dissemination by trade unions and employers of information on employment rights and duties in the most common foreign languages.

In **Italy**, an initiative of the paritarian institution CNCE to reach bilateral agreements was backed by sectoral construction social partners that fund and manage the body.

Policy pointers

In addition to well-known measures, such as running preventive awareness-raising campaigns and increasing systematic fines, there should be a greater focus on **jointly devising measures and initiatives to pursue the cross border path.**

Develop transnational administrative cooperation: The cross-border nature of the fraud demands transnational administrative cooperation. Such cooperation can prove decisive in identifying letter-box companies and preventing internal markets from triggering a race to the bottom, having regrettable effects on the tenure of honest companies and threatening genuine work. Proactive transnational administrative cooperation can create synergies between authorities, making it more difficult for employers found to be conducting fraud in one Member State to continue their illicit activities in others.

Explore opportunities offered by digitalisation of data: The ongoing digitalisation of administrative data can prove a powerful ally in making information more readily available. For instance, the introduction of identification badges that are directly connected with the personal details of workers (possibly including their wages and working times) may discourage fraud, while making data easily sharable between companies and accessible for inspectors.

Address transnational social security contribution gaps: Insofar as significant gaps remain between social security contribution levels among EU countries, an incentive to fraudulent posting will remain, while genuine posting might itself affect competition negatively. A gradual increase in social security contributions in countries where they are lower, as well as policies that support wage increases in these countries (for instance, by strengthening the role of collective bargaining), can reduce the scope for fraud while increasing economic consumption and living standards in these countries.

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