

Construction sector: Issues in information provision, enforcement of labour mobility law, social security coordination regulations, and cooperation between Member States

2023 | ELA Strategic Analysis

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PDF: ISBN 978-92-9401-399-6 doi:10.2883/9750 HP-09-23-367-EN-N

Contents

List of abbreviations.....	6
Abstract.....	7
Executive summary	8
1. Introduction.....	9
2. The construction sector: Key characteristics and challenges	11
2.1 The construction sector in the EU economy	12
2.2 Subcontracting and the role of temporary work agencies	13
2.3 Posted workers and key mobility patterns	15
2.3.1 Data from portable documents A1	16
2.3.2 Data from prior declaration tools and micro-data.....	19
2.3.2.1 Austria.....	20
2.3.2.2 Belgium	20
2.3.2.3 France	21
2.3.2.4 Germany	21
2.3.2.5 Italy	21
2.3.2.6 Luxembourg.....	22
2.3.2.7 The Netherlands.....	22
2.3.2.8 Poland.....	23
2.3.2.9 Slovenia.....	23
2.3.2.10 Spain.....	23
2.3.2.11 Other Member States.....	24
2.4 Intra-EU posting of TCNs in the construction sector	24
2.5 Abusive practices in the context of the posting of workers in the construction sector	25
Letterbox companies in sending countries	25
Fake posting by means of permanent/rotating posting	25
Bogus self-employment.....	26
Overtime and underpayment as non-respect of working conditions	26
Fraudulent PD A1 form.....	26
Illegal employment of TCNs or fraudulent posting of TCNs	26
3. Information needs of workers and employers and measures to address them	28
3.1 Legal framework on information and relevant tools and actors	29
3.2 Information needs.....	34
3.3 Suggested way forward to better inform posted workers and their employers in the construction sector	35
4. Preventive measures	38
4.1 The role of social ID cards in the EU construction sector	39
4.2 Subcontracting chain liability schemes in the EU construction sector	41
4.3 Limits on subcontracting to improve the implementation of liability schemes.....	45
4.4 The role of public procurement in the compliance with EU labour mobility rules applying to posted workers in the construction sector	45

4.5	Portable Documents A1: the administrative tie of the EU social security coordination.....	47
4.5.1	Legal framework	47
4.5.2	Gaps and criticalities relating to portable documents A1	48
4.6	Prior declaration tools	49
5.	Enforcing EU labour mobility and social security rules in the EU construction sector	52
5.1	Challenges in the enforcement of EU labour mobility and social security rules in the EU construction sector.....	53
5.2	Sanctioning mechanisms	56
5.3	Resources allocated to labour inspectors and inspection tools.....	57
5.4	Cross-border cooperation between social security and enforcement institutions	58
5.5	The role of trade unions in supporting the enforcement of posted workers' rights in the construction sector	60
5.6	Conclusions on enforcement.....	62
6.	Cross-border matching initiatives to address labour market imbalances in the EU construction sector.....	63
6.1	Introduction and context	63
6.2	Trends and state of the art	65
6.3	The impact of Russia's war of aggression against Ukraine on labour market imbalances in the EU construction sector.....	66
6.4	Cross-border matching/recruitment initiatives to address labour market imbalances in the EU construction sector	67
6.5	Conclusions	71
7.	Operational conclusions	72
1.	Information provision	72
2.	Concerted and joint inspections.....	72
3.	Cooperation between Member States	73
4.	Data collection	73
	Bibliography.....	74
	EU documents	78
	Annex 1 – Interviews.....	79
	Annex 2 – Case study interviews	81
	Annex 3 – Single official national websites	83
	Annex 4 – Bilateral agreements between Poland and other Member States	84

List of tables

Table 1: Case studies overview	10
Table 2: Roles and responsibilities of the contracting business and temporary work agency	14
Table 3: Main receiving/sending Member States of postings in the construction sector, based on PDs A1 issued under Article 12, 2021	17
Table 4: Member States where construction is the primary sector for incoming/outgoing posted workers, 2021	18
Table 5: Main corridors of postings in the construction sector between Member States, 2021	18
Table 6: Posted workers in the construction sector as a share of total employment according to Art. 12 PDs A1 data, 2021	19
Table 7: Typology of abusive practices in the construction sector	27
Table 8: Overview of the different social ID cards in the 17 Member States covered in this study	39
Table 9: National measures on subcontracting liability in the construction sector in force in the 17 Member States covered under this study according to the Commission Communication on the implementation of Directive 2014/67/EU	43
Table 10: Typology of measures and examples of countries	68

List of boxes

Box 1: Case study on construction companies' initiatives to inform posted workers in the construction sector in sending and receiving Member States	29
Box 2: Case study on the role of social partners in provision of information to workers and employers.	32
Box 3: Case study on employer practices in accessing information	36
Box 4: Case study on the role of public procurement in compliance with EU labour mobility rules applying to posted workers in the construction sector.	46
Box 5: Case study on labour inspectorates' access to databases	50
Box 6: Case study on good practices and key issues in enforcement by labour inspectorates of labour mobility rules and social security coordination regulations	54
Box 7: Case study on bilateral agreements between Poland and receiving Member States	59
Box 8: Case study on the enforcement of workers' rights in sending Member States	61
Box 9: Ukrainians in the Polish construction sector	66
Box 10: Initiatives targeting TCNs	70

List of figures

Figure 1: Number of employed and growth rate of employment (in %) in the construction sector, 2021	12
Figure 2: Temporary work agency workers in the construction sector (% of total employees), 2021	14
Figure 3: Causes of quantitative and qualitative shortages	64
Figure 4: Example of factors creating imbalances in the construction sector	65

List of abbreviations

BUAK	<i>Bauarbeiter-Urlaubs- und Abfertigungskasse</i> [Construction Workers' Annual Leave and Severance Pay Fund]
Cedefop	Centre for the Development of Vocational Training
CJEU	Court of Justice of the European Union
CNV	<i>Christelijk Nationaal Vakverbond</i> [Christian National Trade Union Federation]
ECSO	European Construction Sector Observatory
EFBWW	European Federation of Building and Woodworkers
EFTA	European Free Trade Association
ELA	European Labour Authority
ETUC	European Trade Union Confederation
EU	European Union
EU-BCS	European Business and Consumer Surveys
EURES	European Employment Services
EGD	European Green Deal
FIEC	European Construction Industry Federation
FNV	<i>Federatie Nederlandse Vakbeweging</i> [Federation of Dutch Trade Unions]
GVA	Gross value added
ILO	International Labour Organisation
IMI	Internal Market Information System
ISCED	International Standard Classification of Education
Limosa	Cross-Country Information System for Migration Research at the Social Administration
OSH	Occupational safety and health
PD A1	Portable Document A1
PDT	Prior declaration tool
PROMO	Protecting Mobility through Improving Labour Rights Enforcement project
SME	Small and medium-sized enterprise
SOKA BAU	<i>Sozialkassen der Bauwirtschaft</i>
TCN	Third Country National
Urssaf	<i>Unions de recouvrement des cotisations de sécurité sociale et d'allocations familiales</i> [Organisations for the Collection of Social Security and Family Benefit Contributions]
UWV	<i>Uitvoeringsinstituut Werknemersverzekeringen</i> [Institute for Employee Insurance]

Abstract

This study analyses challenges related to the enforcement of labour mobility and social security laws in the construction sector, with a specific focus on the posting of workers. Despite measures in place in the European Union Member States to ensure compliance with posting rules, their enforcement has been challenging in the construction sector. Posted workers and their employers are also not always fully aware of their rights and obligations despite several initiatives to improve the communication of relevant information by social partners, Member States and the European Commission. The sector also struggles with labour and skill shortages, and although some cross-border initiatives exist to address these shortages, they are often hindered by language and cultural differences, along with limited recognition of skills and qualifications. The findings in this study suggest that the European Labour Authority (ELA) could play a more active role in supporting the improved enforcement of posting rules in the construction sector in Member States, the communication of information to workers and employers concerned, and contributing to the improvement of data collection on labour mobility in the construction sector.

The ELA *Strategic Analysis* series keeps track of emerging trends, challenges and loopholes in the areas of labour mobility and social security coordination. It includes in-depth analyses and studies that investigate specific issues, recurring problems and sector-specific challenges. The analyses contribute to risk assessment to inform ELA's operational activities as well as the work of national competent authorities, and, where appropriate, the social partners.

Executive summary

This report addresses challenges related to the enforcement of labour mobility and social security law in the construction sector, with a focus on the posting of workers. It is based on the review of literature, statistical analysis and empirical work in Member States most affected by labour mobility in the construction sector that was conducted between October 2022 and May 2023.

The construction sector plays a vital role in the EU economy, employing approximately 13 million people and contributing around 5.5 % to the gross value added (GVA). In 2021, around one in four portable documents A1 (PDs A1) issued was granted for services in the EU construction sector. This amounts to an approximate estimate of 833 000 PDs A1 issued in the sector. Germany was the primary receiving country for posted workers in the EU construction sector, while Poland was the main sending country. The 2021 figures indicated a recovery from the COVID-19 pandemic in most Member States as far as the number of postings was concerned. A relatively high rate of third country nationals (TCNs) are employed in the EU construction sector and posted to other Member States than their own Member State of residence. These TCNs face some specific challenges compared to other posted workers, such as dependence on employers for work permits, language barriers, irregular employment, non-payment of social contributions and more exposure to occupational health and safety risks.

The enforcement of legislation on the posting of workers in the construction sector poses several challenges. The most prevalent violations and abusive practices include the establishment of letterbox companies, non-compliance with working conditions, bogus self-employment, fraudulent PD A1 usage and fraudulent posting of TCNs. Labour inspectorates have the necessary inspection and sanctioning regulatory tools to address these violations and abusive practices, but lack sufficient financial and staff resources, and experience difficulties in identifying some factual elements in such posting contexts (e.g. place of registration of undertakings, number of contracts performed, whether or not the posted workers return to or are expected to resume working in the sending Member State) to properly carry out their inspection activities. Furthermore, the imposition of sanctions and their effective implementation can be difficult in a cross-border situation.

The report identifies several relevant measures to prevent non-compliance with posting rules in the construction sector. These include social ID cards, subcontracting chain liability schemes, limitations on subcontracting and specific public procurement rules. The Member States, together with social partners and the European Commission, also launched several measures to better diffuse information to workers and employers about their rights and obligations in a posting context. Despite these measures, workers and employers in the construction sector are still not considered to be well informed. Moreover, major deficiencies in the communication tools and methods were flagged, leading to confusion and difficulty in accessing relevant information. These shortcomings included a use of complex legal language, lack of translations, and scattered sources of information.

The EU construction sector is also facing significant labour and skill shortages. To address such shortages, Member States have implemented various cross-border initiatives, including enhancing skills development, offering training opportunities and fostering cross-border cooperation. Several initiatives are also targeted at the recruitment of TCNs, often through bilateral agreements with third countries.

Based on the findings of this study and taking ELA's mandate into consideration, some operational conclusions have been drawn. These conclusions highlight the need for more support from ELA to improve the enforcement of posting rules within Member States in the construction sector, to better communicate information at the EU and Member State level to workers and employers in the construction sector, and to contribute to the improvement of data collection on labour mobility in the construction sector.

1. Introduction

The construction sector in the European Union directly employs around 13 million people and is an essential part of its economy. The EU construction sector has experienced persistent labour and skill shortages over the years along with significant worker mobility flows between Member States, in particular from eastern to western Member States. These shortages are often eased through the posting of workers. Due to its characteristics, notably the prevalence of complex and labour-intensive projects relying on subcontracting chains, the construction sector is more susceptible to abusive practices that lead to infringements of the EU legal framework on labour mobility and social security coordination.

The European Labour Authority (ELA), which plays an essential role in facilitating and enhancing cooperation between Member States to help ensure that EU rules on labour mobility and social security coordination are enforced, selected the construction sector as one of its priorities for 2023.

Within this context, this study aims to assist ELA and Member States in addressing challenges arising in the construction sector relating to the enforcement of labour and social security law (such as information exchange and cooperation). The study focuses primarily on the posting of workers in the construction sector. It provides an overview of the construction sector labour market and its key characteristics, including a detailed analysis of the number of posted workers in the construction sector and key mobility patterns (Section 2). It maps the information needs of posted workers and employers and the measures taken to address these needs (Section 3). It analyses measures in place to prevent infringement of EU mobility rules in the construction sector (Section 4) and explains how these rules are enforced in Member States sending and receiving posted workers (Section 5). The study also outlines cross-border matching initiatives to address labour and skill shortages in the EU construction sector (Section 6). Finally, based on the findings in these sections, the study develops operational conclusions, taking ELA's mandate into account (Section 7).

This study is based on the following five main research streams carried out between October 2022 and May 2023.

- A comprehensive **review of the literature** including peer-reviewed articles, conference papers and reports from representatives of social partners at the EU level were mapped, selected and analysed. The review considered literature in English, prioritising the literature covering the period from 2014 onwards.
- A **quantitative data analysis** showing key mobility patterns in the construction sector with a focus on 2019–2021, using the European Commission's annual reports on portable documents A1 (PDs A1) and the POSTING.STAT project from HIVA – Research Institute for Work and Society KU Leuven as the main data sources.
- **Seven exploratory interviews** with selected stakeholders to better understand the situation of posted workers in the construction sector and the issues at stake (e.g. challenges in the enforcement of EU labour mobility legislation in the construction sector). See **Annex 1** for the full list of interviewees.
- **21 interviews with either a representative of a central inspection authority or another relevant stakeholder** in the 17 main sending countries (Czechia, Germany, Croatia, Hungary, Poland, Portugal, Romania, Slovenia and Slovakia) and receiving countries (Belgium, Germany, Spain, France, Italy, the Netherlands, Austria, Finland and Sweden) of posted workers in the construction sector. Interviewees were identified in cooperation with ELA national liaison officers. The interviews covered the information needs of these workers and their employers, the challenges linked to the application and enforcement of EU labour mobility rules in the construction sector, and the identification of cross-border matching/recruitment initiatives of public authorities or social partners to address labour and skill shortages in the construction sector. They also focused on good practices ⁽¹⁾ and areas for improvement under these three aspects.
- **10 case studies covering selected Member States** ⁽²⁾ that receive posted workers in the construction sector, namely Belgium, Germany ⁽³⁾, France, the Netherlands and Austria, and Member States that posted workers in the construction sector, namely Germany, Croatia, Poland, Portugal, Slovenia and Slovakia, based on interviews with key actors (i.e. social partners, labour inspectorates, labour court representatives and authorities in charge of public procurement). The 10 case studies are detailed in the table below. The case studies were selected in cooperation with national liaison officers and based on the preliminary findings of the study. Their aim was to provide an in-depth understanding of the situation of posted workers in the construction sector in relevant Member States.

⁽¹⁾ Good practices to be defined according to ELA criteria: <https://www.ela.europa.eu/en/call-good-practices-2022#bcl-inpage-item-780>.

⁽²⁾ These countries were selected based on available information on the total number of PDs A1 issued under Article 12 of Regulation (EU) 2018/1139 (the Basic Regulation). As a result, certain Member States where construction is a highly significant sector among posted workers (e.g. Estonia and Romania) may be excluded from this list.

⁽³⁾ Germany is covered both as a receiving country and as a sending country.

Table 1: Case studies overview

Case studies	Sending Member State					Receiving Member State				
	HR	PL	PT	SI	SK	BE	DE	FR	NL	AT
Construction companies' initiatives to inform posted workers in the construction sector in sending and receiving Member States	X	X	X	X	X	X	X	X	X	X
Employers' practices in accessing information	X	X	X	X	X	X	X	X	X	X
The role of social partners in provision of information to workers and employers	X	X	X	X	X	X	X	X	X	X
Good practices and key issues in enforcement by labour inspectorates of labour mobility rules and social security coordination regulations						X	X	X	X	X
Labour inspectors' access to other databases to cross-check data (e.g. PD A1, tax records)						X	X	X	X	X
Public procurement in compliance with EU labour mobility rules applying to posted workers in the construction sector						X	X	X	X	X
Enforcement of workers' rights in sending countries	X	X	X	X	X					
Bilateral agreements between Poland and receiving Member States		X				X	X	X	X	X
Cross-border matching/recruitment initiatives to address labour and skills shortages in the construction sector	X	X	X	X	X	X	X	X	X	X
Chain liability and posted workers in subcontracting schemes in the construction sector						X	X	X	X	X

The methodology for this study was designed to be feasible, considering its scope and timeline and the sources of information available. Therefore, the findings under this study must be read considering the following limitations.

- The study covers 17 Member States.
- Case studies cover 10 Member States.
- Posted workers and employers were not directly consulted; instead, their representatives (i.e. social partners) were interviewed.
- There is limited up-to-date academic literature and quality data on some of the topics discussed. Additionally, figures for 2020 and 2021 should be approached with caution due to potential disruptions created by COVID-19.

Despite these constraints, significant efforts were made to consult the most relevant stakeholders and to include a large representative sample of Member States.

2. The construction sector: Key characteristics and challenges

Main findings

- The construction sector is essential for the EU economy, adding significant value and employing around 13 million people. The average growth rate of employment in 2021 was around 3 %. The gross value added (GVA) share of the sector in the EU was around 5.5 % in 2021.
- The construction sector is characterised by the significant presence of posted workers and by distinct mobility patterns across Member States. Based on available data on PDs A1 issued in 2021, around one out of four PDs A1 issued (under Article 12) in the EU are granted for services in the construction sector, with a significant difference observed between western and southern (15 %) and central and eastern Member States (49 %). Germany is both a main receiving and sending country for posted workers in the construction sector, whereas Poland is the primary sending country –the corridor from Poland to Germany is the primary corridor in the EU. Posted construction workers also play an important role in Belgium from a receiving perspective and in Slovenia from a sending perspective. Figures from 2021 also indicate a recovery from the COVID-19 pandemic in most of the Member States that have national-level data available.
- Subcontracting is a prevalent practice in the construction sector in the EU, enabling access to cheap labour and specialised skills and offering a way to manage market fluctuations and labour shortages. Subcontracting chains in this sector can become complex, especially when they involve multiple companies from different Member States, creating difficulties for labour enforcement authorities and trade unions to identify the ‘actual employer’ and protect workers’ rights.
- Temporary work agencies play a pivotal role in subcontracting chains by providing workers for different stages of construction projects, including both unskilled and highly specialised workers. National labour inspectorates face difficulties in monitoring and inspecting these agencies, often due to their use of virtual offices or letterbox companies to evade inspections. Ensuring compliance and preventing abuses in the construction sector requires regular inspections, improved information sharing between labour authorities, and access to national databases on posted workers, tax and social security.
- The construction sector is one of the main sectors employing posted third country nationals (TCNs), together with (road freight) transport and agriculture. There are, however, notable differences between Member States. For instance, Malta and Romania have low numbers of posted TCNs in the construction sector; in contrast, incoming TCNs represent a significant share of posted workers in Belgium and Austria. Posted TCN workers are more vulnerable than EU posted workers due, inter alia, to their dependency on their employer for the renewal of the work and residence permits, language barriers, more exposure to irregular employment, and subsequent non-payment of social contributions and health insurance. Such vulnerability is most likely to be enhanced in the construction sector considering, inter alia, the occupational health and safety risks inherent to this sector.
- The setting up of letterbox companies, the non-respect of working conditions, bogus self-employment, fraudulent PD A1 forms and illegal employment of TCNs or their fraudulent posting represent the most significant and recurrent violations and abusive practices.

Providing an introductory overview of the construction sector labour market in the EU, this section will first detail the relevance of the construction sector in the EU economy ([Section 2.1](#)). It will then describe the key characteristics of the EU construction sector relevant to this study, focusing in particular on the use of subcontracting practices and temporary work

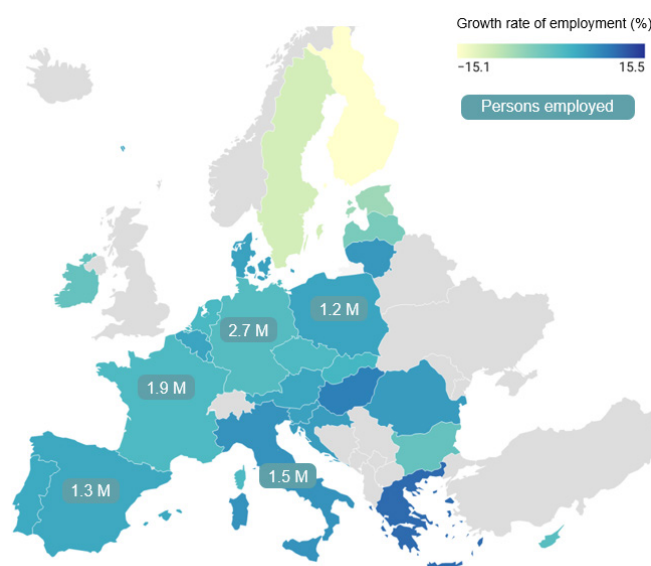
agencies (Section 2.2), the number of posted workers in the construction sector and key mobility patterns (Section 2.3), the role of posted TCN workers (Section 2.4) and the abusive practices related to postings in the construction sector (Section 2.5).

2.1 The construction sector in the EU economy

With more than 3 million enterprises, the EU construction sector has an annual turnover of more than EUR 1 500 billion. One way to assess its size is by looking at the GVA, which is a measure of the sector's contribution to the overall economy ⁽⁴⁾. According to the latest available Eurostat data, the GVA share of the construction industry was around 5–6 % between 2010 and 2021. This figure reached its peak of 5.8 % in 2010, but fell to 5.1 % during 2014–2017, before increasing again to 5.5 % between 2020 and 2021 ⁽⁵⁾. During this period, several Member States experienced a decrease in the GVA share from the construction sector, with the main reductions being in Bulgaria, Greece, Spain and Slovakia. In contrast, Denmark, Germany, Lithuania, Hungary and Finland experienced the highest growth. In 2021, the GVA share was particularly high in Lithuania, Austria, Romania and Finland, in all of them contributing to 7 % or more of the total GVA ⁽⁶⁾.

In addition to GVA, employment figures can also provide insights into the size of the sector. Overall, the EU construction sector directly employs around 13 million people ⁽⁷⁾ and had an average employment growth rate of employment (between 2020 and 2021) of around 3 % ⁽⁸⁾. The map in Figure 1 shows these figures by Member State. Germany had the highest number of workers employed in the construction sector in 2021, followed by France, Italy, Spain and Poland. Relative to the total workforce, Luxembourg has the highest share of workers in construction (around 17 %), followed by Lithuania (9.5 %), Cyprus (9 %) and Austria (8.5 %) ⁽⁹⁾. When it comes to employment growth rates between 2020 and 2021, Greece, Hungary and Italy had the highest figures. In Scandinavian and Baltic states, the growth rates have been decreasing and, considering the high GVA, a lower level of employment may indicate an increase in productivity, further confirmed by the high extent of digitalisation adopted in the construction sector within these countries ⁽¹⁰⁾.

Figure 1: Number of employed and growth rate of employment (in %) in the construction sector, 2021



NB: Figures for total persons employed are shown only for countries with numbers above 1 million. Growth rate of employment (in %) is relative to the previous year.

Source: Eurostat, enterprise statistics, SBS_SC_OVW

⁽⁴⁾ Eurostat defines GVA as 'output (at basic prices) minus intermediate consumption (at purchaser prices)'. Eurostat, 'Statistics Explained' (https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Glossary:Gross_value_added&lang=en).

⁽⁵⁾ Data for 2020 and 2021 may be subject to limitations and distortions due to the impact of the COVID-19 pandemic. Figures for these years should be interpreted with caution.

⁽⁶⁾ Eurostat, annual national accounts, NAMA_10_A10. See also: <https://ec.europa.eu/eurostat/cache/digipub/housing/bloc-3a.html?lang=en>.

⁽⁷⁾ Eurostat, labour force survey data, LFSA_EGAN2, and Eurostat, structural business statistics – industry and construction, SBS_NA_CON_R2.

⁽⁸⁾ Eurostat, enterprise statistics, SBS_SC_OVW. Data for 2020 and 2021 may be subject to limitations and distortions due to the impact of the COVID-19 pandemic. Figures for these years should be interpreted with caution.

⁽⁹⁾ Eurostat, enterprise statistics, SBS_SC_OVW; Eurostat, labour force survey, LFSA_EGAN22D.

⁽¹⁰⁾ European Construction Sector Observatory (ECSO), *Digitalisation in the construction sector: Analytical report*, European Commission, 2021.

In the EU, most of the construction industry (99 %) is composed of small and medium-sized enterprises (SMEs), namely enterprises with fewer than 250 employees ⁽¹¹⁾. Among those, micro-enterprises (with fewer than 10 workers) represent the largest share in the EU, accounting for around 94 % of the construction sector ⁽¹²⁾.

2.2 Subcontracting and the role of temporary work agencies

As further detailed in Section 4(2), subcontracting is a prevalent practice in the construction sector in the EU, enabling access to cheap labour and specialised skills and offering a way to manage market fluctuations and labour shortages. A subcontracting chain forms when a large contractor, hired by an investor or the investor itself, engages one or more subcontractors who bring their own personnel or engage another legal entity, such as a temporary employment agency ⁽¹³⁾. These chains can become complex, especially when they involve multiple companies from different Member States, increasing uncertainty around employment arrangements. This complexity can result in an erosion of workers' rights, and it is particularly challenging at the lower levels of the chain for labour enforcement authorities and trade unions to identify the 'actual employer' and protect workers' rights.

The growth of labour market intermediaries in the form of temporary work agencies has created additional complexity in the subcontracting chain. Temporary work agencies play a pivotal role in subcontracting chains by providing workers for the different stages of construction projects. This can include both unskilled labour and highly specialised workers such as architects and engineers. In doing so, they can help promote labour mobility within the EU by making it easier for companies to hire temporary workers from other Member States. Within the EU legal framework, temporary work agencies are regulated by the Directive on Temporary Agency Work (Directive 2008/104/EC) ⁽¹⁴⁾, which ensures the protection of temporary agency workers and the principle of equal treatment ⁽¹⁵⁾. The directive does not set standards on pay, working conditions or occupational health and safety for temporary agency workers, but requires that temporary agency workers are entitled to the same rights as directly hired workers in areas such as the duration of working time, overtime, breaks, rest periods, night work, holidays and public holidays and pay ⁽¹⁶⁾. The revision of the Posting of Workers Directive ⁽¹⁷⁾ ensures equal treatment of posted temporary workers. The same conditions applicable to national temporary work agencies will also apply to cross-border agencies hiring workers.

Article 3 of the directive defines temporary work agencies as 'any natural or legal person who, in compliance with national law, concludes contracts of employment or employment relationships with temporary agency workers in order to assign them to user undertakings to work there temporarily under their supervision and direction'. The relationships between the temporary work agency (supplier/lender of workers' services), the temporary agency worker and the contracting business (user/borrower of workers' services) are established via two contracts: one between the agency and the worker, and a second between the agency and the business. Therefore, the worker is a formal employee of the temporary work agency and there is no contract between the contracting business and the worker ⁽¹⁸⁾. Even though the specific responsibilities of the temporary work agency and contracting business may vary depending on the national regulations and collective agreements, the table below provides a general outline of their distribution between the two parties.

⁽¹¹⁾ Eurostat, enterprise statistics, SBS_SC_OVW.

⁽¹²⁾ *Ibid.*

⁽¹³⁾ European Parliament, Directorate-General for Parliamentary Research Services, Heinen, A., Kessler, B., and Müller, A., *Liability in subcontracting chains: national rules and the need for a European framework*, European Parliament, 2017.

⁽¹⁴⁾ Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work (OJ L 327, 5.12.2008, p. 9).

⁽¹⁵⁾ Article 2 of Directive 2008/104/EC.

⁽¹⁶⁾ Further instruments shaping the legal framework for temporary work agencies are the International Labour Organisation (ILO) Convention No 181 and the European Social Charter. The former provides guidelines for the operation of private employment agencies (an umbrella group that includes temporary work agencies) and emphasises the importance of protecting the rights of workers who are placed through such agencies. Although no explicit reference to temporary work agencies is made in the provisions of the 1961 and 1996 ESC, the charter requires Member States to ensure that the social and economic rights are applied to all workers, regardless of the nature of their contracts. See: Countouris, N., Deakin, S., Freedland, M., Koukiadaki, A., and Prassl, J., *Report on temporary employment agencies and temporary agency work*, ILO, 2016, pp. 29–35.

⁽¹⁷⁾ Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (OJ L 18, 21.1.1997, p. 1)

⁽¹⁸⁾ Kessler, B., et al., 2017.

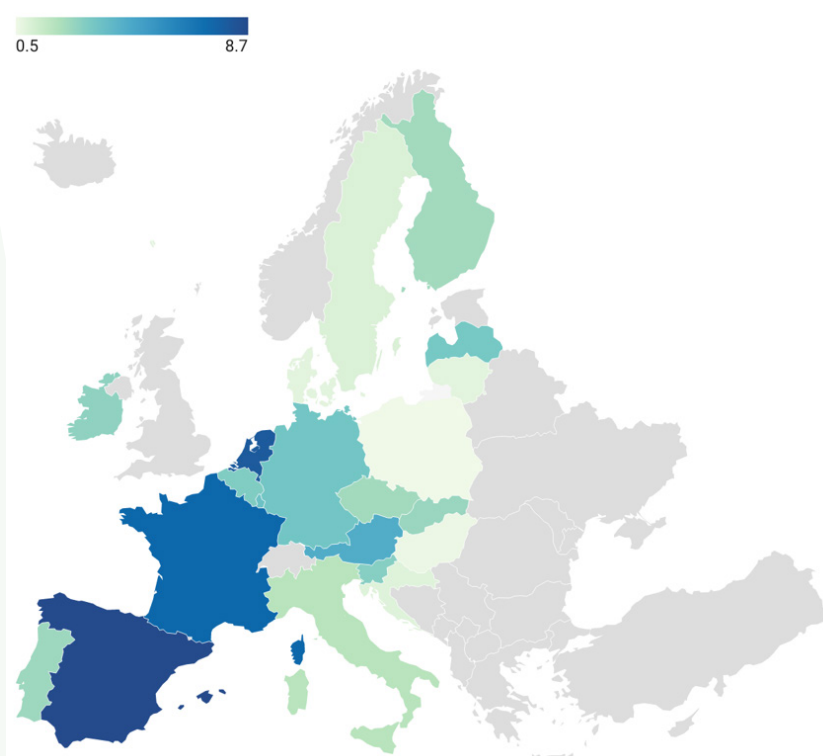
Table 2: Roles and responsibilities of the contracting business and temporary work agency

Contracting business	Temporary work agency
Providing a safe working environment for temporary agency workers, including any necessary safety equipment or training. They must also comply with the legal framework relevant to occupational health and safety. Providing temporary agency workers with access to the same collective facilities and amenities as permanent workers, such as staff canteens, childcare facilities and transport services. Ensuring equal treatment of temporary agency workers so that they receive the same basic working and employment conditions as if they had been recruited directly by the user company, including pay, working hours, and any other relevant terms and conditions. They must not discriminate against temporary agency workers on the grounds of their employment status or any other characteristic. Supervising and managing temporary agency workers. They must ensure that the workers receive adequate training and support to perform their job, and that they are treated fairly and respectfully.	Recruiting and selecting temporary agency workers for user companies, and ensuring that the workers have the necessary skills and qualifications for performing the job and all the necessary documentation and permits (including PD A1 in the case of posted workers) for working in the relevant country. Entering into contracts with temporary agency workers. These contracts should specify the terms and conditions of employment, including the duration of the assignment, the rate of pay, working hours and any other relevant details. Providing information to temporary agency workers about their employment conditions, including their pay, working hours and any other relevant terms and conditions. Paying temporary agency workers, including any overtime or additional compensation required by law. They must also deduct and remit any taxes, social security contributions or other mandatory deductions required by law.

Source: Author's elaboration, based on Kessler, B., et al., 2017; and Countouris, N., Deakin, S., Freedland, M., Koukiadaki, A., and Prassl, J., *Report on temporary employment agencies and temporary agency work*, ILO, 2016, p. 35.

According to Eurostat data, in 2021, 3.4 % of employees in the EU construction sector worked for a temporary work agency. This figure is one percentage point higher than for the rest of the economy and has stayed relatively stable over that last 6 years (3.1 % in 2015) ⁽¹⁹⁾. The map below provides a breakdown by Member State. Spain, the Netherlands, and France report the highest shares of workers employed by temporary work agencies: around 9 %, 8 % and 7 %, respectively.

Figure 2: Temporary work agency workers in the construction sector (% of total employees), 2021



NB: No data for Bulgaria, Estonia, Cyprus, Malta and Romania. Greece excluded due to a break in time series. Figures are in percentage of total employees between 20–64 years old.

Source: Eurostat, LFS, LFSA_QOE_4A6R2.

⁽¹⁹⁾ Eurostat, Labour Force Survey (LFS), LFSA_QOE_4A6R2.

Temporary work agencies, although very flexible and cost-effective, may be subject to fraudulent use ⁽²⁰⁾. As temporary work agencies are not directly linked with the activities of construction businesses, they may take advantage of the complex employment relationships and context in which they operate to avoid legal wage payments, and bypass vocational education and training and occupational safety and health (OSH) requirements. Certain studies further suggest that fraudulent agencies have created business models that generate income from charging high recruitment fees ⁽²¹⁾, offering exploitative arrangements when it comes to the posting of workers, or disguising employment as business trips ⁽²²⁾. Some of the temporary work agencies may be unregistered, unlicensed or underreporting the economic activities undertaken and can force EU mobile workers into undeclared work ⁽²³⁾. In general, all Member States have in place a clear statutory framework that regulates and limits the terms of use of temporary work agencies to prevent fraudulent practices ⁽²⁴⁾. In Germany, for instance, temporary work agencies are strictly forbidden in the construction sector ⁽²⁵⁾.

In Poland, an issue persists regarding temporary work agencies. According to the Polish Ministry of Family and Social Policy, approximately 9 000 temporary work agencies are registered in the country, yet they exhibit a high annual turnover rate – with over 20 % disappearing each year – which signals potential fraudulent activities within these companies. To address this problem, the Polish Labour Inspectorate suggests regular inspections of cross-border postings from these temporary work agencies. Such measures are crucial in preventing abuses, particularly in the construction sector, and ensuring compliance inter alia with OSH requirements.

Difficulties in monitoring and inspecting temporary work agencies were reported by several national labour inspectorates, as those agencies often set up ‘virtual offices’ or letterbox companies to evade inspections and legal consequences for non-compliance ⁽²⁶⁾. Often, there is also a lack of tools to monitor the labour relations of workers who are posted to other Member States. Addressing these issues may include prompt and efficient access by national authorities to information from other Member States’ national databases regarding posted workers, tax and social security, and also an increased accessibility of information flow between labour authorities and workers ⁽²⁷⁾.

2.3 Posted workers and key mobility patterns

This section examines the number and share of posted workers in the construction sector and their key mobility patterns. This is based on data from the portable documents A1 (PDs A1) ⁽²⁸⁾ and on data obtained from prior declaration tools (PDTs) and other micro-data sources.

Based on available data on postings in 2021, around one in four PDs A1 issued were granted for services in the EU construction sector. The estimated total number of PDs A1 issued in the EU construction sector was approximately 833 650. Germany was the primary receiving country for posted workers in the EU construction sector, while Poland was the main sending country. These Member States also made up the primary corridor in the EU, namely from Poland to Germany. At the same time, posted construction workers played an important role in Belgium from a receiving perspective and in Slovenia from a sending perspective. Moreover, figures from 2021 indicated a recovery from the COVID-19 pandemic in most Member States when national-level data were available.

As for posted workers in general, it is important to first highlight the challenges and gaps in terms of data collection regarding posted workers in the construction sector ⁽²⁹⁾. The availability of data on intra-EU posting depends mainly on the extent to which companies effectively declare their posting activities in both the sending and receiving Member State, alongside the reporting mechanisms in place. Nevertheless, there is a lack of uniformity in data collection approaches

⁽²⁰⁾ Pavlovaite, I., ‘Tools and approaches to tackle fraudulent temporary agency work, prompting undeclared work’, *European Platform Tackling Undeclared Work*, 2020; Pavlovaite, I., ‘Tools and approaches to tackle fraudulent temporary agency work, prompting undeclared work’, *European Platform Tackling Undeclared Work*, 2021; Stefanov, R., et al., 2021.

⁽²¹⁾ Although Directive 2008/104/EC and ILO Convention No 181 prohibit temporary work agencies from charging any fees for recruitment, placement or providing information about job vacancies, there may be certain exceptions to this rule in some Member States (e.g. fees related to the processing of work permits or visas). This also depends on the transposition of the directive provisions in Member States. See: Schömann, I., and Guedes, C., *Temporary Agency Work in the European Union: Implementation of Directive 2008/104/EC in EU Member States*, European Trade Union Institute (ETUI), 2012.

⁽²²⁾ Pavlovaite, I., 2020, p. 5.

⁽²³⁾ Stefanov, R. et al., 2021.

⁽²⁴⁾ Kessler, B., et al., 2017, p. 20.

⁽²⁵⁾ Temporary Employment Act (LS 1972 – Ger. F.R. 2), Section 1. More information can also be found here: https://www.zoll.de/EN/Businesses/Work/Foreign-domiciled-employers-posting/Temporary-work-temporary-worker-assignment/Requirements/requirements_node.html.

⁽²⁶⁾ Stefanov, R., et al., 2021.

⁽²⁷⁾ *Ibid.*

⁽²⁸⁾ The PD A1 is a document that must be requested by the posting undertaking or the self-employed person to prove that a worker or a self-employed person remains subject to the social security system of the sending Member State.

⁽²⁹⁾ De Wispelaere, F., De Smedt, L., and Pacolet, J. *Posted workers in the European Union: Facts and figures*. Leuven: POSTING.STAT project VS/2020/0499, 2022b, pp. 17–19.

among Member States (including differences in information requested, type of procedure, etc.). In practice, authorities in both countries may not always be informed about posting activities, partially due to notable differences in terms of the use, methodology and scope of declaration tools and prior declaration forms. The available posting data from both PDs A1 and PDTs might therefore not always reflect reality ⁽³⁰⁾. Some countries have recently taken measures to increase compliance by imposing stricter conditions on the PD A1 requirements for being legally posted. France and Austria, for example, have implemented penalties or sanctions for companies that are not able to present a valid PD A1, and authorities are conducting more frequent and thorough checks on whether posted workers possess the necessary PD A1 ⁽³¹⁾.

Despite these limitations, PD A1 statistics remain the most useful source for comparing Member States at the EU level and provide a good estimation of postings / posted workers in the construction sector. At the national level, PDTs and other micro-data can help complement the information, filling in some gaps and revealing potential trends within Member States.

2.3.1 Data from portable documents A1

At the EU level, data from 2021 are used and focus specifically on PDs A1. The available statistics distinguish between PDs A1 issued under Article 12 (i.e. employees / the self-employed who normally carry out activities in one Member State and are posted to another) and Article 13 (i.e. employees / the self-employed engaged in activities in two or more Member States) of the Basic Regulation ⁽³²⁾. As such, the different types of PDs A1 data collected provide valuable insights into the mobility patterns of posted workers within the EU.

It is important to note that several Member States – including significant net receiving and sending countries – lack available data on PDs A1 issued from a sending perspective under Article 12 in the sector in 2021. These are Bulgaria, Denmark, Ireland, Greece, Spain, Italy, Hungary and the Netherlands ⁽³³⁾. Additionally, under Article 13, information on PDs A1 is unavailable for the countries mentioned above as well as for Czechia, Germany, Portugal and Romania. This data gap partly stems from the absence of information about the location of cross-border activities for these individuals, resulting in data regarding the receiving Member States being unobtainable, and also from countries not fully sharing the requested data.

The main Member States receiving and sending construction services in 2021, based on the total number of PDs A1 issued under Article 12 of the Basic Regulation ⁽³⁴⁾, are shown in [Table 3](#). While Germany was the main receiving country in terms of absolute numbers, Poland was the main sending EU Member State. In order to indicate the significance of postings in the workforce of each Member State's construction sector, the table also shows an estimation of the PDs A1 issued as a share of all workers in the sector. Notably, Slovenia and Slovakia stand out with remarkably high proportions of outgoing postings at 52 % and 28 % respectively. This may suggest a widespread use of and reliance on a possible 'business model' by employers in these countries' construction sectors whereby workers do not get employed in the country but are immediately posted to another Member State ⁽³⁵⁾. At the same time, the share for Belgium (17 %) indicates a high level of posted workers in its construction sector from a receiving perspective.

⁽³⁰⁾ The reported figures only indicate the intention to provide services in the Member State, without confirming the actual provision of these services. There are also differences in the definition of 'posted' between the Basic Regulation and the Posting of Workers Directive, which may result in workers (not) being counted in the PDs A1 statistics. Moreover, while undertakings are required to inform competent institutions before a posting, this may not always happen, resulting in further discrepancies between the number of PDs A1 issued, postings of which Member States have been notified and the actual number of persons being sent abroad as posted workers. These tools may therefore over- or underestimate the actual number of posted workers, making it challenging to directly compare or extrapolate the data.

⁽³¹⁾ De Wispelaere, F., De Smedt, L., and Pacolet, J., *Posted Workers in the European Union: Facts and figures*. Leuven: POSTING.STAT project VS/2020/0499, 2022b, pp. 16–19.

⁽³²⁾ Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ L 166, 30.4.2004, p. 1).

⁽³³⁾ In 2020, Hungary and the Netherlands did have data available in this context.

⁽³⁴⁾ De Wispelaere, F., De Smedt, L. and Pacolet, J., *Posting of Workers: Report on A1 Portable Documents issued in 2021*, HIVA-KU Leuven, 2023, pp. 55–56.

⁽³⁵⁾ De Wispelaere, F., De Smedt, L. and Pacolet, J., *Posted workers in the European Union: Facts and figures*. Leuven: POSTING.STAT project VS/2020/0499, 2022b, p. 36.

Table 3: Main receiving/sending Member States of postings in the construction sector, based on PDs A1 issued under Article 12, 2021

Receiving Member State			Sending Member State		
Member State	No. of PDs A1 issued under Article 12	Estimated postings as % of total employment in the construction sector	Member State	No. of PDs A1 issued under Article 12	Estimated postings as % of total employment in the construction sector
DE	151 146	5 %	PL	104 308	10 %
BE	54 852	17 %	DE	64 813	2 %
FR	47 125	3 %	SI	41 785	52 %
AT	36 923	10 %	SK	41 209	28 %
NL	24 549	4 %	PT	34 635	9 %

NB: Data unavailable for Bulgaria, Denmark, Ireland, Greece, Spain, Italy and Hungary.

Source: De Wispelaere et al., 2023; ECSO 2021 employment data (number of persons employed in construction); author's calculations.

From a sending perspective, in the EU in 2021, 25.9 % of all PDs A1 issued under Article 12 were granted for services in the construction sector ⁽³⁶⁾. This has increased from 23.9 % in the previous year. Excluding Germany, this share significantly rises to 42.8 %, highlighting the greater number of posted workers in construction for the rest of the sending Member States. Moreover, there is a notable difference between mostly western and southern Member States (15 %) ⁽³⁷⁾ and mostly central and eastern European Member States (48.9 %) ⁽³⁸⁾. This indicates that the posting of workers in the construction sector has a stronger geographical dimension compared to the more evenly distributed phenomenon of posting across various sectors of Member States. Under Article 13, 19.3 % of PDs A1 issued were applicable to the construction sector ⁽³⁹⁾ (compared to 18.3 % in 2020).

Using these average shares and the total number of PDs A1 issued in each Member State, an estimation can be made of the total number of PDs A1 issued in the EU construction sector (under both Articles 12 and 13). As mentioned earlier, from a sending perspective, there are missing figures for eight Member States regarding PDs A1 issued under Article 12, and for 12 Member States for those issued under Article 13. After making a number of inevitable assumptions due mainly to missing data ⁽⁴⁰⁾, the estimated total number of PDs A1 issued in the EU construction sector in 2021 is approximately 833 650, comprised of 590 728 PDs A1 under Article 12 and 242 922 PDs A1 under Article 13. Nonetheless, it is important to note that, rather than exact numbers, these figures represent estimates relying on several assumptions.

Table 4 provides information on the Member States where the construction sector has the highest share across all sectors for incoming and outgoing posted workers in 2021. The table is based on PDs A1 issued under Article 12 for incoming posted workers and PDs A1 issued under both Articles 12 and 13 for outgoing posted workers in the construction sector, expressed as a share of the total incoming/outgoing postings ⁽⁴¹⁾. The data suggest again that western Member States were mainly represented among incoming posted workers, whereas central and eastern Member States were mostly observed as having outgoing postings. More than one out of four incoming posted workers were active in the construction sector in Belgium, Germany, France, Croatia, Luxembourg, Finland and Sweden. From a sending perspective, Estonia is the only Member State with available data that shows the construction sector as the largest among those posted under Article 13.

⁽³⁶⁾ De Wispelaere, F., De Smedt, L. and Pacolet, J., *Posting of Workers: Report on A1 Portable Documents issued in 2021*, HIVA-KU Leuven, 2023, p. 33. This figure excludes Bulgaria, Denmark, Ireland, Greece, Spain, Italy and Hungary, and includes European Free Trade Association (EFTA) member states Iceland and Liechtenstein.

⁽³⁷⁾ Belgium, Denmark, Germany, Ireland, Greece, Spain, France, Italy, Luxembourg, the Netherlands, Austria, Portugal, Finland and Sweden.

⁽³⁸⁾ Bulgaria, Czechia, Estonia, Croatia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Romania, Slovenia and Slovakia.

⁽³⁹⁾ De Wispelaere, F., De Smedt, L., and Pacolet, J., *Posting of Workers: Report on A1 Portable Documents issued in 2021*, HIVA-KU Leuven, 2023, p. 42. This figure excludes Bulgaria, Czechia, Denmark, Germany, Ireland, Greece, Spain, Italy, Hungary, the Netherlands, Portugal, and Romania, and includes the EFTA member state Liechtenstein.

⁽⁴⁰⁾ For Article 12, the missing values are calculated by assigning the missing Member States the average construction shares of western and southern (i.e. Denmark, Ireland, Greece) and central and eastern (i.e. Bulgaria) Member States, which are 15 % and 48.9 % respectively. However, in the cases of Spain and Italy, it is assumed that they are main sending countries, and therefore the share of 48.9 % is used. For Hungary and the Netherlands, the average construction shares in 2020 are taken, which were 44.2 % and 13.8 % respectively. For Article 13, the average EU construction share (19.3 %) is used for all missing Member States.

⁽⁴¹⁾ De Wispelaere, F., De Smedt, L., and Pacolet, J., *Posting of Workers: Report on A1 Portable Documents issued in 2021*, HIVA-KU Leuven, 2023, pp. 33–34 and 42.

Table 4: Member States where construction is the primary sector for incoming/outgoing posted workers, 2021

Incoming posted workers		Outgoing posted workers			
Member State	Construction as % of total PDs A1 issued under Art. 12	Member State	Construction as % of total PDs A1 issued under Art. 12	Member State	Construction as % of total PDs A1 issued under Art. 13
DE	55.1 %	PT	60.3 %	EE	54.4 %
HR	44.2 %	RO	53.9 %		
SE	44.1 %	EE	53.6 %		
LU	38.7 %	SK	52.5 %		
BE	38.6 %	PL	46.7 %		
FI	29.1 %	HR	45.8 %		
FR	25.6 %	HU	44.2 %		
AT	22.2 %	CZ	43.4 %		
SI	21.4 %	LU	42.7 %		
		SI	41.4 %		
		LV	41.2 %		
		LT	39.7 %		
		AT	28.5 %		

NB: Only the Member States that reported construction as the sector with the largest share among all sectors are included in the table. 2020 figures were used for HU and NL. Data unavailable under Art. 12 for BG, DK, EL, ES, IE, and IT. Data unavailable under Art. 13 for BG, CZ, DE, DK, EL, ES, HU, IE, IT, NL, PT, and RO.

Source: De Wispelaere et al., (2023)

The primary corridor of postings in the construction sector in 2021, similar to 2020, was from Poland to Germany, with a total of 53 914 PDs A1 issued by Poland under Article 12 ⁽⁴²⁾. This represents a 17 % increase compared to 2020, which was a recovery from the 11 % decrease following the COVID-19 pandemic. [Table 5](#) presents the other main flows between Member States in the construction sector. Following the Poland–Germany corridor, significant flows included Slovakia–Germany (23 148 PDs A1) and Slovenia–Germany (22 374 PDs A1). Belgium and France mainly hosted posted construction workers from Portugal and Poland, whereas Austria primarily received workers from Germany and Slovenia. Nonetheless, it is important to note that data for several major sending Member States, including Italy and Spain, were unavailable.

Table 5: Main corridors of postings in the construction sector between Member States, 2021

Sending Member State	Receiving Member State	Number of PDs A1
PL	DE	53 914
SK	DE	23 148
SI	DE	22 374
DE	AT	17 097
PT	FR	12 383
PL	FR	12 358
PL	SE	11 011
PT	BE	10 886
PL	BE	9 501
SI	AT	9 193

NB: Data unavailable for BG, DK, EL, ES, HU, IE, and IT.

Source: De Wispelaere et al., (2023)

⁽⁴²⁾ *Ibid*, p. 32.

When looking at the division of both types of PD A1 granted to individuals employed in the construction sector in the EU, 74 % were issued under Article 12, while 26 % were issued under Article 13 in 2021. This represents a wider gap compared to previous years, when the percentages had been converging every year between 2017–2020 to reach 65 % and 35 % respectively in 2020. This shift may suggest an increase in the significance of Article 12 across the EU as a consequence of the COVID-19 pandemic, but these figures should be treated as tentative ⁽⁴³⁾. Only six Member States reported more PDs A1 issued in construction under Article 13 compared to Article 12: Cyprus (97 %), Latvia (75 %), Estonia (72 %), Sweden (70 %), Finland (53 %) and Lithuania (51 %) ⁽⁴⁴⁾.

2.3.2 Data from prior declaration tools and micro-data

The other sources of data to be examined, collected mainly from PDTs, are at the national level. The national declaration systems, implemented by all 27 Member States, assist competent authorities in identifying posted workers and complement the information provided by PDs A1. Other micro-data sources can assist with complementing and confirming previously made reflections. There are significant differences found between Member States in terms of the implementation, procedures, and requirements of their respective tools ⁽⁴⁵⁾.

This section focuses on a selection of net receiving countries (Austria, Belgium, France, Germany, Luxembourg, and the Netherlands) and net sending countries (Italy, Poland, Slovenia, and Spain). To the extent that data are available, these Member States are presented from both the receiving and sending perspective (in alphabetical order). The primary source is the POSTING.STAT study conducted by HIVA-KU Leuven. Some key sending countries (e.g. Portugal, Slovakia, Romania) were not included in the study due to a lack of data.

Table 6 summarises the data for the Member States that are covered in the rest of the section regarding posted workers as a share of total employment in the construction sector. In comparison to the PDs A1 data presented in Table 3, the PDT data and micro-data suggest a significantly different share of posted workers on the workforce in construction. While both types of data are valuable as proxies for evaluating the scope of postings and flows of posted, an advantage of PDT data is that, as opposed to PDs A1, for the sector of construction, national PDTs normally require a separate declaration for every envisaged posting. Belgium appears to rely significantly on incoming posted workers in the construction sector, whereas figures from Slovenia suggest again a high share of outgoing posted workers relative to the workforce.

Table 6: Posted workers in the construction sector as a share of total employment according to Art. 12 PDs A1 data, 2021

Receiving Member State		Sending Member State	
Member State	Estimated posted workers as % of total employment in the construction sector	Member State	Estimated posted workers as % of total employment in the construction sector
BE	26 %	SI	27 %
DE	10 %	PL	26 %
NL	7 %	ES	4 %
AT	5 %		
FR	5 %		
LU	1 %		

NB: 2019 figures for AT and FR. 2020 figures for DE, ES, LU, PL, and SI. 2021 figures for BE and NL.

Source: POSTING.STAT project; ECSO (2021) employment data (Number of persons employed in construction); author's calculations.

Furthermore, the data confirm that construction was a significant sector for posted workers, accounting for a large share of all posted workers across Member States. As observed from the PD A1 data, the PDT data show that Germany was the main receiving country, while Poland was the primary sending country. When figures from 2021 are available, Member States

⁽⁴³⁾ Drawing definitive conclusions is not feasible as these shares are based on a short time frame and (somewhat) different sets of countries each year. For 2021, coverage was limited to 15 EU Member States (Belgium, Estonia, France, Croatia, Cyprus, Latvia, Lithuania, Luxembourg, Malta, Austria, Poland, Slovenia, Slovakia, Finland and Sweden) and one EFTA member state (Liechtenstein).

⁽⁴⁴⁾ De Wispelaere, F., De Smedt, L., and Pacolet, J., *Posting of Workers: Report on A1 Portable Documents issued in 2021*, HIVA-KU Leuven, 2023, pp. 42–43.

⁽⁴⁵⁾ De Wispelaere, F., De Smedt, L., and Pacolet, J., *Posting of Workers: Collection of data from the prior declaration tools – Reference year 2020*, HIVA-KU Leuven, 2022a, pp. 11–17.

often report a recovery from the COVID-19 pandemic compared to 2020 figures. There was also a regional dimension at play, as posting activities appeared to hold particular importance between neighbouring countries (e.g. Poland–Germany and Spain–France). In addition, TCNs, such as Ukrainians and Bosnians, played a vital role in the labour force of the construction sector in the EU, and their presence among posted workers was increasingly prominent.

2.3.2.1 Austria

The Austrian construction sector was a significant receiver as well as sender of posted workers. According to the *Zentrale Koordinationsstelle des Bundesministeriums für Finanzen* forms from the Austrian Financial Police, 83 634 postings were recorded in 2019 by prior declarations in the construction sector (8 % of all postings), whereas there were 20 717 individual posted workers (3 % of all individual posted workers) ⁽⁴⁶⁾. The number of posted workers was estimated at 16 561, which was around 5 % of the total 309 440 people employed in the Austrian construction sector ⁽⁴⁷⁾. The share of EU citizens (including Austrians) in the construction sector in Austria was 88 % and the share of TCNs was 12 % ⁽⁴⁸⁾.

In the aftermath of the COVID-19 pandemic, postings in the construction sector recovered quickly as construction sites remained open during the lockdowns and the Austrian social partners in the construction sector negotiated arrangements to facilitate the return of foreign workers. In 2021, posting activity rose considerably compared to 2020 (+ 33 %), while the average number of postings also increased above the pre-pandemic 2019 level (+ 7 %) ⁽⁴⁹⁾. Furthermore, 3 214 individually posted TCNs worked in construction in 2021, and these accounted for 25 % of all incoming posted TCNs ⁽⁵⁰⁾. The countries most commonly represented among the TCNs included Bosnia and Herzegovina, Kosovo ⁽⁵¹⁾, Serbia and Türkiye ⁽⁵²⁾.

2.3.2.2 Belgium

Belgium was a net receiving country in terms of posted workers in the construction sector. According to the ‘Cross-Country Information System for Migration Research at the Social Administration’ declaration tool (Limosa) ⁽⁵³⁾, the Belgian construction sector received 87 470 posted workers (63 530 posted employees and 23 940 self-employed persons) in 2021, representing around 26 % of total employment in the sector ⁽⁵⁴⁾. As there were around a quarter of a million posted persons reported in total, nearly one in three persons posted to Belgium was active in the construction sector, making it the most significant sector for incoming posted workers. These figures might be a (strong) over- or underestimation of the reality, due to the changes made since 2017 in the declaration tool on which they are based ⁽⁵⁵⁾. However, in the Belgian construction sector, data provided in Limosa are matched by the inspection authorities with data from ‘checkinatwork’, which is an online registration system of presence at a work site. The information from digitally checking in is automatically transferred to the Belgian authorities, which can then determine whether the information provided in Limosa matches the actual work by the posted worker ⁽⁵⁶⁾.

In terms of the main sending-countries of posted workers employed in the Belgian construction sector in 2021, these included the Netherlands (11 %), Portugal (10 %), Ukraine (9 %), Poland (9 %), and Romania (8 %) ⁽⁵⁷⁾. For posted TCNs, the main mobility flows were Ukrainians and Belarusians through Poland and Lithuania, Brazilians through Portugal, and

⁽⁴⁶⁾ These shares rise significantly to 28 % and 18 % respectively when excluding the transport sector from the total postings. Additionally, it should be noted that the figures should be interpreted with caution, as there is a financial incentive for companies to declare postings in a different sector due to a supplementary insurance for construction workers.

⁽⁴⁷⁾ Geyer, L., Premrov, T. and Danaj S., *Posted Workers from and to Austria: Facts and figures*, Leuven: POSTING.STAT project VS/2020/0499, 2022, pp. 28–29.

⁽⁴⁸⁾ *Ibid*, p. 31.

⁽⁴⁹⁾ *Ibid*, pp. 50–51.

⁽⁵⁰⁾ Information gathered through an interview with Austrian administration, as part of the following study: Vancauwenbergh et al., *Report on the cooperation practices, possibilities and challenges between Member States – specifically in relation to the posting of third-country nationals*, 2023.

⁽⁵¹⁾ *This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.*

⁽⁵²⁾ Geyer, L., Premrov, T. and Danaj, S., *Posted Workers from and to Austria: Facts and figures*, Leuven: POSTING.STAT project VS/2020/0499, 2022, p. 31. It should be noted that this may include TCN workers posted directly from the third country.

⁽⁵³⁾ Limosa is a declaration to be filled in by employers before the work begins if they employ people sent to work on a temporary or part-time basis in Belgium. It is also required for self-employed workers who come to Belgium to pursue a temporary or partial self-employed activity in a high-risk sector (including construction). The declaration contains data on the employer and worker, such as identification details of the employer and of the employee, nature of the services, the place where the work is performed, the anticipated start and end date, etc.

⁽⁵⁴⁾ ECSO, *Data mapper – Number of persons employed in construction (Belgium)*, European Commission, 2021.

⁽⁵⁵⁾ De Wispelaere, F., De Smedt, L., Muñoz, M., Gillis, D., and Pacolet, J., *Posted Workers from and to Belgium: Facts and figures*, Leuven: POSTING.STAT project VS/2020/0499, 2022c, p. 36.

⁽⁵⁶⁾ Vancauwenbergh et al., *Report on the cooperation practices, possibilities and challenges between Member States – specifically in relation to the posting of third-country nationals*, 2023, pp. 71–72.

⁽⁵⁷⁾ Belgian legislation also mandates workers sent from third countries to register in Limosa as posted workers.

Bosnians through Slovenia ⁽⁵⁸⁾. Moreover, the Belgian construction sector employed more than half (53 %) of all posted TCNs in the country ⁽⁵⁹⁾.

2.3.2.3 France

France was a net receiving country of posted construction workers. According to data from the national PDT 'SIPSI', as collected by the French labour inspectorate *direction générale du travail*, most postings to France occurred in the construction sector, with nearly 45 % of all postings declared in 2020. Compared to the fact that only around 7 % of all French workers were employed in this sector, it points to the importance of construction as a sector for incoming posted workers. In 2019, companies located in southern Europe (Spain, Italy and Portugal) and central and eastern Europe reported shares of postings in the French construction sector of 45 % and 43 % respectively, which were above the aggregate level (39 %). The main activity was the construction of residential and non-residential buildings (18 % of all postings to France) ⁽⁶⁰⁾. Additionally, the impact of the posted workers on French employment can be estimated using census data from the National Institute of Statistics and Economic Studies of France. With 66 143 posted workers in the construction sector in 2019, the share of total employment of the French construction sector was estimated at 4.7 % ⁽⁶¹⁾.

2.3.2.4 Germany

Germany was the main receiving country of posted workers in the EU construction sector. According to 2021 data from the German minimum wage registration portal, construction was the second largest sector for incoming posted workers (after 'shipping, transport, and related logistics industry') with a share of 39 %. The largest shares of posted construction workers were from Poland (46 %), followed by Romania (8 %), Austria (8 %), Hungary (5 %) and Slovenia (4 %). In addition, among the five main sending countries of all posted workers to Germany ⁽⁶²⁾, nearly half of the postings (48 %) took place in the construction sector ⁽⁶³⁾.

Furthermore, according to data from the *Sozialkassen der Bauwirtschaft* (SOKA BAU) ⁽⁶⁴⁾, there were 82 351 posted workers in the construction sector in 2020. This decreased from 86 014 in 2019, but was followed by a recovery in 2021 (83 112) ⁽⁶⁵⁾. The impact of the COVID-19 pandemic on incoming posted workers in the sector appeared to be limited, as postings decreased only by 4 % between 2019 and 2020. In the German construction sector, around 10 % of all employees were estimated to be posted workers. Regarding the main sending countries of the posting companies, Poland, Austria, and Czechia were top of the list. The most performed tasks included building construction work, concrete work, reinforcement work, carpentry work, assembly of building components and other construction work ⁽⁶⁶⁾.

At the same time, Germany was one of the main sending countries of posted workers. According to disaggregate micro-data provided by German health insurance agencies *Techniker Krankenkasse*, *Barmer*, and *Deutsche Rentenversicherung Bund*, when looking at the total number of employee postings under Article 12 ⁽⁶⁷⁾, construction was among the main sectors.

2.3.2.5 Italy

The construction sector was one of the few sectors for which some quantitative data on posting were available in Italy. In addition, some qualitative studies have indicated that construction is one of the sectors in which Italy is a significant sending country, whereas it is not a relatively significant receiving country. It has been suggested that this could be explained by

⁽⁵⁸⁾ De Wispelaere, F., De Smedt, L., Muñoz, M., Gillis, D., and Pacolet, J., *Posted Workers from and to Belgium: Facts and figures*, Leuven: POSTING.STAT project VS/2020/0499, 2022c, pp. 31–33.

⁽⁵⁹⁾ Lens, D., Mussche, N., and Marx, I., 'A hole in the wall of fortress Europe: The trans-European posting of third-country labour migrants', *International Migration*, Vol. 60, No 2, 2022, p. 15.

⁽⁶⁰⁾ Muñoz, M., *Posted Workers from and to France: Facts and figures*, Leuven: POSTING.STAT project VS/2020/0499., 2022, pp. 25–28.

⁽⁶¹⁾ *Ibid*, p. 40.

⁽⁶²⁾ Croatia, Austria, Poland, Slovenia and Slovakia.

⁽⁶³⁾ Albrecht, C., Duran, S., Giesing, Y., Niederhoefer, B., Rude, B., and Steigmeier, J., *Posted Workers from and to Germany: Facts and figures*, Leuven: POSTING.STAT project VS/2020/0499, 2022, pp. 22–26.

⁽⁶⁴⁾ SOKA BAU is the umbrella organisation for the holiday and wage compensation fund and the supplementary pension fund of the construction sector. It is a paritarian institution established by the social partners of the German construction industry: *Zentralverband Deutsches Baugewerbe*, and *Hauptverband der Deutschen Bauindustrie*, as employer organisations, together with the trade union *IG Bauern-Agrar-Umwelt*. SOKA BAU unites two institutions under one roof: *Urlaubs- und Lohnausgleichskasse der Bauwirtschaft* [Paid Leave Scheme and Vocational Training Scheme of the German construction industry] and *Zusatzversorgungskasse der Bauwirtschaft* [Pension Fund of the German construction industry]. Together these two institutions protect the leave entitlements for domestic and posted blue-collar workers, manage the pension fund and co-fund the vocational training for workers and companies in the construction industry. For posted workers, SOKA BAU provides only the paid leave scheme, because of the Posting of Workers Directive 96/71/EC in the revised form of 2018/957/EU.

⁽⁶⁵⁾ European Market Environment in the Construction Sector, *Final Report*, 2022a, p. 10.

⁽⁶⁶⁾ Albrecht, C., Duran, S., Giesing, Y., Niederhoefer, B., Rude, B., and Steigmeier, J., *Posted Workers from and to Germany: Facts and figures*, Leuven: POSTING.STAT project VS/2020/0499, 2022, pp. 27–28.

⁽⁶⁷⁾ *Ibid*, p. 45.

the widespread use of other equivalents of posting in the country, such as forms of relatively cheap labour and irregular and informal employment ⁽⁶⁸⁾. Postings from Italian construction companies were mainly registered in border regions, with Germany, France and Austria as the principal receivers ⁽⁶⁹⁾.

The quantitative data on incoming postings originate from the available questionnaires based on the Italian PDT, the *UNI_Distacco UE* form. In 2020, the number of reported incoming posted persons in the construction sector decreased significantly, by 81 % from 4 413 to 825, reflecting the impact of the COVID-19 pandemic measures. This slightly rebounded to 1 458 persons in the first quarter of 2021, based on data provided by the *Ministero del Lavoro e delle Politiche Sociali* [Italian Ministry of Labour and Social Policies] ⁽⁷⁰⁾. This translates to approximately less than 1 % of total employment in the construction sector ⁽⁷¹⁾, reflecting again the relatively low level of posted workers in the sector as a whole. As a receiving country, construction was the third largest sector for posted workers (11 % of all posted workers), with workers originating mainly from Romania (49 % of all posted workers in the construction sector), Spain (16 %) and Germany (6 %) ⁽⁷²⁾.

2.3.2.6 Luxembourg

Luxembourg was a net receiving country, with construction being the most significant sector for incoming posted workers in 2019 (54 % of all posted workers) and 2020 (49 %) ⁽⁷³⁾. In 2020, the number of posted workers in the sector could then be estimated at approximately 14 340 ⁽⁷⁴⁾, which was equivalent to around 1.2 % of total employment ⁽⁷⁵⁾. The main sending countries included Germany (44 %), Belgium (24 %), Poland (10 %), France (9 %) and Portugal (4 %). When comparing these figures with those based on nationality concerning all posted workers ⁽⁷⁶⁾, it suggests that posted TCNs likely contributed significantly to these percentages. While the total number of workers posted to Luxembourg continued to grow in 2020, the construction sector was heavily impacted by the COVID-19 pandemic. It experienced the largest decline of posted workers in absolute numbers among all sectors, with a decrease of 802 workers (or approximately –7 %) ⁽⁷⁷⁾.

According to data provided by the General Inspectorate of Social Security, construction was the second largest sector for posted employees in 2019 from a sending perspective. Approximately 16 % of those posted abroad were employed there. Moreover, more than half of workers posted from Luxembourg worked in specialised construction activities (57 %), followed by civil engineering (22 %) and construction of buildings (21 %) ⁽⁷⁸⁾.

2.3.2.7 The Netherlands

The Netherlands was a net receiving country for posted workers in the construction sector in 2021. According to data from the national PDT *Meldloket WagwEU*, as collected by the Social Insurance Bank, construction was the second largest sector of employment for posted employees with 24 769 declarations, accounting for 7 % of all declared employees (5 % in 2020) ⁽⁷⁹⁾. In contrast, construction was the primary sector of the self-employed, with 47 % of all declared self-employed workers (35 % in 2020), totalling 3 365 persons ⁽⁸⁰⁾. Declared construction workers accounted for 6.6 % of the total employment in the Dutch construction sector in 2021 ⁽⁸¹⁾.

Among the five main sending Member States in the construction sector, the largest shares of declared employees were from Poland (22 %), Germany (14 %), Belgium (13 %), Lithuania (10 %), and Romania (5 %) ⁽⁸²⁾. In 2021, out of all declared

⁽⁶⁸⁾ Dorigatti, L., Pallini, M., and Pedersini, M., *Posted Workers from and to Italy: Facts and figures*. Leuven: POSTING.STAT project VS/2020/0499, 2022, pp. 10–18.

⁽⁶⁹⁾ *Ibid*, p. 19.

⁽⁷⁰⁾ European Market Environment in the construction sector, *Country report – Italy*, 2022b, p. 7.

⁽⁷¹⁾ ECSO, *Data mapper – Number of persons employed in construction*, European Commission, 2021.

⁽⁷²⁾ Dorigatti, L., Pallini, M., and Pedersini, M., *Posted Workers from and to Italy: Facts and figures*. Leuven: POSTING.STAT project VS/2020/0499, 2022, pp. 22–23.

⁽⁷³⁾ The data for incoming workers are based on annual reports from the Labour and Mines Inspectorate and on European reports.

⁽⁷⁴⁾ Clément, F., and Hauret, L., *Posted Workers from and to Luxembourg: Facts and figures*. Leuven: POSTING.STAT project VS/2020/0499, 2022, pp. 16–18.

⁽⁷⁵⁾ ECSO, *Data mapper – Number of persons employed in construction (Luxembourg)*, European Commission, 2021.

⁽⁷⁶⁾ Clément, F. and Hauret, L., *Posted Workers from and to Luxembourg: Facts and figures*. Leuven: POSTING.STAT project VS/2020/0499, 2022, p. 16.

⁽⁷⁷⁾ *Ibid*, p. 31.

⁽⁷⁸⁾ *Ibid*, pp. 23–25.

⁽⁷⁹⁾ It should be noted that the significantly higher number of declared employees in the road freight transport sector causes the shares of all other sectors to dwindle. For instance, excluding road freight transport, the share of declared employees in the construction sector in 2021 would rise to 31 %.

⁽⁸⁰⁾ Heyma, A., Bussink, H., and Vervliet, T., *Posted Workers to the Netherlands: Facts and figures*. Leuven: POSTING.STAT project VS/2020/0499, 2022, pp. 28–30.

⁽⁸¹⁾ *Ibid*, p. 43.

⁽⁸²⁾ *Ibid*, pp. 31–32.

employees in the sector 86 % were EU nationals (including nationals of the Netherlands) and 14 % were TCNs (2020: 88 % versus 12 %) ⁽⁸³⁾.

2.3.2.8 Poland

Poland has been the primary sending country of posted workers in the construction sector in the EU. According to data from the Polish Social Insurance Institution, there were 203 678 PDs A1 issued in 2021 in the construction sector, which declined significantly by more than 63 000 PDs A1 compared to 2020. As a share of total employment in the sector, these figures translate to 26 % in 2020 and 19 % in 2021. About 51 % were issued under Article 12 and 49 % under Article 13 in 2021, whilst the division was 35 % and 65 % in 2020.

Despite the decline in total issued PDs A1, the number of postings issued to TCNs in the construction sector more than doubled in 2021 (21 605), compared to 2020 (10 216). Out of all posted TCNs, nearly four out of five had Ukrainian nationality. Moreover, the share of EU nationals (including Polish nationals) was 89 % and the share of TCNs was 11 %, compared to 96 % and 4 % in 2020. This indicates a significant increase of TCN workers being posted from Poland ⁽⁸⁴⁾.

2.3.2.9 Slovenia

Similarly to Poland, Slovenia has been one of the main sending countries. Based on data from the Health Insurance Institute of Slovenia, workers posted from Slovenia in 2020 amounted to 27 % of national employment in the Slovenian construction sector, which was the main sector of activity among posted workers. There were 42 472 PDs A1 recorded in the construction sector in total, of which 42 392 were under Article 12 (43 % of total PDs A1 issued under Article 12) and 50 under Article 13 (<1 % of total PDs A1 issued under Article 13) ⁽⁸⁵⁾. Additionally, among the main receiving countries, construction was the main sector of activity in Germany (23 359), Austria (7 994), Belgium (5 101), and Croatia (2 557) ⁽⁸⁶⁾.

Out of all PDs A1 issued under Article 12 in the construction sector, nearly half were issued to nationals of Bosnia and Herzegovina (20 864), whereas 19 % were issued to Slovenian nationals (7 919). Other significant nationalities included Kosovars (12 %), Serbs (8 %) and North Macedonians (3 %), indicating the significance of TCNs in the construction sector. Moreover, 60 % of all workers employed in the Slovenian construction sector were Slovenian nationals, whereas the share of non-nationals (mainly from Bosnia and Herzegovina) was 40 % ⁽⁸⁷⁾. The fact that outgoing posted TCNs represented more than double the number of postings compared to incoming posted TCNs is an indication of a possible 'business model' whereby TCNs are never employed in the country where they gained EU entry but are immediately posted to another Member State ⁽⁸⁸⁾.

2.3.2.10 Spain

Although there were no data available on PDs A1, the national administrative micro-data suggest that Spain was one of the main sending Member States of posted construction workers in the EU. In 2019, construction was a significant sector in which posted workers from Spain were employed under Article 12 in France (25 %, and 26 % in 2020), Germany (23 %), and Portugal (18 %). Under Article 13, only 4 % were posted to France and other Member States in 2020 ⁽⁸⁹⁾. Among the non-nationals, Spain posted primarily Romanian construction workers to France ⁽⁹⁰⁾. As a sending country, the share of sent workers in construction activities increased from 45 % in 2019 to 60 % in 2020 ⁽⁹¹⁾. In terms of shares of total employment in the sector ⁽⁹²⁾, these are equivalent to 4.6 % and 4.2 % respectively.

⁽⁸³⁾ *Ibid*, p. 39.

⁽⁸⁴⁾ Kiełbasa, M., Szaraniec, M., Mędrala, M., and Benio, M., *Posted Workers from and to Poland: Facts and figures*. Leuven: POSTING.STAT project VS/2020/0499, 2022, pp. 109–111.

⁽⁸⁵⁾ The remaining 30 PDs A1 were issued under Article 11 and/or Article 16.

⁽⁸⁶⁾ Vah Jevšnik, M., Cukut Krilić, S. and Toplak, K., *Posted Workers from Slovenia: Facts and figures*. POSTING.STAT project, 2022, pp. 18–19.

⁽⁸⁷⁾ *Ibid*, pp. 31–32.

⁽⁸⁸⁾ De Wispelaere, F., De Smedt, L., and Pacolet, J., *Posted Workers in the European Union: Facts and figures*. Leuven: POSTING.STAT project VS/2020/0499, 2022b, p. 36.

⁽⁸⁹⁾ Usually, PDs A1 issued under Article 13 do not allow the receiving Member States to be tracked. However, Carrascosa and Contreras were able to collect quantitative data specifically for the French case.

⁽⁹⁰⁾ Carrascosa, M. D. and Contreras, Ó., *Posted Workers from and to Spain: Facts and figures*, Leuven: POSTING.STAT project VS/2020/0499, 2022, pp. 36–42.

⁽⁹¹⁾ European Market Environment in the Construction Sector, *Final Report*, 2022a, p. 10.

⁽⁹²⁾ ECSO, *Data mapper – Number of persons employed in construction (Spain)*, European Commission, 2021.

From a receiving perspective, available data from regional PDTs show that construction remained the main sector (52 % in 2019, 48 % in 2020), with posted workers coming in mostly through Portugal ⁽⁹³⁾.

2.3.2.11 Other Member States

Data from other Member States on posted workers in the construction sector are rather limited. In Lithuania, there were 599 posted workers reported in the construction sector in 2021 (less than 1 % of total employment in the sector ⁽⁹⁴⁾), which increased from 390 in 2020 ⁽⁹⁵⁾. According to representatives from the respective national administrations, construction was the main sector for incoming posted TCNs in Estonia, Latvia, Portugal and Finland. Construction was also the primary sector for TCNs posted from Latvia, who were mostly posted to Sweden.

2.4 Intra-EU posting of TCNs in the construction sector

Intra-EU posting of TCNs is covered by the EU directives on the posting of workers. According to the Court of Justice of the European Union (CJEU), TCNs legally employed in one Member State (e.g. with a work permit) can be posted to another Member State without needing an additional work permit in this Member State ⁽⁹⁶⁾. The Court also considered that a visa request from receiving Member States targeting posted TCNs was disproportionate, as it would be excessive for the receiving Member State to require a separate visa application solely for TCNs who are already legally employed in another Member State and are being temporarily posted for work ⁽⁹⁷⁾.

One of the most significant trends in the construction sector across Member States over the last few years is the increased prevalence of labour shortages ⁽⁹⁸⁾. While the construction industry has grown, it has not been accompanied by an equivalent growth in members of the domestic workforce who are qualified and available to work in that sector. The intra-EU posting of TCNs is one of the responses to address such shortages, together with other policy and legal initiatives (e.g. relaxing immigration rules for certain workers from third countries or by having specific bilateral treaties that allow posting directly from third countries).

Indeed, the construction sector is one of the main sectors employing posted TCNs together with (road freight) transport and agriculture ⁽⁹⁹⁾. There are, however, some disparities between Member States on their use (e.g. Malta and Romania have low numbers of posted TCNs in the construction sector, while in Belgium and Austria TCNs represent a significant share of posted workers) ⁽¹⁰⁰⁾.

Posted TCN workers tend to present a higher degree of vulnerability than EU posted workers due, inter alia, to their dependency on their employer for the renewal of the work and residence permits, language barriers, more exposure to irregular employment and subsequent non-payment of social contributions and health insurance ⁽¹⁰¹⁾. Such vulnerability is most likely to be enhanced in the construction sector considering, inter alia, the occupational health and safety risks inherent to this sector (e.g. posted TCN workers are more likely to be less equipped and trained than workers from Member States) ⁽¹⁰²⁾. Furthermore, the complex transnational employment chains common in the construction sector (e.g. subcontracting, cross-border mobility and temporary service provision) make it difficult to determine which company is responsible for certain OSH obligations and related breaches involving posted TCN workers ⁽¹⁰³⁾. Such findings were endorsed by several labour inspectors interviewed as part of this study, as detailed in the following sections.

⁽⁹³⁾ Carrascosa, M. D., and Contreras, Ó., *Posted Workers from and to Spain: Facts and figures*, Leuven: POSTING.STAT project VS/2020/0499, 2022, pp. 50–53. Page 49 of the text also states: 'Although data about nationality of the posted workers were requested to the Autonomous Communities, very few reported this information. Therefore, representative and conclusive results on the nationality of persons posted to Spain cannot be provided. However, the data available confirms that in many cases the country of origin of the posted workers is similar to the nationality of the posted worker.'

⁽⁹⁴⁾ ECSO, *Data mapper – Number of persons employed in construction (Lithuania)*, European Commission, 2021.

⁽⁹⁵⁾ Information gathered through an interview with a Lithuanian administrative organisation, as part of the following study: Vancauwenbergh et al., *Report on the cooperation practices, possibilities and challenges between Member States – specifically in relation to the posting of third-country nationals*, 2023.

⁽⁹⁶⁾ CJEU, Judgment of the Court of 9 August 1994, *Raymond Vander Elst v Office des Migrations Internationales*, C-43/93, EU:C:1994:310.

⁽⁹⁷⁾ CJEU, Judgment of the Court (First Chamber) of 21 September 2006, *Commission of the European Communities v Republic of Austria*, C-168/04, EU:C:2006:595, paragraph 67.

⁽⁹⁸⁾ Con3Post, 'Posting of Third Country Nationals: Mapping the trend in the construction sector – project VP/2018/011/0019', 2020, p. 24.

⁽⁹⁹⁾ Vancauwenbergh, S., De Keyser, L., Lhernould, J., Homem, F., Dorval, J., and Akbaba, B., *Report on the cooperation practices, possibilities and challenges between Member States – specifically in relation to the posting of third-country nationals*, ELA, 2023, pp. 95–96.

⁽¹⁰⁰⁾ *Ibid*, see in particular Table 10: Main sectors of posted third-country nationals.

⁽¹⁰¹⁾ Con3Post, 'Posting of Third Country Nationals: Mapping the trend in the construction sector – project VP/2018/011/0019', p. 15.

⁽¹⁰²⁾ Vah Jevšnik, M., *POOSH Country Report in Slovenia*, 2018, p. 17. Available at: <http://www.poosh.eu/resources/poosh-country-reports/>.

⁽¹⁰³⁾ Con3Post, 'Posting of Third Country Nationals: Mapping the trend in the construction sector – project VP/2018/011/0019', p. 57.

2.5 Abusive practices in the context of the posting of workers in the construction sector

The construction sector is a price- and labour-intensive sector, with a high prevalence of subcontracting arrangements and strong competition among actors. Posting of workers in this sector is common and it applies in a cross-border situation where rules regarding labour law, social security contributions, income tax levels and the cost of living vary significantly between the net sending and receiving Member States. Posting of workers is therefore more likely to be exposed to abusive practices in the construction sector, leading to infringements and violations of Member State legislation. In the questionnaire targeting representatives of labour inspectorates, interviewees were requested to list and provide comments on the type of abusive practices they were experiencing related to posted workers in the construction sector. According to their feedback, the most significant and recurrent violations and abusive practices concern the setting up of letterbox companies, the non-respect of working conditions, bogus self-employment, fraudulent PD A1 forms and illegal employment of TCNs. However, these are only the views reflected during interviews and are not based on statistical data being collected within Member States. This points to a need for improving focused data collection and data sharing regarding inspections, violations, and the application of sanctions. It should be noted that these abusive practices are often interlinked (e.g. fraudulent PDs A1 in the case of fake posting or bogus self-employment or illegal employment of TCNs linked to letterbox companies), as further detailed in the following paragraphs.

Letterbox companies in sending countries

The European Commission's study on letterbox companies ⁽¹⁰⁴⁾ highlights that there is no single or agreed definition of letterbox companies ⁽¹⁰⁵⁾. Within the context of posting, letterbox companies are considered as companies registered in a sending Member State but that de facto do not perform any activity in that Member State except hiring workers and posting them to other Member States. These posted workers do not, or hardly, work in the sending Member State. The aim of this practice is to benefit from cost savings (e.g. lower social security costs on posted workers affiliated to sending countries). The use of letterbox companies to circumvent the rules on posting of workers has been identified as an issue of paramount importance by interviewees. Enforcement actors at the national level encounter significant difficulties in assessing whether a company sending posted workers in the construction sector could be considered a letterbox company. As highlighted by a representative of the labour inspectorate in Spain ⁽¹⁰⁶⁾, such a practice was one of the most common fraudulent practices involving posted workers in the construction sector (e.g. letterbox companies established in Spain sending workers to France, or letterbox companies established, for instance, in Poland and Romania sending posted workers to Spain).

Fake posting by means of permanent/rotating posting

Fake or permanent rotating of posting goes against the 'temporary' feature of the posting of workers. Notably, it is meant to circumvent the rule established by Article 3(1)(a) of the Posting of Workers Directive, according to which postings lasting for more than 12 months entail the application, on the basis of equality of treatment, of all the terms and conditions of employment established by applicable legislation and collective agreements. As mentioned in the impact assessment accompanying the revision of the legislative framework on the posting of workers in the context of provision of services, to justify the difference in treatment between posted workers (core protection) and migrant workers (equal treatment), the posting must be of a temporary nature. If the duration of the posting is excessive, the presumption behind the difference in legal status between these two categories of workers is no longer valid. The same situation occurs if the same or different employees are repeatedly recruited by an undertaking with the purpose of being posted to another Member State for carrying out the same job (rotational postings) ⁽¹⁰⁷⁾. Such an abusive practice is considered quite common in the construction sector by representatives of labour inspectorates, to the point that in Spain, for instance, it was reported that posted workers in the construction sector were staying several years without going back to the sending Member States ⁽¹⁰⁸⁾.

⁽¹⁰⁴⁾ European Commission, Directorate-General for Justice and Consumers, De Wispelaere, F., Schuster, E., Morel, S., et al., *Letterbox companies: Overview of the phenomenon and existing measures – Final report*, Publications Office of the European Union, 2021 (<https://data.europa.eu/doi/10.2838/41247>).

⁽¹⁰⁵⁾ Note that such a definition does not seem plausible in the foreseeable future, due to Member State discretion regarding their own company law and registration rules for companies.

⁽¹⁰⁶⁾ Official of the Labour Inspectorate of Spain, interview held in January 2023.

⁽¹⁰⁷⁾ Commission Staff Working Document – Impact Assessment – Revision of the legislative framework on the posting of workers in the context of provision of services (SWD(2012) 63 final – APP/2012/0064), available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52012SC0063&from=EN>.

⁽¹⁰⁸⁾ Official of the Labour Inspectorate of Spain.

Bogus self-employment

Bogus self-employment (also known as ‘sham self-employment’) is referred in Recital 10 of the Enforcement Directive ⁽¹⁰⁹⁾ as ‘workers falsely declared as self-employed’ ⁽¹¹⁰⁾. In the literature, it is defined as somebody voluntarily assuming or being forced to assume the status of self-employed, while the person can or should be defined as an employee subordinated to an employer ⁽¹¹¹⁾. Such a fake self-employment status allows cost savings for posting companies, by avoiding the payment of social security contributions and taxes for their workers, by providing more flexibility in hiring and dismissing posting workers, by reducing administrative burden associated with managing posted workers and by bypassing the application of occupational health and safety and working conditions (e.g. minimum or collectively agreed income, working time). As flagged by interviewees, it is very difficult for enforcement authorities to demonstrate cases of bogus self-employment in a posting context, considering the temporary nature of the work and the difficulty of verifying their proper status in the sending Member States. This practice has a very negative impact on the posted workers concerned since, as outlined by a representative of the Construction Workers’ Annual Leave and Severance Pay Fund (BUAK) in Austria (in charge of distributing benefits to construction workers ⁽¹¹²⁾), they cannot receive the benefits they are entitled to under labour law (e.g. holiday pay, bad weather compensation).

Overtime and underpayment as non-respect of working conditions

In this abusive practice, minimum employment and working conditions set by law in the receiving Member State are not respected by employers, particularly regarding wages, working hours and the occupational health and safety legal framework. The interviewee in Austria ⁽¹¹³⁾ considered that underpayment was a main concern, detailing that the amount of underpayment in the case of non-compliance with the national wages was extremely high, representing around 60 % of the salary amount due. In the same vein, the interviewee in Spain ⁽¹¹⁴⁾ stressed that underpayment practices were quite common for wages that were below the minimum wages set under sectoral collective agreements. The interviewees in Italy mentioned that very often workers have to return to their employers what they have accrued and been paid by the construction funds (e.g. holidays, 13th month pay). They also identified that levels of posted workers are adjusted downwards, with lower job profiles, while in fact they are carrying out the work of specialised workers ⁽¹¹⁵⁾.

Fraudulent PD A1 form

A PD A1 form can be fraudulent if it contains false or misleading information or if it has been obtained through fraudulent means. For example, a company could fraudulently obtain PD A1 forms for their workers by falsely claiming that the workers are still employed in their home country and are not subject to the social security system of the receiving Member State. This is often linked to the abusive practice of fake posting by means of permanent/rotating posting. In Belgium ⁽¹¹⁶⁾, several public authority representatives are of the view that fake PD A1 forms are common mostly among posted TCNs. As highlighted by labour inspectors in Spain ⁽¹¹⁷⁾, the fraudulent use of PD A1 forms is a major problem in the construction sector, in particular where companies are being granted PD A1 forms for all of their workforce, implying that in the country where companies are established there is no activity due to the lack of staff being posted. Likewise, labour inspectors in the Netherlands have noted recurrent instances where posted workers were unaware of the PD A1 form and did not have such a document with them. This suggests that their employers were likely withholding this information fraudulently ⁽¹¹⁸⁾.

Illegal employment of TCNs or fraudulent posting of TCNs

This refers to the situation where a company employs a worker from a third country to work in a receiving Member State without obtaining the necessary work and residence permits, or without complying with the applicable labour laws and regulations or posting rules. This was raised by labour inspectors as a very common practice in the construction

⁽¹⁰⁹⁾ Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System (‘the IMI Regulation’) (OJ L 159, 28.5.2014, p. 11).

⁽¹¹⁰⁾ Recital 10 of Directive 2014/67/EU.

⁽¹¹¹⁾ Werner, B. (ed.), *Self-employment and bogus self-employment in the European construction industry: Part 2 – Abstracts of 11 country reports*, 2009.

⁽¹¹²⁾ Staff member of BUAk of Austria, interview held in January 2023.

⁽¹¹³⁾ *Ibid.*

⁽¹¹⁴⁾ Official of the Labour inspectorate in Spain, interview held in January 2023.

⁽¹¹⁵⁾ European Employment Services (EURES) National Coordinator Italy reporting a position of the Italian trade union *Confederazione Italiana Sindacati Lavoratori*, interview held in December 2022.

⁽¹¹⁶⁾ Official of the Ministry of Labour of Belgium, Official of the *Office National de Sécurité Sociale* [National Office of Social Security] of Belgium, Staff member of the National Institute for the Social Security of the Self-Employed of Belgium, interviews held in January 2023.

⁽¹¹⁷⁾ *Ibid.*

⁽¹¹⁸⁾ Officials of the *Nederlandse Arbeidsinspectie* [Dutch Labour Inspectorate], interviews held in February and December 2022.

sector. SOKA BAU ⁽¹¹⁹⁾ specified that fraudulent postings of TCNs in the construction sector occurred, for instance, via the establishment of a branch or subsidiary of a third-country company (e.g. from Bosnia and Herzegovina) in a sending Member State (e.g. Slovenia) with limited or no economic activity in that Member State, pointing to a situation where the TCN workers never really worked in the sending Member States but only in the receiving Member State (e.g. Germany); hence avoiding fully applying the legislation and collective agreements of the Member State where the work was performed according to Article 8(2) of Regulation (EU) 593/2008 on the law applicable to contractual obligations (Rome I) ⁽¹²⁰⁾.

Table 7: Typology of abusive practices in the construction sector

Type of abusive practices	Proposed definition in the construction context
Letterbox companies in sending countries	Companies registered in a sending Member State but that de facto do not or hardly perform construction work activities in that Member State apart from hiring workers and posting them to other Member States, in order to benefit from cost savings (e.g. lower social security costs on posted workers affiliated in sending countries).
Fake posting by means of permanent/rotating posting	Practice which goes against the 'temporary' feature of the posting of workers, as long-term postings should not exceed 12 months. If the duration of the posting is excessive due to permanent/rotating posting, the presumption behind the difference in legal status between posted workers (core protection) and migrant workers (equal treatment) is no longer valid.
Bogus self-employment	Workers voluntarily assuming or being forced to assume the status of self-employed, while the person can or should be defined as an employee subordinated to an employer.
Non-respect of working conditions	Minimum employment and working conditions set by law in the receiving Member State are not respected by employers, particularly regarding wages, working hours and the occupational health and safety legal framework.
Fraudulent PD A1 form	A PD A1 form is fraudulent when it contains false or misleading information or if it has been obtained through fraudulent means. For example, a construction company falsely claiming that the workers are still employed in their home country and are not subject to the social security system of the receiving Member State.
Illegal employment of TCNs or fraudulent posting of TCNs	A company employs a worker from a third country to work in a receiving Member State without obtaining the necessary work and residence permits or without complying with the applicable labour laws and regulations.

⁽¹¹⁹⁾ Staff Member of the SOKA BAU of Germany, interview held in January 2023.

⁽¹²⁰⁾ Article 8(2) reads as follows: 'To the extent that the law applicable to the individual employment contract has not been chosen by the parties, the contract shall be governed by the law of the country in which or, failing that, from which the employee habitually carries out his work in performance of the contract. The country where the work is habitually carried out **shall not be deemed to have changed if he is temporarily employed in another country**' (bold added).

3. Information needs of workers and employers and measures to address them

Main findings

- The Enforcement Directive and the revised Posting of Workers Directive require workers and employers to be adequately informed about their rights and obligations during posting. Several measures have been implemented by Member States to support this requirement. Furthermore, initiatives have been put in place by social partners to inform workers and employers. Despite these measures, there still appears to be a deficiency in the level of information held by posted workers and their employers in the construction sector.
- This lack of awareness and need for information is even more pronounced for posted TCN workers. These workers are more likely to be socially, geographically and culturally marginalised, and having less access to trade unions.
- Several shortcomings are identified in the quality of provided information communication methods can be identified, leading to confusing duplication and difficulties in identifying the relevant information. These include difficult legal wording, language that is not easy to read and very complex, a lack of translations into relevant languages in particular for posted TCNs, and multiple sources of information that are not standardised or consistent.
- Workers need to be properly informed on applicable remuneration, clear working time limits, overtime regulations, number of leave days, and the OSH legal framework and its scope. In addition, employers must be properly informed about necessary administrative formalities related to posting.
- Information needs are less likely to be addressed in SMEs that do not have the capacities or resources to employ or hire legal experts to explain the rules and obligations to them.
- Direct interaction with posted workers is crucial to ensure that they are well informed. This interaction facilitates a better understanding of the workers' individual legal situations and allows for tailored information to meet their specific needs. Entities responsible for carrying out these tasks should be given sufficient funding. This would include financing for legal training for personnel and provision of multilingual services via mediators and interpreters.
- Centralised efforts at the EU level, including a common website and a helpdesk at the EU level, could foster a concrete advancement in workers' and employers' awareness of rights and obligations in the construction sector.

This section provides a comprehensive discussion around the critical issue of informing posted workers and their employers within the construction sector about their rights and obligations. [Section 3.1](#) details the EU legal framework that mandates the provision of information and examines the measures and tools developed by Member States, social partners and the Commission to provide this information. [Section 3.2](#) identifies the specific information needs within the sector, highlighting the gaps in knowledge that persist among posted workers and their employers and considering the type of information they need and in which form. Finally, [Section 3.3](#) proposes some suggestions to better inform posted workers and their employers in the construction sector, with the aim of enhancing their understanding of their rights and obligations. This section contains three illustrative case studies: 1) on construction companies' initiatives in sending and receiving Member States to inform posted workers in the construction sector; 2) on employer practices when accessing information; and 3) on the role of social partners in the provision of information to workers and employers.

3.1 Legal framework on information and relevant tools and actors

Inadequate or absent information poses a barrier to exercising rights and fulfilling obligations. The effectiveness and proper implementation of law and regulations largely rely on the dissemination of information to all relevant actors. Within the context of posted workers, the provision of information encompasses three distinct dimensions.

- Article 7 of Directive (EU) 2019/1152 ⁽¹²¹⁾ establishes that Member States shall ensure that employers inform workers, including in the context of posting, on the terms and conditions of employment.
- Article 3 of the Posting of Workers Directive establishes the applicable terms and conditions of work and employment that undertakings must guarantee to workers posted to their territory. Such terms and conditions of work and employment relate to several matters (explicitly listed in Article 3 of the Posting of Workers Directive), as laid down by law or collective agreements. Among these matters, the provision of information is not mentioned. However, there are some subjects (e.g. health, safety and hygiene at work) whereby information obligations are imposed on the company (in favour of the worker).
- Article 4 of the Posting of Workers Directive and Article 5 of the Enforcement Directive establish several obligations for Member States to inform all the players involved in the framework of posting on the terms and conditions of employment ⁽¹²²⁾.

The European Pillar of Social Rights action plan sets out 20 principles and rights to ensure fair and well-functioning labour markets and social protection systems ⁽¹²³⁾. Principle No 7 of the European Pillar of Social Rights provides that workers have the right to be informed in writing at the start of employment about their rights and obligations resulting from the employment relationship, and also that prior to any dismissal, workers are entitled to be informed of the reasons and given a reasonable period of notice ⁽¹²⁴⁾.

Article 7(2) of Directive 2019/1152 implements principle No 7 of the European Pillar of Social Rights in the posting context. It establishes that Member States must ensure that posted workers receive additional information from their employers that is specific to their situation. This includes essential information on the terms and conditions of employment and on working conditions, remuneration, allowances, and any arrangements for reimbursing expenditure on travel, board and lodging, along with a link to the single official national website provided for by Article 5(2) of the Enforcement Directive.

Box 1: Case study on construction companies' initiatives to inform posted workers in the construction sector in sending and receiving Member States

This case study aimed to identify whether in 10 Member States ⁽¹²⁵⁾ there were any relevant practices implemented by construction companies within their employers obligations to inform posted workers.

The following initiatives were identified.

- Educational workshops and seminars to inform workers about their work rights and obligations applicable to posting schemes. These events may include presentations by experts and lawyers, and question and answer sessions.

⁽¹²¹⁾ Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union (OJ L 186, 11.7.2019, p. 105).

⁽¹²²⁾ Article 5 of the Enforcement Directive aims to improve access to information and introduces an obligation for Member States to set up single official national websites, including the terms and conditions of employment to be applied to workers posted to their territory, according to the applicable collective agreement. The information must be available free of charge to workers and service providers in the official language of the receiving Member State and in the most relevant languages (taking into account the demand of the Member State's labour market). Article 5(3) of the Enforcement Directive provides that the European Commission shall continue to support Member States in the area of access to information. Member States are also obliged to publish all the terms and conditions of employment laid down in collective agreements for service providers and posted workers, and to make information available with regard to bodies and authorities which could provide general information to workers.

⁽¹²³⁾ European Commission, Directorate-General for Employment, Social Affairs and Inclusion, *The European Pillar of Social rights Action Plan*, 2022.

⁽¹²⁴⁾ Principle No 7 also establishes that workers have the right of access to effective and impartial dispute resolution and, in the case of unjustified dismissal, a right to redress, including adequate compensation.

⁽¹²⁵⁾ Belgium, Germany, France, Croatia, the Netherlands, Austria, Poland, Portugal, Slovenia and Slovakia.

- Manuals or brochures that contain information about rights and obligations applicable to posting schemes. These materials can be made available both on digital tools or in printed form and can be distributed to workers during training or through internal communication channels.
- Advisory activities led by professionals such as lawyers, human resources advisors or consultants who can provide advice and support to workers regarding their rights and obligations applicable to posting schemes. These support services may be available by phone, email or through an in-person exchange (e.g. helpdesks).
- Online platforms to provide workers with access to information about their employment rights and obligations applicable to posting schemes. These platforms can include online manuals, interactive learning modules, and even chatbots that can provide answers to common questions.
- Training sessions, frequently facilitated by external agencies or firms ⁽¹²⁶⁾.

Such initiatives mostly come from large companies and not SMEs.

Trade unions have nonetheless emphasised that it is not necessarily the case that large-scale structured information systems deliver information of a higher quality or that it is more widely disseminated among workers. In a similar way, an official of the *Federatie Nederlandse Vakbeweging* [Federation of Dutch Trade Unions] (FNV) observed that while larger companies might have more legal expertise or human and financial capacity, it is not guaranteed that the information will be effectively disseminated to posted workers at the ground level ⁽¹²⁷⁾. The causes vary, and can include, inter alia, more complex organisational structures in these larger companies that can potentially hinder such dissemination. Trade unions consulted at the national level further emphasised that measures aimed at informing workers very often come from initiatives such as *Faire Mobilität*, from labour inspectorates or liaison offices, or from the trade unions, and therefore not necessarily from employers.

Member State competent authorities are also responsible for providing accessible information regarding posting regulations. According to Article 4 of the Posting of Workers Directive, each Member State must take appropriate measures to make available the information on the terms and conditions of employment. Such terms and conditions are listed in Article 3 of the Posting of Workers Directive, including the law applicable to the employment relationship laid down by regulation or administrative provisions, and/or by collective agreements or arbitration ⁽¹²⁸⁾.

The Enforcement Directive has expanded into the obligations set forth by the Posting of Workers Directive, enhancing elements related to information accessibility. Member States must take the appropriate measures to ensure that the information on the terms and conditions of employment referred to in Article 3 of the Posting of Workers Directive is made available free of charge in a clear, transparent, comprehensive, and easily accessible way at a distance and by electronic means as detailed in its Article 5 ⁽¹²⁹⁾.

One of the requirements under Article 5 of the Enforcement Directive is to establish, and keep up to date, a single official national website with information on the terms and conditions of employment that apply to workers posted to their territory. The role of single official national websites has been further strengthened by Directive (EU) 2018/957 amending the Posting of Workers Directive ⁽¹³⁰⁾. Article 3 of the Posting of Workers Directive now requires Member States to ensure

⁽¹²⁶⁾ Trade union official – FNV construction sector and trade union official of the *Christelijk Nationaal Vakverbond* [Christian National Trade Union Federation] (CNV), the Netherlands, interview held in April 2023. Regional representative Trade Union of Construction Industry of Croatia, interview held in April 2023.

⁽¹²⁷⁾ Trade union official – FNV construction sector and Trade union official – CNV, the Netherlands, interview held in April 2023.

⁽¹²⁸⁾ Concerning (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 the 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.

⁽¹²⁹⁾ Article 5(1) of Directive 2014/67/EU.

⁽¹³⁰⁾ Directive (EU) 2018/957 of the European Parliament and of the Council of 28 June 2018 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services.

that the information provided on the single official national website is accurate and up to date. Furthermore, contrary to Article 5 of the Enforcement Directive, where the information on the single official national website does not indicate which terms and conditions of employment are to be applied, that circumstance must be considered when determining penalties in the event of infringements of the national provisions adopted pursuant to this directive. Annex 3 provides the complete list of single official national websites. In a report on the application and implementation of the Enforcement Directive released in 2019, the Commission ⁽¹³¹⁾ stated that all Member States have set up their websites and these largely fulfil the conditions provided in the directive, including the language requirements, and that many websites go further as regards the scope of information presented. The views of the labour enforcement authorities and paritarian institutions consulted in the framework of this study were in line with this statement and described examples of useful features on these national websites. In Austria, the Posting of Workers Platform ⁽¹³²⁾ informs workers who are posted to Austria about their rights and entitlements in different languages, facilitating the identification of the Austrian collective agreement potentially covering that activity ⁽¹³³⁾. In Spain, in recent years the Directorate General of Labour increased the number of languages in which the information is available on the website ⁽¹³⁴⁾, due to the funds made available by ELA ⁽¹³⁵⁾. In Italy, the website has recently been translated into Romanian ⁽¹³⁶⁾. France and Norway provide high-quality information in Polish that makes it easy for employers and employees to access and grasp the rules with which to comply ⁽¹³⁷⁾. In Germany, SOKA BAU has a website and hotlines in 14 languages regarding information on the paid leave scheme ⁽¹³⁸⁾.

In Finland, extensive information regarding workers' rights is available on the Occupational Safety and Health Authority's webpage ⁽¹³⁹⁾. According to a senior advisor of an EU organisation representing employers, the Limosa website developed in Belgium is appreciated among employers, as it is considered as a relevant support for the preparation of the prior declaration ⁽¹⁴⁰⁾.

On the contrary, some representatives of employer organisations and paritarian organisations consulted under this study are of the view that most of the single official national websites are still only available in the language of the receiving Member States or in English and thus present barriers to access for some posted workers and employers ⁽¹⁴¹⁾. On the completeness of information, Jorens and De Wispelaere stressed that national websites do not always refer to the application/declaration procedure of posted workers in both sending and receiving Member States ⁽¹⁴²⁾. Furthermore, many of them do not contain information on social security law and tax law, or even on the applicable collective agreements ⁽¹⁴³⁾. Kall and Lillie affirm that it is difficult to assess whether the single official national website is effective in its mandate, specifying that it is also crucial that stakeholders and workers have knowledge of which websites are relevant and how to find them ⁽¹⁴⁴⁾.

The responsibility for informing workers and posting undertakings lies not only with Member States, but also with the Commission, as established by Article 5(3) of the Enforcement Directive. The Commission must publish on its website the addresses of the single official national websites. The Commission currently fulfils this obligation by providing, via the Your Europe website, the basic information on posting and links to official national websites, as well as other national websites providing information on applicable legislation and collective labour agreements. In addition, the Your Europe website provides a question and answer section where clear and simple clarifications on specific aspects are provided. The Commission also has a dedicated page entitled 'Posted Workers', which covers, inter alia, basic information on the role of ELA, information on employment rights and working conditions for posted workers, and the EU legislation on posting of workers and coordination of social security systems, and also a hyperlink to the Your Europe website.

⁽¹³¹⁾ Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the application and implementation of Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) 1024/2012 on administrative co-operation through the Internal Market Information System ('the IMI Regulation'), COM(2019) 426 final of 25 September 2019.

⁽¹³²⁾ Available at: www.entsendeplattform.at.

⁽¹³³⁾ Official of the Finance Police in the Ministry of Finance of Austria, interview held in January 2023.

⁽¹³⁴⁾ Now available in Bulgarian, English, French, German, Italian, Polish, Portuguese and Romanian.

⁽¹³⁵⁾ Labour Inspectorate of Spain, interview held on 13 January 2023.

⁽¹³⁶⁾ Officials from the Italian Labour Inspectorate, interview held in January 2023.

⁽¹³⁷⁾ Polish Department of Legality of Employment, Chief Labour Inspectorate, Acting Director, interview held in January 2023.

⁽¹³⁸⁾ Staff member of BUAK of Austria, interview held in January 2023.

⁽¹³⁹⁾ Available at: <https://www.tyosuojelu.fi/web/en>.

⁽¹⁴⁰⁾ Senior advisor of an EU organisation representing employers, interview held on 15 December 2022.

⁽¹⁴¹⁾ Senior advisor of an EU organisation representing employers, interview held on 15 December 2022. Staff Member of SOKA BAU in Germany, interview held in January 2023.

⁽¹⁴²⁾ Jorens, Y., and De Wispelaere, F., 'Intra-EU posting: Looking for solutions – a herculean or a sisyphian task?', *Belgisch tijdschrift voor sociale zekerheid-ministerie van tewerkstelling en arbeid*, No 1, 2019, pp. 113–137.

⁽¹⁴³⁾ *Ibid*, p. 117.

⁽¹⁴⁴⁾ Kall, K. and Lillie, N., Protecting Mobility through Improving Labour Rights Enforcement in Europe (PROMO) Project, *Protection of Posted Workers in the European Union: Findings and Policy Recommendations based on existing research*, 2017, p. 28.

Tools that are complementary to national-level websites have been implemented by transnational organisations at the EU level. For example, the European Construction Mobility Information Net webpage, developed by the European Federation of Building and Woodworkers (EFBWW), provides basic information to posted workers on the (minimum) wages and working conditions in the construction industry of all Member States. The webpage also allows direct communication between the posted worker and the local trade unions. Given the increasing relevance of TCNs in posting schemes, one of the main challenges lies in the need to increase the number of non-EU languages for posted TCNs in which information is presented on the website. The data were updated for most Member States in 2022, but some countries' data were last updated in 2017. Before this initiative, the European Construction Industry Federation (FIEC) and the EFBWW created a joint website on the posting of workers in the construction industry ⁽¹⁴⁵⁾.

A questionnaire targeting labour inspectors in 17 countries contained an open question to identify good examples of measures in place for improving workers' and employers' awareness of their rights and obligations in the construction sector. The inspectors responded that websites with multiple language versions, awareness-raising campaigns and provision of informative materials (handbooks, posters, leaflets, visuals, etc.) were the most relevant tools for informing such workers and employers. They also highlighted the crucial role of social partners as key actors in diffusing such information in a posting context. This is the theme of the following case study.

Box 2: Case study on the role of social partners in provision of information to workers and employers

This case study covers information gathered in Belgium, Croatia, the Netherlands, Austria and Poland.

Trade union initiatives and activities

In the construction sector, trade unions provide information to workers on two different levels: EU and national. The provision of information at the EU level is mainly developed by the EFBWW, through awareness-raising campaigns addressing workers, civil society and policymakers on a range of different topics, including cross-border social fraud, subcontracting chains, temporary work agencies, human trafficking and organised crime. Additionally, the EFBWW carries out joint campaigns with the FIEC.

At the national level, trade unions carry out a variety of activities to inform posted workers, despite the difficulties that exist in unionising such workers. The following three cases illustrate the activities carried out by trade unions in the construction sector in Austria, the Netherlands and Poland, demonstrating how the nature and scope of trade union initiatives targeting posted workers in the sector varies considerably across Member States. In Austria, the trade union with a mandate on the construction sector implements specific initiatives targeting posted workers, including in particular the establishment of offices at key places on the Austrian border. For instance, since 2017 an office has been established between Austria and Slovenia in Spielberg, where many posted workers, including from third countries, arrive. The Austrian trade union of building and woodworkers considers this office to have been very successful, as posted workers are informed directly at the border and in their native language of their rights and the applicable legislation relating to the posting. Moreover, workers can access this information anonymously. The Austrian trade union is planning to establish other offices at the borders with Czechia and Slovakia ⁽¹⁴⁶⁾. In parallel to this activity, the Austrian trade union of building and woodworkers distributes information brochures about rights, entitlements and obligations derived from EU labour mobility legislation (notably posting and social security issues) in different languages.

In the Netherlands, limited initiatives targeting posted workers in the construction sector have been identified, as trade unions usually try to reach out to posted workers only on an ad hoc basis. Trade unions employ staff that can speak the main languages of sending Member States

⁽¹⁴⁵⁾ The website is not updated due to a lack of financing. Following the changes to the EU legislation on the posting of workers, in particular the entry into force of Directive 2018/957, the information presented on the website is no longer up to date.

⁽¹⁴⁶⁾ Members of the Austrian trade union of building and woodworkers, interview held in April 2023.

and can, in addition to their everyday work and mission, support posted workers. Posted workers can also benefit from more cross-sectoral initiatives, such as union visits to migrant workers in the workplace, which target different categories of workers, including posted workers ⁽¹⁴⁷⁾.

In Poland, the majority of posted workers in construction are not unionised. Posted workers normally contact trade unions only when a violation has already happened.

Cross-border initiatives and support between trade unions

A specific aspect of trade union activity that is particularly relevant in the context of labour mobility and social security coordination is cross-border initiatives, in which the sectoral trade union at the EU level, the EFBWW, plays a key role. Along the same lines, representatives of trade unions in Austria and the Netherlands consider that, in particular, the website [constructionworkers.eu](https://www.constructionworkers.eu) (managed by the EFBWW) is very relevant. The website provides concise information on wages, working conditions and rights of construction workers for all Member States in all EU languages. In general, the area of labour mobility and all the connected challenges (fake posting, cross-border social fraud and the posting of bogus self-employed workers, along with social abuses such as the use of letterbox companies) is indeed one of the main priorities of the EFBWW Strategic Plan 2020–2023. Alongside this, the EFBWW has a key role in facilitating cooperation among its national members, including through the creation of networks to help share best practices in capacity building and organisation ⁽¹⁴⁸⁾.

In Poland, the interviewed trade union representative mentioned that posted workers were redirected to trade unions in receiving countries if they experience problems, but also to other institutions such as SOKA BAU. Some trade unions, for example in Belgium and the Netherlands, have Polish staff on the helpdesks and others prepare information sheets for posted workers in Polish (and other languages such as Romanian). Some other Member State trade unions are keeping the Polish trade unions (e.g. *ZZ Budowlani*) up to date regarding changes in collective agreements.

Employer organisations support to construction companies

Employer organisations implement several measures to support companies in the construction sector. These include a range of different initiatives including helpdesks, seminars, workshops and conferences with relevant experts and representatives of institutions. Employer organisations also inform members via informative materials, such as brochures and easy-to-read documents about their rights and obligations related to postings ⁽¹⁴⁹⁾. Employer organisations also provide direct assistance to their members, undertaking advisory activities on specific cases.

Some EU-level employer organisations and trade unions in the construction sector have advocated for the creation of a single online access point that would list all applicable provisions, by country of posting at the EU level in different languages. Such a platform would facilitate the role of employer organisations in providing information to employers.

Initiatives and activities implemented by advisory organisations and paritarian institutions

The advisory activities provided by *Faire Mobilität* ⁽¹⁵⁰⁾ allow workers to know what their expectations should be in different Member States and offer legal advice to the workers on an individual level ⁽¹⁵¹⁾. A project implemented by *Faire Mobilität* which deserves attention (although not specifically targeting the construction sector) is the 'Fair European Labour Mobility' project, financed by the European Union European Social Fund Plus. The project envisages trade unions

⁽¹⁴⁷⁾ Trade union official – FNV construction sector and trade union official – CNV, the Netherlands, interview held in April 2023.

⁽¹⁴⁸⁾ See EFBWW, 'Strategic Plan: Main Priorities 2020-2023', available at: <https://www.efbww.eu/activities/strategic-plan-2020-2023/1-a>.

⁽¹⁴⁹⁾ Regional representative of the Trade Union of Construction Industry of Croatia, interview held in April 2023.

⁽¹⁵⁰⁾ <https://www.faire-mobilitaet.de/en>

⁽¹⁵¹⁾ Staff members of the EFBWW, interview held in December 2022.

in sending countries (Hungary, Slovenia, Poland and Romania) and receiving countries (Austria) cooperating with Faire Mobilität. Among other activities, the project aims to reinforce the transnational cooperation of sector-specific cooperation centres within trade unions in sending and receiving Member States. The goal is to provide transparent access to information on working conditions and administrative requirements ⁽¹⁵²⁾.

The paritarian organisation SOKA BAU has been mentioned as a key player in the provision of information, for both employers and workers in the German construction sector ⁽¹⁵³⁾. SOKA BAU has its own infrastructure for informing posted workers, including a website and hotlines in 14 languages ⁽¹⁵⁴⁾.

3.2 Information needs

The Enforcement Directive and the revised Posting of Workers Directive require workers and employers to be adequately informed about their rights and obligations during posting. In addition to these, several measures have been implemented by Member States to support this requirement. Furthermore, initiatives have been put in place by social partners to inform workers and employers. Despite these measures, the research and interviews conducted for this study reveal that in the construction sector, posted workers and employers are still not consistently well-informed. This finding mainly comes from the opinion of the majority of labour inspectors interviewed under this study who are in contact with posted workers and their employers in the construction sector in their everyday work and are therefore considered well-placed to assess their degree of awareness and related information needs. Nevertheless, a comprehensive survey targeting posted workers and their employers in the construction sector across the EU would be necessary to properly assess these information needs.

Examples of information needed by employers

- Applicable remuneration, notably as regards complementary elements which are now mandatory after the 2018 revision of the Posting of Workers Directive.
- Clear working time limits, overtime regulations and number of leave days.
- the OSH legal framework and its scope.
- Clear indication of necessary formalities for posting declarations, document retention and indication of the person of contact.
- Contacts with chambers of commerce / employer organisations that can provide helpdesk support.
- Information translated in their language and easy to read.

Examples of information needed by workers

- Applicable remuneration, notably as regards complementary elements which are now mandatory after the 2018 revision of the Posting of Workers Directive.
- Clear working time limits, overtime regulations and number of leave days.
- Contact details and ways to get in touch with trade unions, labour inspectorates and other providers of information and advice.
- Rights and rules related to accommodation.

⁽¹⁵²⁾ Information available at: <https://www.fair-labour-mobility.eu/>

⁽¹⁵³⁾ Coordinator of the construction sector for an organisation providing advice on labour mobility rules, interview held in December 2022.

⁽¹⁵⁴⁾ Staff Member of SOKA BAU in Germany, interview held in January 2023.

Main drawbacks identified in the quality of information provided

- Information using legal wording and thus not easy to read and very complex.
- Not in all relevant languages, in particular for posted TCNs.
- Multiple sources of information not standardised, leading to confusing duplication and difficulties in identifying the relevant information.

3.3 Suggested way forward to better inform posted workers and their employers in the construction sector

Section 3.2 illustrates that information needs related to posting in the construction sector are different for employers and employees, in particular regarding the nature of the information and its delivery method. Within this study's framework, European and national employer and trade union organisations have been solicited for their input on how to enhance the present information delivery system. Based on these recommendations, it appears that future improvements should consider these distinctive needs since currently, at both the EU and the Member State level, the manner in which information is disseminated and the type of information offered to employers and workers is undifferentiated.

Regarding the provision of information to workers, representatives of trade unions at the EU and national level consulted under this study raised the importance of complementing the information on single official national websites and other websites with an in-person interaction between posted workers and employers. It is only through in-person interaction that the legal status of the worker can be framed in all its legal facets ⁽¹⁵⁵⁾. Especially when it comes to posting schemes, targeted information on the ground (e.g. the network for Faire Mobilität in Germany) should be provided, for example, by recruiting native speakers in cooperation with trade unions. The provision of information on the ground for the benefit of workers could be strengthened by the role of trade unions. No specific measures have been formulated, but the main suggestions focused on the deployment of funds. At the level of trade unions, given the public purpose of this activity, the entities performing this service could receive public funds, therefore including trade unions that provide information to non-affiliated workers. Thus, the European Union should provide additional funds and resources for the provision of information, promoting the dissemination of information on posting and social security coordination rules with face-to-face interaction ⁽¹⁵⁶⁾.

Concerning information to be provided to employers, an EU employer organisation considers that a concrete advancement of employers' awareness can only be achieved with a centralised effort at the EU level, through initiatives led by ELA ⁽¹⁵⁷⁾. First, the creation of a common website at the EU level would facilitate the understanding of the national legal frameworks, as currently the different websites implemented at the Member State level are difficult to navigate ⁽¹⁵⁸⁾. Secondly, an approach that goes beyond mere information published on websites and including a more interactive way of providing information through a helpdesk set up within ELA could facilitate access to information ⁽¹⁵⁹⁾. This helpdesk should be able to provide information and advice to employers, as the single official national websites implemented in the framework of the Enforcement Directive are not easy to navigate and understand, especially for those not familiar with the EU legal system or the language of the Member States concerned ⁽¹⁶⁰⁾. In the same vein, as detailed in case study No 3, several representatives of employer organisations but also some trade unions in the construction sector advocated for the creation of a single online access point at the EU level that would list all applicable provisions, by country of posting (single portal) in different languages.

The potential role played by ELA in the provision of information appears crucial, both in the receiving and sending Member States. ELA could be the promoter not only of centralised digital tools such as the ELA helpdesk on labour mobility, interactive guides addressing companies posting workers, but also of the implementation of long-term strategies for the standardisation of the presentation of collective agreements on the way they are communicated.

Furthermore, ELA could play a role in facilitating cooperation between trade unions and the organisations of employers at the cross-border level in the exchange of information on working conditions and standards in the construction sector ⁽¹⁶¹⁾.

⁽¹⁵⁵⁾ *Ibid.*

⁽¹⁵⁶⁾ Staff member of the European Trade Union Confederation (ETUC), interview held in December 2022.

⁽¹⁵⁷⁾ Senior advisor of an EU organisation representing employers, interview held in December 2022.

⁽¹⁵⁸⁾ *Ibid.*

⁽¹⁵⁹⁾ *Ibid.*

⁽¹⁶⁰⁾ *Ibid.*

⁽¹⁶¹⁾ A more in-depth analysis is provided in Chapter 7 – Operational recommendations.

Box 3: Case study on employer practices in accessing information

The most relevant sources of information for employers are:

- single national official website (managed by ministries of labour and social affairs);
- the Commission website (Your Europe);
- primary legislative sources;
- paritarian organisation websites (e.g. SOKA BAU website);
- employer organisation websites;

Construction companies often rely on the chamber of commerce or employer organisation in their Member State to access information on posting and social security coordination regulations.

The request for information may come directly from employers to the chamber or employer organisation. This mostly occurs when construction companies need information prior to the start of the posting period, to verify the terms and conditions that are to be applied to the posted scheme under the law and collective agreements of the receiving Member State. In other cases, however, the employer organisations themselves provide information to their members, especially in cases of amendments to the legislative framework.

The seeming absence of communication between companies in the sending Member States and employer organisations in the receiving Member States also stands out as a unique feature. In fact, across all sectors, connections only occur between companies and employer organisations within the same Member State. In contrast, intra-EU relations are solely nurtured by the connections established between employer organisations and chambers of commerce in both sending and receiving Member States, enabling a seamless and efficient exchange of information.

Construction companies possessing significant financial resources can also rely on internal staff dedicated to mobility to get informed about the posting process.

Way forward on new communication tools suggested by employer organisations

In the consultation process carried out as part of this study, several suggestions for new communication tools targeting employers have been identified.

- The Polish Organisation of Employers in Construction proposes developing an updated database that includes regulations related to worker postings, especially for cross-border postings between frequently occurring routes (e.g. Poland–Denmark or Poland–Germany). Such a database should also cover sector-specific collective agreements and rules applicable to professions. The classification of applicable legislation and collective agreements in a single digital space would simplify the navigation of the complex legal framework applicable to posting schemes. While this proposal seems relevant considering the need to streamline information for employers, it poses some difficulties in relation to its design, especially when it comes to the difficulties that might arise in the standardisation of collective agreements. The latter, in fact, may not offer the basic similarities necessary for a potential grouping exercise within databases.
- A Croatian employer organisation proposes several tools to improve and modernise access to information, ranging from apps that would enable quick and easy access to information on labour mobility and social security coordination regulations to online seminars and workshops. The digitalisation process of information tools seems to be fully in line with one of the objectives of the Digital Agenda for Europe 2020–2030, namely the development of digital public services operating in a transnational context ⁽¹⁶²⁾.

⁽¹⁶²⁾ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – A Digital Agenda for Europe (COM(2010) 245 final).

- According to the Croatian employer organisation, awareness-raising campaigns aimed at a broader public could also be considered. In particular, what could represent added value is a public campaign carried out through traditional media, such as newspapers, television and radio, but also through social networks and other digital platforms, aiming to inform employers and employees about their rights and obligations regarding labour mobility and social security coordination.

All three proposals listed above could be implemented either by public bodies (labour ministries or labour law enforcement authorities) or by other parties, and in particular by employer organisations. Furthermore, the creation of standardised databases containing information on collective agreements seems to be a more achievable task for employer organisations, if supported by adequate public funding.

4. Preventive measures

Main findings

- Social ID cards are a very useful preventive tool, with some reservations on their effectiveness a) on small construction sites due to a poor cost-benefit ratio and b) in identifying underpayment practices.
- Subcontracting and employment through temporary work agencies is widespread in the EU construction sector. A provision of the Enforcement Directive introducing liability requirements in subcontracting chains in the construction sector was transposed in all Member States covered by this study. In some Member States, concerns were raised about these schemes. Most notably, there are very short timelines for workers to enforce their rights and the existing schemes do not apply to past wages.
- The German liability scheme was considered as a good practice by several scholars and interviewees consulted, because of its extensive scope (covering all the links of the subcontracting chain) and its ability to incentivise monitoring by main contractors.
- Limiting the number of subcontractors in the construction sector can be considered a practical and effective approach to ensure better compliance of, inter alia, EU posting rules. However, this would require careful consideration of the specific circumstances and needs of the construction industry within each Member State. Such limitation could indeed hinder the agility and flexibility of construction companies by reducing their access to specific expertise, increasing their operational costs and work delays.
- There are no specific public procurement rules and procedures in place in the main receiving countries concerning posted workers in the construction sector. However, bidders must demonstrate that they comply with social security and labour laws, including those pertaining to posting. If they fail to do so, they may be excluded from the tendering procedure. Some countries have developed guidelines in cooperation with employer associations in the construction sector to support construction companies in public procurement procedures, among other things, in demonstrating compliance with posting rules.
- Withdrawal of PDs A1 is a major cause of concern for labour inspectorates. The procedure for the withdrawal of PDs A1 is cumbersome and time-consuming even in cases of manifest issues, leading to under-enforcement.
- The PDT for incoming posting undertakings is considered an essential instrument for labour inspectorates in Member States targeted by this study.

This section analyses the main preventive measures employed by Member States to inhibit or restrict violations of EU labour mobility and social security rules within the EU construction sector in the context of posting. [Section 4.1](#) explores the use of social ID cards in the construction sector and their role as a certification tool to, inter alia, confirm the legal status of posted workers and thus help in detecting undeclared work. [Section 4.2](#) discusses the role and implementation of subcontracting chain liability schemes, which aim to ensure responsibility throughout the entire chain of subcontracting in the construction industry to protect posted workers' rights. [Section 4.3](#) describes the use of limitations on subcontracting within the construction sector in Member States and provides some suggestions on the use of such measures. [Section 4.4](#) details examples in Member States of public procurement mechanisms ensuring better compliance with posting rules on construction sites subject to public contracts. [Section 4.5](#) first provides an overview of the legal framework of the PDs A1 as an 'administrative tie' in the context of posting of workers, while identifying the main shortcomings and critical issues. The role of the PDT is the focus of [Section 4.6](#), which provides an overview of the main differences in the scope of declaration tools among Member States, along with a brief overview of its centrality when it comes to the mandates of labour inspectorates.

This section contains two illustrative case studies, on the role of public procurement in the compliance of EU labour mobility rules applying to posted workers in the construction sector and on labour inspectorates' access to databases respectively.

4.1 The role of social ID cards in the EU construction sector

A social ID card in the construction sector can be defined 'as an individualised worker certification tool which contains visible and safely stored electronic data that aims to attest that specific social and/or other (e.g. professional qualifications, OSH training, social protection/security issues) requirements have been met by the worker's employer and/or the worker him/herself' ⁽¹⁶³⁾. These cards are checked during inspections on construction sites to confirm the legal status of (posted) workers and thus help in detecting undeclared work ⁽¹⁶⁴⁾. Social ID cards are also intended to record and certify OSH training, accredited training and qualifications, and also to document work experience, control access to sites and/or assist in the prevention or detection of undeclared work ⁽¹⁶⁵⁾.

There are several studies stressing the link between the adoption of digital tools and lower levels of undeclared work (and abusive practices in general) and highlighting how digital technologies can limit the scope of undeclared work ⁽¹⁶⁶⁾. A well-articulated and consolidated literature argues that Member States with low levels of adoption of digital technologies, including electronic identification, have high levels of undeclared work and shadow economy ⁽¹⁶⁷⁾. There are several reasons why social ID cards are extensively used in the construction industry, including the temporary nature of the construction sites, the high mobility of workers, the higher level of work accidents compared with other sectors and the high prevalence of undeclared work. All these features increase the need for the use of social ID cards to facilitate the identification of (posted) workers on construction sites by labour enforcement authorities, and for the establishment of a dataset to enable this to occur ⁽¹⁶⁸⁾.

The latest study by Williams on the different social ID cards developed throughout the Member States underlined that there has been little post hoc formal evaluation of the outcomes of the use of social ID cards ⁽¹⁶⁹⁾. [Table 8](#) briefly describes the different social ID cards adopted at the national level, based on the study carried out by Williams in 2022 and on the feedback gathered in the context of the interviews carried out as part of this study ⁽¹⁷⁰⁾.

Table 8: Overview of the different social ID cards in the 17 Member States covered in this study

Member State	Date and acts of implementation
Belgium	The ConstruBadge was introduced in 2014. However, it is still not mandatory. The card includes different information, including on training, safety and health certification, and employee identification number.
Czechia	Social ID cards have not been introduced by collective agreement or legislation.
Germany	In Germany, a social ID card has not been adopted at the legislative level nor at the level of collective agreements, nor at the level of the social partners. Pursuant to section 2a, paragraph 1, no 1 of the Act to Combat Clandestine Employment, persons working in the construction industry are obliged to carry their identity card, passport, substitute passport or substitute identity card with them and to present these to the customs authorities upon request. The Central Customs Authority has the ability to obtain further information, e.g. from the A1 database or from the declarations for mobile activity.

⁽¹⁶³⁾ Briganti, F., Machalska, M., Steinmeyer, H-D. and Buelen, W., *Social identity cards in the European Construction industry*, EFBWW/FIEC, Brussels., 2015, p. 5.

⁽¹⁶⁴⁾ Williams, C., 'Comparative study of the use of social identity cards in the construction sector in various European countries', *ID CARDS for Decent Work in the Construction Industry*, 2022, p. 6.

⁽¹⁶⁵⁾ *Ibid.* p. 6.

⁽¹⁶⁶⁾ See for instance: Chacaltana, J., Leung, V. and Lee, M., 'New technologies and the transition to formality: The trend towards e-formality', *Employment Working Paper No 247*, ILO, Geneva, 2018. See also: Elbahnasawy, N. G., 'Can e-government limit the scope of the informal economy?' *Home Development*, 139, 2021. See also: Goel, R. K. and Saunoris, J. W., 'Virtual Versus Physical Government Decentralization: Effects on Corruption and the Shadow Economy', *Public Budgeting and Finance*, 36 (4), 2016, pp. 68–93.

⁽¹⁶⁷⁾ See: Williams, C. C., et al., An evaluation of the scale of undeclared work in the European Union and its structural determinants: estimates using the Labour Input Method (LIM), 2017; <https://digital-agenda-data.eu/datasets/desi/indicators>. See also: Medina, L., Schneider, F., 'Shedding Light on the Shadow Economy: A Global Database and the Interaction with the Official One', CESifo Working Paper No 7981, 2019; <https://digital-agenda-data.eu/datasets/desi/indicators>.

⁽¹⁶⁸⁾ Williams, C., 'Comparative study of the use of social identity cards in the construction sector in various European countries', *ID CARDS for Decent Work in the Construction Industry*, 2022, p. 8.

⁽¹⁶⁹⁾ Williams, C., 'Comparative study of the use of social identity cards in the construction sector in various European countries', *ID CARDS for Decent Work in the Construction Industry*, 2022, p. 65.

⁽¹⁷⁰⁾ *Ibid.*

Member State	Date and acts of implementation
Spain	The Tarjeta Profesional de la Construcción was introduced through the National Collective Agreement in the Construction Sector in 2007. The card shows the name of the worker, and a photo, and accredits the training in health and safety received by the worker through an approved entity and other training programmes completed. It also accredits the worker's professional category/occupation and experience in the sector.
France	Law No 2015 990 for growth, activity and equality of economic opportunities, also called the Macron Law, introduced the Carte Professionnelle BTP (171). The card includes the first and last name of workers, an ID picture, the name of their employers and a QR code.
Croatia	Croatia does not have a social ID card on construction sites and its introduction has not been considered so far.
Italy	Italy has not introduced a social ID card specifically targeting the construction sector (172). Legislative Decree no 81/2008 establishes that company identification cards apply to all employees of contracted or subcontracted companies.
Luxembourg	The 'social badge' applies only to posted workers, and it does not specifically target the construction sector. The card includes the full name of the posted worker, the name of their employer and a QR code.
Netherlands	In the Netherlands, a social ID card has not been adopted at the legislative level nor at the level of collective agreements, nor at the level of the social partners.
Austria	In Austria, a social ID card has not been adopted at the legislative level nor at the level of collective agreements, nor at the level of the social partners. Recently, BUAK has introduced what is known as the BAU-ID, which is a card gathering important information about the posted workers (e.g. registration with BUAK and social security institutions). All this information is available on a daily basis (not only on a monthly basis).
Poland	In Poland, a social ID card has not been adopted at the legislative level nor at the level of collective agreements nor at the level of the social partners.
Portugal	In Portugal, a social ID card specifically targeting the construction sector has not been adopted at the legislative level nor at the level of collective agreements nor at the level of the social partners.
Romania	In Romania, a social ID card specifically targeting the construction sector has not been adopted at the legislative level nor at the level of collective agreements nor at the level of the social partners.
Slovenia	In Slovenia, a social ID card specifically targeting the construction sector has not been adopted at the legislative level nor at the level of collective agreements nor at the level of the social partners.
Slovakia	No information available.
Finland	The Valttiälykortti has been introduced by the Confederation of the Finnish Construction Companies. The card includes the name of the worker, their tax number, the name of their employer and a photo. According to the Occupational Safety and Health Act, it is mandatory to have an ID card with the above-mentioned information, but it is not mandatory to have the Valttiälykortti specifically.
Sweden	Introduced in 2007 by social partners and in 2016 by the Law on Electronic Registration of Workers on Construction Sites (Section 5 of the Tax Procedure Ordinance (2011: 1261) and the Swedish Tax Agency's regulations SKVFS 2015: 6). The Swedish Tax Agency's 2015 regulation on electronic registration of workers on construction sites was introduced from 1 January 2016. ID06 is not a mandatory card, nor is there a legislative or collective agreement that makes it mandatory on construction sites. The visual information on the ID06 includes the name of the worker, an ID image, the current employer and the number of the ID06 card.

Employer associations, trade unions and labour enforcement authorities consulted within this study identified social ID cards as a very useful preventive tool, including in Member States where they have not been in use. Several Member States are considering and/or are in the process of introducing them in the construction sector. In Austria, BUAK is planning to establish a 'BUAK-service-card' in 2023, which will provide the identity of the construction worker, all periods of employment of the worker completed in Austria and his/her rights and entitlements according to Austrian law ⁽¹⁷³⁾. Social partners in Italy are also considering the introduction of social ID cards ⁽¹⁷⁴⁾. In Poland, identity cards in the construction sector are not in use. However, the Polish Labour Inspectorate considers it to be an interesting and potentially effective tool to tackle abuse, as it would help to identify employees and their respective employers ⁽¹⁷⁵⁾. In the Netherlands, a working group was established in 2013 with the aim of exploring the feasibility of the introduction of an ID card in the construction

⁽¹⁷¹⁾ BTP is the acronym in French of *Bâtiment et Travaux Publics* [Buildings and Public Works].

⁽¹⁷²⁾ In the last collective agreement for the construction sector for 2022–2024, it was decided to give the mandate to *Commissione Nazionale paritetica per le Casse Edili* [Italian paritarian institution] to establish the *Carte d'Identità Professionale Edile* [ID Professional Construction Card]. Nevertheless, it seems not to be in operation yet.

⁽¹⁷³⁾ Staff member of BUAK of Austria, interview held in January 2023.

⁽¹⁷⁴⁾ Staff members of the *Commissione nazionale paritetica per le Casse Edili* in Italy, interview held in December 2022.

⁽¹⁷⁵⁾ In particular, the Polish Labour Inspectorate cites the solutions used in Finland as potentially worth copying. Staff members of the Department of Legality of Employment of Poland, interview held in January 2023.

sector (which included trade unions and employer federation representatives). Even though resources have been allocated, the project has not yet been implemented ⁽¹⁷⁶⁾.

In Germany, the introduction of a social ID card is not considered needed for construction sites, as construction workers are obliged to carry their identity card, passport, substitute passport or substitute identity card with them and to present them to the customs authorities upon request ⁽¹⁷⁷⁾.

According to a representative of an EU-level confederation of trade unions, social ID cards are of great support to trade unions and labour inspectorates in getting a better view of who does what on a construction site, but also beneficial for the employers to ensure better transparency and monitoring in subcontracting chains, especially when chain liability applies ⁽¹⁷⁸⁾.

Belgium has set up a new identification tool via a QR code on the Limosa declarations that can be checked by inspectors with an application on their phone ⁽¹⁷⁹⁾. In Spain, social ID cards have a function that is not necessarily framed for inspective purposes, and is not related to social security, but serves to accredit the worker's compulsory training and compulsory medical tests. It is a tool designed to facilitate the recruitment of workers with the right level of training and not really to facilitate inspections ⁽¹⁸⁰⁾.

Labour enforcement authorities of different Member States flagged some gaps and key issues related to the use of social ID cards on construction sites. A representative of the Labour Inspectorate in Czechia argued that the benefits of such cards used on small construction sites would not outweigh the costs they entail. This stakeholder stressed that manual records were usually sufficient in such circumstances ⁽¹⁸¹⁾. The Finance Police in the Ministry of Finance of Austria raised the issue of fake social ID cards ⁽¹⁸²⁾, as also highlighted in the report 'Tackling undeclared work in the construction industry' based on a seminar on 3 May 2017 organised by the European Platform Tackling Undeclared Work ⁽¹⁸³⁾. While this report acknowledges the possibility of abuse concerning social ID cards, it concludes that such risk should not be a deterrent for their use, as they are effective in the majority of cases. However, measures to ensure that social ID cards are secured against abuses are also a key element to be put in place.

4.2 Subcontracting chain liability schemes in the EU construction sector

The construction industry is characterised by the interplay between EU labour mobility regulations, cross-border service provision and national labour market rules ⁽¹⁸⁴⁾. Subcontracting and employing temporary work agencies are widespread practices in the EU construction sector.

Subcontracting serves various purposes ⁽¹⁸⁵⁾. Construction companies use it to access the specialised expertise they lack in-house, as main contractors on large projects often do not possess the specific knowledge needed for every aspect of the job, such as electrical and plumbing work, bricklaying, or pavement installation. As mentioned in Section 6, the growing labour shortages in the construction sector also contribute to the prevalence of subcontracting chains; subcontracting serves as a primary tool to address these shortages and recruit workers.

The subcontracting working structure also poses challenges to the inspection tasks of labour enforcement authorities as well as to trade unions and workers' representation, as it becomes challenging for them to pinpoint the 'actual employer' at the top of the subcontracting chain, to assess each one's responsibility and take targeted action. A series of studies on the construction sector in Germany and the Netherlands have observed a recurring pattern where large companies

⁽¹⁷⁶⁾ Briganti, F., Machalska, M., Steinmeyer, H-D. and Buelen, W., *Social Identity Cards in the European Construction Industry*, FIEC/EFBWW, 2015, p. 33.

⁽¹⁷⁷⁾ Official of the Federal Ministry of Finance and Central Customs Authority transferred by the Ministry of Labour and Social Affairs of Germany, interview held in January 2023.

⁽¹⁷⁸⁾ Staff member of ETUC, interview held in December 2022.

⁽¹⁷⁹⁾ Staff member of the National Institute for the Social Security of the Self-Employed of Belgium, interview held in January 2023.

⁽¹⁸⁰⁾ Official of the Labour Inspectorate of Spain, interview held in January 2023.

⁽¹⁸¹⁾ Official of the State Labour Inspection Office of Czechia, interview held in February 2023.

⁽¹⁸²⁾ Official of the Finance Police in the Ministry of Finance of Austria, interview held in January 2023.

⁽¹⁸³⁾ Cremers, J., Williams, C., Hawley-Woodall, J. and Nikolova, N., 'Tackling undeclared work in the construction industry: A learning resource', from the Construction Seminar of the European Platform Tackling Undeclared Work, 2017, pp. 8–9.

⁽¹⁸⁴⁾ Lillie, N. and Wagner, I., 'Subcontracting, insecurity and posted work: evidence from construction, meat processing and ship building', in *The outsourcing challenge: Organizing workers across fragmented production networks*, 2019, p. 163.

⁽¹⁸⁵⁾ Caro, E., Berntsen, L., Lillie, N. and Wagner, I., 'Posted Migration and Segregation in the European Construction Sector', *Journal of Ethnic and Migration Studies*, Vol. 41, No 10, 2015, p. 1605.

(main contractors) subcontract work to temporary agencies or small and medium-sized subcontractors ⁽¹⁸⁶⁾. Along these subcontracting chains, principal contractors often pass business risks down the chain, fostering competition among lower-tier subcontractors and exerting pressure on workers' conditions. At the lower levels of the chain, temporary work agencies and construction subcontractors compete based on labour costs ⁽¹⁸⁷⁾, and within this context, principal contractors might lack the legal tools and/or the will to exert sufficient control over the lower chain levels ⁽¹⁸⁸⁾.

The concentration of business risks towards the end of the subcontracting chain and downward competition, combined with the fragmentation of chains of companies engaged in subcontracting sites, create significant challenges for labour inspectorates involved in the protection of posted workers ⁽¹⁸⁹⁾. Long posting chains have an impact on the identification of liability, compliance with OSH rules, and the safety of workers in general, especially for those employed at the end of the chain, who are the more vulnerable ⁽¹⁹⁰⁾. In addition, long chains lead to a fragmentation of the construction site, which also poses challenges to trade unions, as they have to determine with which company they have to conclude a collective agreement and for which workers ⁽¹⁹¹⁾.

The Enforcement Directive introduced a provision on liability in subcontracting chains in the construction sector precisely to tackle these criticalities. Article 12(2) of the Enforcement Directive indeed obliges Member States to introduce subcontracting liability in the construction sector, aimed at protecting posted workers' rights. In light of this provision, posted workers may hold liable the contractor of which the employer is a direct subcontractor, in addition to or instead of the employer, for the respect of net remuneration corresponding to the minimum rates of pay and/or contributions due to common funds or institutions of social partners.

All Member States considered under this study (except Finland and Luxembourg) have at least transposed into their national law the minimum requirement (or 'first tier') that contractors in the construction industry be held generally liable in the event of the employer (or subcontractor) failing to comply with the payment of minimum wages and social security contributions ⁽¹⁹²⁾. Finland and Luxembourg have made use of Article 12(6) of the Enforcement Directive, which foresees the possibility for Member States to take other appropriate enforcement measures and sanctions to tackle fraud and abuse in situations when workers have difficulties in obtaining their rights in subcontracting relations. In Finland, such 'appropriate enforcement measures' require the general contractor to act immediately if a posted worker communicates irregularities on wage payments. In Luxembourg, if the inspectorate informs the main contractor, in writing, of the non-payment of the remuneration due to the worker, it must immediately oblige the subcontracting company to eradicate the violation ⁽¹⁹³⁾.

⁽¹⁸⁶⁾ Wills, J., 'Subcontracted Employment and its Challenge to Labor', *Labor Studies Journal*, 2009, p. 456. See also: Lillie, N. and Wagner, I., 'Subcontracting, insecurity and posted work: evidence from construction, meat processing and ship building', in *The Outsourcing Challenge: Organizing workers across fragmented production networks*, 2015, p. 163. See also: Deakin N. and Walsh, K., *The enabling state: the role of markets and contracts*, Public Administration, 74 (1), 33–47, 1996.

⁽¹⁸⁷⁾ Wagner, I. and Berntsen, L., 'Restricted rights: Obstacles in enforcing the labour rights of mobile EU workers in the German and Dutch construction sector', *Transfer: European Review of Labour and Research*, Vol. 22, No 2, 2016, p. 196.

⁽¹⁸⁸⁾ Wagner I., 'Posted work and rule enactment in the German construction sector', *British Journal of Industrial Relations*, Vol. 53, No 6, 2015a, pp. 692–710.

⁽¹⁸⁹⁾ Policy Department for Citizens' Rights and Constitutional Affairs, Directorate General for Internal Policies of the Union, European Parliament, 'Liability in Subcontracting chains: national rules and the need for a European framework', PE 596.798, 2017, p. 20.

⁽¹⁹⁰⁾ Staff Members of the EFBWW, interview held in December 2022.

⁽¹⁹¹⁾ Staff member of ETUC, interview held in December 2022.

⁽¹⁹²⁾ Report From the Commission To The European Parliament, The Council And The European Economic And Social Committee on the application and implementation of Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation') (COM(2019) 426 final), p. 16.

⁽¹⁹³⁾ Commission Staff Working Document accompanying the document Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the application and implementation of Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation') (SWD(2019) 337 final).

Table 9: National measures on subcontracting liability in the construction sector in force in the 17 Member States covered under this study according to the Commission Communication on the implementation of Directive 2014/67/EU ⁽¹⁹⁴⁾

Key features of subcontracting liability measures in the construction sector in selected Member States	
Belgium	- Joint and several liability of the direct contractor in the case of construction activities. - The employee is entitled to obtain subsidiary payment of the remuneration due from third parties. - Only the direct contractual link between the employer of the unpaid workers and his or her direct contractor, or the person jointly and severally liable, is addressed by the special system in the case of building activities.
Czechia	According to Section 319 paragraph 3 of the Labour Code, the service recipient is liable for payment of the minimum or guaranteed wage, if; a) the minimum remuneration has not been paid by the employer which posted the employee to Czechia; b) this employer has been fined for the offences regulated by the Labour Inspection Act; and c) the service recipient was or must have been aware of the fact that the remuneration had not been paid.
Germany	- Liability for subcontracting is applicable in situations where the general minimum wage is applied to the construction sector, as well as in situations where there is a specific, prevailing and universally applicable collective agreement on a minimum wage in the sector. - The general contractor, at the top of the chain, is responsible for its subcontractors on the entire construction site. - If a company hires another company to do a significant amount of work or provide services, and that hired company fails to pay the proper wages or contributions to a common fund, then the first company may be committing an administrative offence, even if they were unaware of the hired company's negligence. - This is the case if the general contractor knows, or negligently does not know, at the time of choosing a subcontractor that this subcontractor in the performance of this order does not pay the remuneration referred to therein or does not pay it on time, or that his or her subcontractor also uses a subcontractor or permits a subcontractor to act who does not pay the remuneration specified therein, or does not pay it on time.
Spain	- The purpose of Law 32/2006 of 18 October is to prevent occupational accidents in subcontracting chains in the construction industry and ensure that construction companies carry out their activities on a transparent basis. - Law 32/2006 stipulates that construction companies must have production organisation and staff with the necessary training in occupational risk prevention. In addition, subcontractors must prove compliance to the contracting company and to the labour authority through registration in the register of accredited businesses. - Article 42 of the consolidated text of the Law of the Workers' Statute approved by Royal Legislative Decree 2/2015 of 23 October regulates the subcontracting of works and services in all sectors. Principal contractors must verify the payments of social security of subcontractors. The principal contractor is jointly and severally liable for the social security obligations of subcontractors (within 3 years), and for the wages for the year following the end of the contract.
France	In the event of non-payment by subcontractors, the main contractor may be held accountable for part, or all, of the statutory or contractual minimum wage owed to the posted worker.
Croatia	The contractor must be jointly and severally liable for the obligations which a subcontractor has in its capacity as employer of its posted workers for claims concerning overdue minimum rate of pay, including increased wages for overtime, to which a posted worker is entitled.
Italy	- Joint and several liability in contracting, labour outsourcing and transport in the construction sector covering matters pertaining to remuneration, and contributions. - In the case of posting, the client undertaking or employer is held jointly liable with the contractor and with any subcontractors with respect to any outstanding remuneration.
Luxembourg	No subcontracting liability: where the project owner or contracting authority is informed by the Labour Inspectorate in writing of the non-payment of part or all of the legal or contractual wages due to the employees, it shall immediately, by registered letter with acknowledgement of receipt, instruct the undertaking to put an end to this behaviour.
Netherlands	- Successive or sequential liability in place. - Chain liability rules apply to posting based on a service contract: i) posting within multinational groups; ii) temporary agency employment. - All links in the subcontracting chain can be held liable for unpaid wages as long as the main customer is not responsible. - Before the employee can move to the next link in the chain, certain conditions must be met. - The chain liability rules cover wages due by law, collective agreement, and labour contract.
Austria	- Posted workers can make salary claims against both their (foreign) employer and their (Austrian) client. - Customers are only liable when they knew, or reasonably should have known, prior to employing a company that the wages would not be paid or would be underpaid. - All related services, such as painting or installation, in addition to construction services are covered.

⁽¹⁹⁴⁾ *Ibid.*

Key features of subcontracting liability measures in the construction sector in selected Member States	
Poland	The contractor is jointly and severally liable with the employer posting workers in Poland for any obligations that arise during that posting regarding compensation and benefits.
Portugal	- The service provider (i.e. the entity that is ultimately responsible for hiring the posted worker) is responsible for ensuring that the subcontractor also meets these minimum standards. - If the subcontractor fails to pay the minimum wage owed to the posted worker, the service provider may be held liable for any unpaid compensation.
Romania	Contractors in the construction industry are to be held generally liable in the event that the employer (or subcontractor) fails to pay wages at least equal to the applicable minimum wage and social security contributions.
Slovenia	No information.
Slovakia	A posted worker to whom the host employer has not paid wages is entitled to demand payment from the natural or legal person who is the service provider within Slovakia and whose direct subcontractor is the host employer.
Finland	No subcontracting liability: - Finnish law does not hold multiple companies in the construction sector responsible for ensuring that proper wages and working conditions are provided to posted workers; - instead, if a posted worker reports anomalies related to wages or working conditions, the builder or general contractor (who hired the subcontractors) is responsible for taking prompt action to address the issue; - the worker can choose at the initial stage who she/he can contact (e.g. the builder or general contractor); - the generally applicable collective agreement specifies that the contractor is responsible for the unpaid wage if the employee makes a claim within 14 days from the salary day; the responsibility is between the contractor and the employees of the subcontractor.
Sweden	Contractors in the construction industry are held generally liable in the event that the employer (or subcontractor) fails to pay wages at least equal to the applicable minimum wage and social security contributions.

Some labour enforcement authorities (and paritarian institutions) are of the view that these liability schemes are not always effective in properly protecting workers. For instance, under the Austrian scheme, workers have to enforce their rights themselves within very short timelines ⁽¹⁹⁵⁾. In Belgium, it has been observed that although liability for past wages exists, in practice it is not often enforced ⁽¹⁹⁶⁾. In the Netherlands, according to an official from the Labour Inspectorate, the regulation could be made more effective by extending the chain liability to remuneration and working hours.

The chain responsibility rules in force in Germany were considered effective by a range of different stakeholders consulted as part of this study, including scholars, representatives of paritarian organisations and social partners. These rules concern situations where the general minimum wage is applied to the construction sector, and to situations where there is a specific, prevailing, and universally applicable collective agreement on a minimum wage in the sector. For the civil liability and the act of committing an administrative offence, it is irrelevant whether the employer is domiciled in Germany or abroad. The general contractor, at the top of the chain, is responsible for their subcontractors over the entire construction site. Furthermore, the general contractor can be held liable for an administrative offence if he/she knows, or does not know due to negligence, that the subcontractor does not pay the proper remuneration to workers or does not pay it on time. This also applies if the subcontractor in turn uses another subcontractor who fails to comply with the same payment terms. Therefore, the general contractor needs to be diligent in selecting subcontractors and must ensure that all subcontractors, whether directly or indirectly contracted, honour the agreed-upon remuneration terms and deadlines.

According to a coordinator of the construction sector for an organisation providing advice on labour mobility rules, this general contractor's 'due diligence' in the selection of subcontractors is a relevant tool to ensure compliance with posting rules in the construction sector since the general contractor, at the top of the chain, is responsible for the entire construction site and can be held liable ⁽¹⁹⁷⁾. According to Bogoeski, the German chain liability scheme 'has been employed in out-of-court negotiations, and many times different stakeholders (e.g. SOKA BAU) have achieved success in fining misbehaviour, which would be unimaginable without such a regulation' ⁽¹⁹⁸⁾. Nonetheless, a representative of SOKA BAU has observed that German law provides for the instrument of principal liability in the event of non-payment of SOKA BAU contributions by the

⁽¹⁹⁵⁾ Official of the Finance Police in the Ministry of Finance of Austria, interview held in January 2023. Staff Member of BUAK of Austria, interview held in January 2023.

⁽¹⁹⁶⁾ Official of the Ministry of Labour of Belgium, interview held in January 2023.

⁽¹⁹⁷⁾ Coordinator of the construction sector for an organisation providing advice on labour mobility rules, interview held in December 2022.

⁽¹⁹⁸⁾ Bogoeski, V., 'Protection of posted workers in the European Union', *Advancing Social Justice in Europe and Worldwide*, 2017, p. 190.

contractor, so it is necessary for SOKA BAU to know the contractors to enforce their liability. To address this issue, it would be necessary to include the name of the contractor in the country of activity in the prior posting declaration ⁽¹⁹⁹⁾.

4.3 Limits on subcontracting to improve the implementation of liability schemes

Subcontracting chains have a very important role in the construction sector, as they allow the use of labour force with specialised expertise along with filling labour shortages themselves. At the same time, subcontracting chains can pose numerous challenges for labour enforcement authorities (and trade unions), particularly when they are used to reduce costs and to escape legal responsibilities (see Section 2.2).

Limiting the number of subcontractors in the construction sector is considered as a relevant measure to facilitate the enforcement of labour mobility rules in this sector, as it would avoid complex bureaucratic procedures that often arise when trying to ascertain who is responsible for an accident or non-payment of wages ⁽²⁰⁰⁾. Limitation of the subcontractors and better regulation of subcontracting (with rules on public procurement, for instance) also means a better liability scheme where the main contractor can be more easily held liable in case of non-payment of wages or social contributions on the immediate next level ⁽²⁰¹⁾. Among the Member States considered under this study, only Belgium and Spain introduced such a subcontracting limitation.

In Spain, the law on subcontracting applies to public and private contracts and establishes that subcontracting is limited to three levels as a general rule and that self-employed workers are not allowed to subcontract. The liability rules cover all labour and social security obligations (thus, both wages and social security contributions) ⁽²⁰²⁾. Spanish law also provides for the obligation to register companies in the subcontracting book at the worksite. In Belgium, the limit for subcontracting is three levels for the public sector, while a proposal to introduce the same limit for the private sector is being discussed at the federal level ⁽²⁰³⁾. In France, there is no limit to the level of subcontracting in the construction sector as such. However, the main contractor who intends to carry out a contract or a project using one or more subcontractors must, at the time of conclusion and throughout the duration of the contract or project, have each subcontractor get their payment agreement accepted by the project owner. The main contractor is required to provide the subcontract(s) to the project owner upon request ⁽²⁰⁴⁾.

Limiting the number of subcontractors in the construction sector could therefore be a practical and effective approach to ensure better compliance of, inter alia, EU posting rules. However, this would require careful consideration of the specific circumstances and needs of the construction industry within each Member State. Such a limitation could indeed hinder the agility and flexibility of construction companies by reducing their access to specific expertise, increasing their operational costs and work delays. The Member State limitation rules described in this section show that such rules should not be too stringent (e.g. three levels of subcontracting allowed), in order to limit the negative impact on construction companies and to ensure they have enough flexibility to properly provide their services.

4.4 The role of public procurement in the compliance with EU labour mobility rules applying to posted workers in the construction sector

Public procurement plays a crucial role in the construction sector, providing a significant portion of the industry's overall business. It represents the process by which government entities, including local, regional, national and international bodies, contract private sector companies to complete public projects. Public procurement rules and procedures could therefore play a significant role in ensuring compliance with EU labour mobility rules applying to posted workers in the construction sector. A case study was developed based on this premise. Its aim was to identify measures and/or inspection mechanisms/requirements in the context of public procurement procedures in five Member States (Belgium, Germany, France, the Netherlands and Austria) to ensure that EU labour mobility rules applying to posted workers on public construction sites are respected.

The measures identified in this case study and further detailed in [Box 4](#) concern the following.

⁽¹⁹⁹⁾ Staff Member of BUAK of Austria, interview held in January 2023.

⁽²⁰⁰⁾ Staff Members of the EFBWW, interview held in December 2022. Coordinator of the construction sector for an organisation providing advice on labour mobility rules, interview held in December 2022.

⁽²⁰¹⁾ Staff Members of the EFBWW, interview held in December 2022.

⁽²⁰²⁾ Houwerzijl, M. and Peters, S., *Liability in Subcontracting Processes in the European Construction Sector*, Eurofound, Dublin, 2008, p. 20.

⁽²⁰³⁾ Royal Decree of 14 January 2013 determining the general execution rules of public procurement, Article 12/3, §2, 1°, to be read in conjunction with Article 4 of the Royal Decree of 26 September 1991 establishing certain implementing measures of the Law of 20 March 1991 regulating the approval of works contractors.

⁽²⁰⁴⁾ Law No 3113-34 of 31 December 1975 governs the use of subcontracting.

- The obligation for participants in public procurement procedures to comply with all labour law provisions, including those on posting, and to demonstrate that they have monitored whether posted rules were respected during the completion of services on construction sites.
- The development of guidelines to support tenderers in showing that posted workers in the construction sector are in line with labour and posting rules.
- The imposition of sanctions in cases where these posting rules are not respected by construction companies involved in public procurement procedures (e.g. exclusion of public tendering). These measures are further detailed and put into context in the case study detailed in Box 4.
- The development of a charter of good practices related to public procurement rules, developed by a national association of construction companies and to be signed between the said association and the relevant contracting public authorities. Contracting public authorities that signed the charter must require that construction companies inform them about the use of posted workers on construction sites and must check and request documents to prove the legality of such posting.

Limited feedback was received from interviewees on the effectiveness of such measures.

Box 4: Case study on the role of public procurement in compliance with EU labour mobility rules applying to posted workers in the construction sector.

In Austria, public procurement plays a crucial role in ensuring that posting in the construction sector is carried out in line with the rules, even though Austrian public procurement laws do not include specific requirements related to the posting of workers. Tenderers must comply with all labour law provisions and also therefore with the provisions applicable to the posting of workers. Furthermore, the name of each subcontractor must be indicated by tenderers ⁽²⁰⁵⁾.

In Belgium, the employer association of construction companies mentioned that at both the federal level and the regional level, good practice guides were provided to construction companies applying for public tenders including information on the posting of workers and on how to prove that posting rules are being complied with ⁽²⁰⁶⁾. Such guidelines are also prepared in France between competent authorities and the employer association of construction companies ⁽²⁰⁷⁾. Under German law, bidders can be excluded if obligations to pay taxes and duties along with social security contributions have not been duly fulfilled, if the company is not registered with the employers' liability insurance association or if serious misconduct has been committed which calls into question the reliability of the candidate or bidder. Such an exclusion can concern violations, inter alia, of the German Posted Workers Act. In the same vein, in France, construction companies participating in public procurement tendering procedures may be asked to demonstrate that they have verified that posting rules are respected by showing, inter alia, the acknowledgement of receipt of the SISPI ⁽²⁰⁸⁾ posting declaration.

The French Federation of Buildings developed a charter of good practices in public procurement procedure that must be signed by potential contracting public authorities in procurement procedures involving construction work. Contracting public authorities that have signed the charter must require construction companies to inform these authorities about the use of posted workers on construction sites, and these authorities must check and request proof of the legality of such postings ⁽²⁰⁹⁾.

⁽²⁰⁵⁾ Member of the Chamber of Commerce of Austria, Association of the Building Industry, interview held in April 2023, and lay judge and national expert in public procurement procedures in the construction sector at the Federal Administrative Court, interview held in April 2023.

⁽²⁰⁶⁾ Information retrieved from questionnaire received from Constructiv, April 2023.

⁽²⁰⁷⁾ Staff member, National Federation of Public Works, European Service, France, interview held in April 2023.

⁽²⁰⁸⁾ French prior declaration tool software.

⁽²⁰⁹⁾ Information retrieved from staff member, National Federation of Buildings in France, interview held in May 2023.

4.5 Portable Documents A1: the administrative tie of the EU social security coordination

4.5.1 Legal framework

The European Union provides common rules to ensure the equal treatment of economically active persons moving within the EU. The coordination of social security is governed by the Basic Regulation currently under revision ⁽²¹⁰⁾, and Regulation (EC) 987/2009 ⁽²¹¹⁾.

The Basic Regulation establishes the general principle of the *lex loci laboris*, according to which the legislation applicable to economically active citizens is the one of the Member State where they work. Instead, Article 12(1) of the Basic Regulation ⁽²¹²⁾ defines an exception when it comes to posted workers, as those mobile workers continue to be subject to the legislation of the first Member State (the sending Member State).

The exception to the *lex loci laboris* rule provided for posted workers is intended 'not only to avoid the simultaneous application of several systems of national legislation and the complications that that might entail, but also to ensure that persons falling within the scope of that regulation do not remain deprived of social protection because of the absence of legislation applicable to them' ⁽²¹³⁾. This exception thus serves to protect the posted workers from unnecessary shifts of responsibilities for their social security requirements in situations where work abroad is of a genuinely temporary nature and also to ensure that they can actually claim their benefits and do not have to do it in a foreign system where they have spent only a very limited amount of time.

Due to the exceptional nature of the posting rule, a number of requirements are established to ensure that the exception remains narrowly defined, hence, to secure the genuine nature of the posting situation and its temporary character ⁽²¹⁴⁾. Two requirements arising from Article 12 of the Basic Regulation need to be fulfilled for an employed person to be posted ⁽²¹⁵⁾: the period of posting shall not exceed 24 months, and the posted worker shall not be sent to the receiving Member State to replace another posted person ⁽²¹⁶⁾. The PD A1 certifies the legislation applicable to the holder, replacing the previous E101 form in this mandate. The certificate establishes that the holder is affiliated to the social security system of the Member State which has issued the certificate ⁽²¹⁷⁾. The PD A1 certificate is issued by the competent authority of the sending Member State at the request of the employer or the person concerned ⁽²¹⁸⁾. When issuing the PD A1, the authority of the sending Member State shall check that the conditions of Article 12 of the Basic Regulation are complied with. On that certificate, the competent institution of the sending Member State in which an undertaking employing the workers concerned is established declares that its own social security system will remain applicable to the posted workers. By virtue of the principle that workers must be registered with only one social security system, the certificate thus necessarily implies that the receiving Member State's social security system cannot apply ⁽²¹⁹⁾.

There is some discretion allowed regarding the moment when the PD A1 is issued, paving the way for some problematic issues ⁽²²⁰⁾. Indeed, in *Alperind GmbH and Others*, the CJEU confirmed (once again) the retroactive effect of the PD A1, ruling

⁽²¹⁰⁾ On 13 December 2016, the European Commission proposed a revision of Regulation (EC) No 883/2004 on the coordination of social security systems and Regulation (EC) No 987/2009 laying down the procedure for implementing Regulation (EC) No 883/2004.

⁽²¹¹⁾ Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems (OJ L 284, 30.10.2009, p. 1).

⁽²¹²⁾ Article 12(1) of Regulation (EC) No 883/2004.

⁽²¹³⁾ Judgment of the Court (Grand Chamber) of 3 June 2021, C-784/19, *'TEAM POWER EUROPE' EOOD v Direktor na Teritorialna direksia na Natsionalna agentsia za prihodite* – Varna.

⁽²¹⁴⁾ Jorens, Y., 'Cross-Border Employment and Labour Law: The Legal Framework', in *Cross-border EU Employment and its Enforcement: An Analysis of the Labour and Social Security Law Aspects and a Quest for Solutions*, Cham: Springer International Publishing, 2022, pp. 287–288.

⁽²¹⁵⁾ According to Rennuy, N., 'Posting of workers: Enforcement, compliance, and reform', *European Journal of Social Security*, Vol. 22, No 2, 2020, p. 215, another element should be taken into account when issuing a PD A1: the posted worker must have been subject to the legislation of the sending Member State prior to being posted. According to CJEU case-law, the worker must be bound by 'a direct link' to the posting undertaking throughout the period of posting. The former must be an employee of the latter and remain under its authority. Finally, the employer must 'normally carry out its activities' in the sending Member State. See: Case C-202/97 *Fitzwilliam Executive Search Ltd v Bestuur van het Landelijk instituut sociale verzekeringen* [2000] ECR I–883, paragraph 24.

⁽²¹⁶⁾ Article 12(1) of Regulation (EC) No 883/2004.

⁽²¹⁷⁾ Article 19 of Regulation (EC) No 987/2009.

⁽²¹⁸⁾ Regulation (EC) No 987/2009.

⁽²¹⁹⁾ See, to that effect, judgments of 26 January 2006, *Herbosch Kiere*, C 2/05, EU:C:2006:69, paragraph 21, and of 27 April 2017, *A-Rosa Flussschiff*, C 620/15, EU:C:2017:309, paragraph 38. See also: C-359/16, Judgment of the Court (Grand Chamber) of 6 February 2018, *Criminal proceedings against Ömer Altun and Others*.

⁽²²⁰⁾ Judgement of the Court (Fifth Chamber) of 30 March 2000, *Banks and Others*, C-178/97, EU:C:2000:169, paragraphs 52–57.

that ‘while it is preferable that such a certificate is issued before the beginning of the period concerned, it may also be issued during that period or indeed after its expiry’ ⁽²²¹⁾.

Pursuant to Article 5 of Regulation (EC) No 987/2009, PDs A1 bind the institutions of the other Member States until they have been withdrawn or declared invalid by the Member State in which they were issued. According to the CJEU, the PD A1 ‘is binding on both the social security institutions of the Member State in which the activity is carried out and the courts of that Member State’ ⁽²²²⁾. Even if the authorities of the receiving Member State find fraudulent behaviour, as in the case of bogus self-employment, the social security institutions and courts of the receiving Member State may not unilaterally withdraw the PD A1, as pointed out by the CJEU in *A-Rosa Flussschiff GmbH* ⁽²²³⁾. In particular, the CJEU ruled that the ‘E 101 certificate issued by the institution designated by the competent authority of a Member State pursuant to Article 14(2) (a) of Regulation No 1408/71 ... is binding on both the social security institutions of the Member State in which the work is carried out and the courts of that Member State, even where it is found by those courts that the conditions under which the worker concerned carries out his activities clearly do not fall within the material scope of that provision of Regulation No 1408/71’ ⁽²²⁴⁾. In the *Vueling* case, the Court made it mandatory for the authorities of the receiving Member State to use the dialogue procedure of Article 76(6) of the Basic Regulation before being able to declare the fraudulent nature of PD A1 (or E101) certificates, even in the case of manifest issues (such as the situation in *Vueling*, where workers were declared as residing at the same address as their employer). This results in further delays and uncertainty being added to the (already difficult) task of identifying fraudulent PDs A1 ⁽²²⁵⁾.

The connection between sending and receiving Member States embedded in the PD A1 has been defined in academic literature as an ‘administrative tie’, as ‘the host administration cannot (unilaterally) question the validity or appropriateness of the measures of other States’ ⁽²²⁶⁾. The PD A1 represents a key element embedded at the very core of the relationship between the authorities of sending and receiving Member States when it comes to enforcing EU labour mobility rules and social security coordination regulations. The PD A1 indeed concerns the interests of all parties involved, Member States, workers, and employers. The aim of this section is to investigate the main issues arising around PDs A1 issued in the framework of Article 12 of the Basic Regulation, related to posting.

4.5.2 Gaps and criticalities relating to portable documents A1

The use of fraudulent PDs A1 is a common abusive practice in the field of EU social security coordination, alongside cases of incomplete or incorrect PDs A1 ⁽²²⁷⁾.

Despite the obligations arising from CJEU case-law ⁽²²⁸⁾ on the principle of sincere cooperation ⁽²²⁹⁾, according to a recent Eurofound report, nine out of 13 Member States considered under the study do not verify whether three important elements of the posting (the existence of a genuine activity in the sending Member State, the existence of an employment relationship, and the prohibition on replacement) are respected in the specific case before issuing a PD A1 ⁽²³⁰⁾. This is

⁽²²¹⁾ Judgment of the Court (First Chamber) of 6 September 2018, *Salzburger Gebietskrankenkasse and Bundesminister für Arbeit, Soziales und Konsumentenschutz v Alpenrind GmbH and Others*, paragraph 70. See also: judgment of the Court 30 March 2000, *Banks and Others*, C-178/97, EU:C:2000:169, paragraph 52–57.

⁽²²²⁾ Judgment of the Court (First Chamber) of 6 September 2018 *Salzburger Gebietskrankenkasse and Bundesminister für Arbeit, Soziales und Konsumentenschutz v Alpenrind GmbH and Others*, ECLI:EU:C:2018:669, paragraph 77. See also: Case C-202/97 *Fitzwilliam Executive Search Ltd v Bestuur van het Landelijk instituut sociale verzekeringen* [2000] ECR I–883, paragraph 53.

⁽²²³⁾ Judgment of the Court (First Chamber) of 27 April 2017, *A-Rosa Flussschiff GmbH v Union de recouvrement des cotisations de sécurité sociale et d’allocations familiales d’Alsace (Urssaf), venant aux droits de l’Urssaf du Bas-Rhin and Sozialversicherungsanstalt des Kantons Graubünden*.

⁽²²⁴⁾ *Ibid*, p. 34.

⁽²²⁵⁾ Judgment of the Court (Grand Chamber) of 2 April 2020, *Caisse de retraite du personnel navigant professionnel de l’aéronautique civile (CRPNPAC) v Vueling Airlines SA v Vueling Airlines SA and Jean-Luc Poignant*.

⁽²²⁶⁾ De Lucia, L., ‘From mutual recognition to EU authorization: A decline of transnational administrative acts?’, *Italian Journal of Public Law*, Vol. 8, No 1, 2016, p. 100.

⁽²²⁷⁾ A broad and well-articulated literature focuses on the main issues related to administrative cooperation among Member State authorities on PD A1. See inter alia: Eurofound, *Exploring the fraudulent contracting of work in the European Union*, Publications Office of the European Union, Luxembourg, 2016. See also: Houwerzijl, M. S. and van Hoek, A. A. H., *Complementary comparative study on the legal aspects of the posting of workers in the framework of the provision of services in the European Union*, November 2011, Amsterdam University Press, 2011. See also: European Commission, Directorate-General for Employment, Social Affairs and Inclusion, Jorens, Y., De Smedt, L., De Wispelaere, F., et al., *Fraud and error in the field of EU social security coordination: Reference year – 2019*, Publications Office of the European Union, 2021.

⁽²²⁸⁾ Case C-202/97 *Fitzwilliam Executive Search Ltd v Bestuur van het Landelijk instituut sociale verzekeringen* [2000] ECR I–883.

⁽²²⁹⁾ E.g. *Fitzwilliam* (note 3 above: paragraph 51); Case C-620/15 *A-Rosa Flussschiff v Urssaf* [2017] 4 WLUK 505, paragraph 39.

⁽²³⁰⁾ Eurofound, *Improving the monitoring of posted workers in the EU*, Publications Office of the European Union, Luxembourg, 2020. An additional concern might also lie in the incentive that the authorities of the sending Member States might have in issuing PDs A1 under Article 13 of the Basic Regulation in which fewer elements have to be considered, compared to PDs A1 issued under Article 12.

considered as a major concern by labour inspectorates of receiving Member States, as the CJEU case-law⁽²³¹⁾ prevents the social security authorities and courts of the receiving Member States from unilaterally deciding that they are not bound by the PD A1 form and subsequently subject the persons concerned to their own social security legislation, potentially increasing the risk of social dumping⁽²³²⁾.

Even though the PD A1 only covers the sphere of social security, the impact of the certificate may also affect the labour law dimension. This is the case for bogus self-employment, whereby labour inspectorates and courts in the receiving Member State may have difficulties in classifying a bogus self-employed person as an employee if the PD A1 states that the person is self-employed. This issue has been highlighted by several interviewees, including an official from BUAK in Austria, an official from the Finance Police in the Ministry of Finance of Austria, and the Belgian National Office of Social Security⁽²³³⁾. An official from the Finance Police in the Ministry of Finance of Austria stressed that, in some cases, companies do not undertake any activities in the sending Member States and the workers should be affiliated with the Austrian social security system, but as the PD A1 certificate has been issued by the social security institutions in the sending Member State, the authorities of the receiving Member State cannot enforce it⁽²³⁴⁾, in particular when it concerns bogus self-employment⁽²³⁵⁾. This same issue has been reported in Belgium. Despite the jurisprudence of the *Altun* case⁽²³⁶⁾, Belgian judges are still restricted when deciding on the withdrawal of a PD A1, as it is necessary to prove the existence of fraud⁽²³⁷⁾.

Another problematic aspect is that the PD A1 can be issued even after the end of the posting period. This principle has been highlighted as a problem for the Italian inspectorate because it creates difficulties in inspection activities. When this certificate is issued during the posting, or even at the end of the posting, the inspectorate cannot consider it as a useful element of assessment to prove the genuine nature of the posting. An official from the Italian labour inspectorate expressed the impression that if the company asks for this at the time it is subject to inspection, it is perhaps only asking for it to avoid having to pay social security contributions later⁽²³⁸⁾.

In Austria and Poland, the absence of some relevant information on the PD A1 concerning the specific sector in which this work is performed, and the status of the worker (part time or full time), was also flagged as a concern⁽²³⁹⁾.

4.6 Prior declaration tools

Article 9 of the Enforcement Directive establishes that Member States may impose an obligation on service providers established in another Member State 'to make a simple declaration to the responsible national competent authorities'. The prior declaration may be used by Member States at their discretion, together with the choice of the information required therein. Thus, the format for national declarations is not standardised. The relevant information that Member States may impose on the service provider is established by Article 4(1)(a) of the Enforcement Directive. The information required in the declarations must be reasonable, proportionate, and required for factual monitoring to request information beyond what is mentioned in Article 9(1)(a). Member States have different declaration processes and different information required in the declarations.

All 17 Member States considered under this study implement a PDT for incoming posting undertakings. As extensively reported by a study conducted in 2020 by Eurofound, the scope of the declaration tools varies considerably among Member States. In some Member States, the obligation to register applies not just to posted workers, but also to self-employed persons, as is the case in Belgium, Denmark, Ireland, the Netherlands and Slovenia⁽²⁴⁰⁾. Most Member States also require the registration of posting undertakings from countries outside of the EU/EFTA. Several Member States (Belgium, Czechia, Denmark, Germany, France, Italy, Luxembourg, the Netherlands, Austria, Poland, Slovakia and Finland) exempt certain

⁽²³¹⁾ See: Judgment of the Court (First Chamber) of 27 April 2017, *A-Rosa Flussschiff GmbH v Union de recouvrement des cotisations de sécurité sociale et d'allocations familiales d'Alsace (Urssaf)*, *venant aux droits de l'Urssaf du Bas-Rhin and Sozialversicherungsanstalt des Kantons Graubünden*. See also: Case C-202/97 *Fitzwilliam Executive Search Ltd v Bestuur van het Landelijk instituut sociale verzekeringen* [2000] ECR I-883.

⁽²³²⁾ See also: Verschueren, H., *The CJEU's case law on the role of posting certificates: A missed opportunity to combat social dumping*, 2020.

⁽²³³⁾ On this aspect see also: European Parliament, Giubboni, S., Iudicone, F., Mancini, M. and Faioli, M., *Coordination of social security systems in Europe*, Study for the EMPL Committee, European Parliament, 2017, pp. 60–61.

⁽²³⁴⁾ Official of the Finance Police in the Ministry of Finance of Austria, interview held in January 2023.

⁽²³⁵⁾ The *Bauarbeiter-Urlaubs- und Abfertigungskasse* [Construction Workers' Annual Leave and Severance Pay Fund] (BUAK), member performing leadership function in the coordination of BUAK Austria.

⁽²³⁶⁾ C-359/16, Judgment of the Court (Grand Chamber) of 6 February 2018, Criminal proceedings against Ömer Altun and Others.

⁽²³⁷⁾ Official of the *Office National de Sécurité Sociale* [National Office of Social Security] of Belgium, interview held in January 2023.

⁽²³⁸⁾ Official of the Italian Labour Inspectorate of Italy, interview held in January 2023.

⁽²³⁹⁾ Official of the Finance Police in the Ministry of Finance of Austria, interview held in January 2023. Staff members of the Department of Legality of Employment of Poland, interview held in January 2023.

⁽²⁴⁰⁾ De Wispelaere, F., De Smedt, L. and Pacolet, J., *Posted Workers in the European Union: Facts and figures*, Leuven: POSTING.STAT project VS/2020/0499, 2022b, p. 39.

activities or sectors from declaration (persons attending business meetings, academic conferences, international truck drivers, professional artists, athletes, etc.) ⁽²⁴¹⁾.

Some Member States (Belgium, Germany, Spain and France) require additional information for posting undertakings that provide services in the construction sector ⁽²⁴²⁾. In Spain, for instance, companies posting construction workers register on the *Registro de Empresas Acreditadas* [Registry of Accredited Companies] in the region where the user company is based ⁽²⁴³⁾. Meanwhile, construction companies that post workers in Belgium must adhere to the sector-related loyalty stamp scheme that is provided by the collective labour agreement ⁽²⁴⁴⁾.

According to the labour enforcement authorities consulted under this study, the PDT is an essential instrument for labour inspectorates. In Finland, the staff member of the Regional State Administrative Agency of Southern Finland stressed that all the information collected on the prior declaration, such as workplace, posting employer, period of posting, number of workers and personal information regarding the workers, were relevant ⁽²⁴⁵⁾. In Poland, the interviewee considered the data relating to the employee replacement, the duration of the posting, and in particular the indication of the workplace (construction site) very relevant ⁽²⁴⁶⁾. In Croatia, the crucial information needed to plan inspections is the place of work, the information about the employer, the period of posting and the information about the posted person. In Slovenia, the information relating to the period during which the workers will be working in the Member State and their location(s) along with the number of PDs A1 issued are considered relevant.

In Austria, a staff member of BUAK considered that the PDT should include the number of employees of the company posting workers to Austria, since the amount of the penalty in the case of underpayment depends on this number ⁽²⁴⁷⁾.

The German construction industry ⁽²⁴⁸⁾ advocates for the implementation of structured, EU-standardised reporting portals and websites. These platforms would offer users the ability to upload documents to a registered account, enabling them to save data and documents for multiple applications.

Box 5: Case study on labour inspectorates' access to databases

The exchange of information and data within the EU between all the different actors involved, both in receiving and sending Member States, is crucial for the effective enforcement of labour mobility and social coordination rules. As part of this case study, the labour inspection authorities of four receiving Member States have been interviewed, namely Belgium, Germany, France and Austria. During these consultation activities, several labour enforcement authorities stressed the importance of having in-house capacity to access different databases of other public authorities, especially those managing data in the social security domain ⁽²⁴⁹⁾. Labour inspectors in all Member States considered under this case study have access to the Electronic Exchange of Social Security Information (EESSI) ⁽²⁵⁰⁾ database with the exception of the Austrian labour inspectors. They therefore have to address a request to the institution that manages the social security database, slowing down the entire inspection process.

The ability to access different databases is particularly important, as EU labour mobility patterns and posting schemes are characterised by an intersection of three different legislative frameworks, namely labour law, social security law and tax law. The intersections of the three domains are not fully covered by the activities of any of the enforcement authorities. Very often, enforcement authorities operate on the three domains with separate mandates and databases.

⁽²⁴¹⁾ De Wispelaere, F. and Pacolet, J., *Posting of workers: Collection of data from the prior notification tools – Reference year 2019*, 2021, p. 11.

⁽²⁴²⁾ Eurofound, *Improving the monitoring of posted workers in the EU*, Publications Office of the European Union, Luxembourg, 2020, p. 17.

⁽²⁴³⁾ *Ibid.*, p. 25.

⁽²⁴⁴⁾ *Ibid.*, p. 19.

⁽²⁴⁵⁾ Staff Member of the Regional State Administrative Agency of Southern Finland, interview held in December 2022.

⁽²⁴⁶⁾ Official of the National Labour Inspectorate of Slovakia, Department of Labour Relations of Slovakia, interview held in January 2023.

⁽²⁴⁷⁾ Staff member of BUAK of Austria, interview held in January 2023.

⁽²⁴⁹⁾ Official of the Finance Police in the Ministry of Finance of Austria, interview held in April 2023. The Finance Police in the Ministry of Finance of Austria pointed out regarding this aspect that EESSI can still not be used, and that the exchange of social security data between sending and receiving Member States does not work at all in practice.

⁽²⁵⁰⁾ EESSI is an IT system through which the Member State systems with a social security mandate can exchange information on different areas covered by the EU social security coordination rules more quickly and securely.

This creates some issues in the case of inspection, investigation or sanctioning activities that are carried out by an actor other than those who manage databases and have access to data. In such cases, the authority that must carry out inspections or sanctions will be required to obtain data from three different entities, thus potentially slowing down enforcement activities ⁽²⁵¹⁾. It is also worth mentioning that in all Member States considered in the framework of this case study, information-sharing processes between social security databases and institutions seem to have been established. In light of the consultations, it seems that access to PD A1 data is a key element for the inspection activities of the labour enforcement authorities. It also seems clear that the main problems primarily arise in relation to the exchange of information between, rather than within, Member States.

The Finance Police in the Ministry of Finance of Austria suggested establishing an EU system where all information/data concerning labour law and especially social security law regarding a posted worker is automatically exchanged, in the framework of posting. The establishment of this system would enhance the efficiency of inspections, especially in the context of social security law ⁽²⁵²⁾.

⁽²⁵¹⁾ Official of the Finance Police in the Ministry of Finance of Austria, interview held in January 2023.

⁽²⁵²⁾ Official of the Finance Police in the Ministry of Finance of Austria, interview held in January 2023.

5. Enforcing EU labour mobility and social security rules in the EU construction sector

Main findings

- The construction sector is a priority sector for labour enforcement authorities as it is an area at risk of non-compliance, with a high proportion of posted workers and a high rate of undeclared work, and is prone to occupational accidents.
- Labour inspectors have the necessary sanctioning tools to carry out their statutory duties. The areas of improvement in their respective sanctioning regimes include the lack of cooperation and knowledge at the Member State level about sanctions imposed in another Member State (Spain and Poland), lengthy procedure in the case of criminal fines (Poland) and lack of expert support for inspectors in more complex infringements (Slovenia).
- At the same time, labour inspectors have difficulties identifying almost all of the factual elements referred to in Article 4(2) and (3) of the Enforcement Directive. This concerns, in particular, Article 4(2) points (a) on the place where the undertaking has its registered office and administration, pays taxes and social security contributions and (e) on the number of contracts performed and/or the size of the turnover realised, along with Article 4(3) points (a) on the nature of activities and (d) on whether or not the posted workers return to or are expected to resume working in the sending Member State.
- Moreover, labour inspectors are of the opinion that they do not have sufficient financial and staff resources to properly check abusive practices and violations involving posted workers in the construction sector. Cross-border inspections are effective tools in enforcing EU mobility rules in the construction sector, as they can foster improved information sharing between Member State authorities and are able to address illegal conduct occurring in multiple Member States.
- The determination of liability and the difficulty of imposing sanctions in an intra-EU (cross-border) context are major challenges when enforcing posting rules in the construction sector. When courts are involved, judges must cope with a very complex legal environment, in which it is often difficult to identify the correct applicable legal basis. Such complexity is further enhanced when intra-EU TCNs are concerned.

The effective enforcement of posting rules in the construction sector across Member States is essential for protecting workers' rights and ensuring fair competition among market actors in this sector. It is therefore relevant to identify the enforcement challenges encountered by labour inspectors, in particular those on the identification of the factual elements under Article 4 of the Enforcement Directive ([Section 5.1](#)), and to gather their views on the sanctioning mechanisms ([Section 5.2](#)), on the inspection tools they can use and the financial and human resources dedicated ([Section 5.3](#)) to addressing infringements of posting rules in the construction sector in Member States. This chapter also contains some paragraphs on the cooperation between authorities across Member States ([Section 5.4](#)), as this is an important aspect to consider when enforcing such rules in a cross-border context. Finally, it details the role of trade unions in supporting the enforcement of posted workers' rights in the construction sector ([Section 5.5](#)). To illustrate this section, three case studies have been developed respectively on good practices and key issues in the enforcement of labour mobility rules and social security coordination regulations by labour inspectorates, on bilateral agreements between Poland and receiving Member States and on the enforcement of workers' rights in sending Member States.

5.1 Challenges in the enforcement of EU labour mobility and social security rules in the EU construction sector

The enforcement of EU labour mobility and social security rules in the construction sector is a challenging exercise. It requires, inter alia, strong cooperation between Member States in a cross-border context in a sector with a high number of posted workers. Furthermore, the posting of workers in the construction sector is prone to a wide array of abusive practices (i.e. the establishment of letterbox companies, non-compliance with working conditions, bogus self-employment, fraudulent PD A1 usage and fraudulent posting of TCNs), which complicates the work of enforcement authorities.

Within the framework of this study, a questionnaire was submitted to the competent national enforcement authorities of the 17 Member States considered as part of this study with the aim of investigating which of the elements of Article 4(2) and 4(3) of the Enforcement Directive are the most difficult to identify in inspections. The following is a brief description of the scope of the two provisions considered in the questionnaire.

- **Article 4(2) of the Enforcement Directive** provides some criteria to determine if an undertaking genuinely performs substantial activities. In such an exercise, the enforcement authority shall make an overall assessment of all factual elements characterising those activities carried out by an undertaking in both sending and receiving Member States.
- **Article 4(3) of the Enforcement Directive** aims to assess whether a posted worker temporarily carries out his or her work in a Member State other than the one in which the posted worker normally works.

The results of the interviews with representatives of the enforcement authorities show that almost all of the factual elements referred to in Article 4(2) and (3) of the Enforcement Directive are difficult to identify. In particular, the competent national enforcement authorities of sending and receiving Member States stress the challenges in identify the factual elements of Article 4(2) points (a) and (e) and Article 4(3) points (a) and (d).

- **Article 4(2) point (a)** concerning the place where the undertaking has its registered office and administration, uses office space, pays taxes and social security contributions, has a professional licence and is registered within the chambers of commerce.
- **Article 4(2) point (e)** on the number of contracts performed and/or the size of the turnover achieved in the Member State of establishment, taking into account the specific situation of, inter alia, newly established undertakings and SMEs.
- **Article 4(3) point (a)** on the work carried out for a limited period of time in another Member State.
- **Article 4(3) point (d)** on whether or not 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.

The State Labour Inspection Office of Czechia is the only one that considers that labour inspectors do not encounter any specific issues related to the identification of elements under 4(2) and (3) of the Enforcement Directive, despite some complications during the inspection process ⁽²⁵³⁾. The Federal Ministry of Finance and Central Customs Authority of Germany and the State Inspectorate at the Service for the supervision of employment, posting and international cooperation of Croatia underline that all such factual elements pose challenges when it comes to their identification.

The Italian labour inspectorate pointed out the importance of cooperation with the authorities of the sending Member States when it comes to the identification of the factual elements of Article 4(2) of the Enforcement Directive ⁽²⁵⁴⁾. Also, as mentioned by the official of the labour inspectorate of Slovakia, the difficulties in identifying the elements of the posting are directly determined by the real participation or cooperation of the posting employer with the inspection authorities of the sending Member State ⁽²⁵⁵⁾.

⁽²⁵³⁾ Official of the State Labour Inspection Office of Czechia, interview held in February 2023.

⁽²⁵⁴⁾ Official of the Italian Labour Inspectorate of Italy, interview held in January 2023.

⁽²⁵⁵⁾ Official of the National Labour Inspectorate of Slovakia, Department of Labour Relations of Slovakia, interview held in January 2023.

Box 6: Case study on good practices and key issues in enforcement by labour inspectorates of labour mobility rules and social security coordination regulations

In the framework of this case study, labour enforcement authorities of four receiving Member States (with different mandates) have been consulted, with the aim of outlining best practices and the main issues involving both inspection and sanctioning activities.

Good inspection practices

One aspect that deserves specific attention concerns cooperation in inspection activities, at both the internal and the cross-border level. Cross-border inspection activities coordinated by the enforcement authorities of Belgium, Germany, France and Luxembourg have for instance been identified as good practice. These inspections require good preparation in advance, that is to say identification of the building sites, of the intervening companies and also of the entity or person who finances and commissions the construction project ⁽²⁵⁶⁾. A coordinated approach to inspections appears to be good practice not only when it involves enforcement authorities of different Member States, but also when it involves several authorities with different mandates within the same Member State. In Belgium, the Social Dumping & Organised Fraudulent Networks at the National Office for Social Security carries out inspections with the *Rijksdienst voor Sociale Zekerheid* [National Social Security Office] and the *Toezicht Sociale Wetten* [Supervision of the social legislation] and with the National Institute for the Social Security of the Self-employed, sometimes supplemented by other inspection services. The advantage is that, by working together at the same time on a construction site, all aspects are checked ⁽²⁵⁷⁾.

The inspection activities then involve a considerable portion of work taking place directly at the construction sites. In this context two main good practices were identified to support labour inspectors in their activities. The Finance Police in the Ministry of Finance of Austria pointed out that a software programme ⁽²⁵⁸⁾ developed by a private company, which allows companies to upload all the information such as the PD A1, the declaration according to the Austrian Anti-Wage and Social Dumping Act and other relevant information about the posted workers, is an example of good practice. Thanks to this document storage, the Finance Police has easy digital access to all relevant documents and has an overview of the workers posted to Austria and of all the subcontractors in the chain. According to the Finance Police, this software has been identified as a good tool for inspection activities, especially on big construction sites ⁽²⁵⁹⁾. Another key element is the use of mediators and interpreters during construction site inspections ⁽²⁶⁰⁾.

Representatives of labour enforcement authorities in France stressed that for inspections on major and complex construction sites, the number of inspection agents is adapted to the work being done. The intervention of the labour inspectorate can be carried out across ministries, particularly under the control of the anti-fraud committees ⁽²⁶¹⁾ in connection with the public prosecutor's office, the labour inspectorate, Urssaf and police services ⁽²⁶²⁾.

⁽²⁵⁶⁾ Staff member of the National Group for Monitoring, Support and Control in the Directorate General of Labour in France, interview held in April 2023.

⁽²⁵⁷⁾ Staff member of the Social Dumping & Organised Fraudulent Networks at the National Office for Social Security of Belgium, interview held in April 2023.

⁽²⁵⁸⁾ Official of the Department of the Finance Police in the Ministry of Finance of Austria, interview held in April 2023.

⁽²⁵⁹⁾ Official of the Department of the Finance Police in the Ministry of Finance of Austria, interview held in April 2023.

⁽²⁶⁰⁾ Official from the Social Intelligence and Investigation Service, Belgium, interview held in April 2023.

⁽²⁶¹⁾ These committees are co-chaired by the departmental prefect and the prosecutor of the capital of the department. Their mandate is to provide a response to fraud phenomena, whether they concern compulsory deductions or social security benefits. The local committees for combating public finance fraud were established on an experimental basis by the decree of 18 April 2008, and after 2 years, in March 2010, the departmental anti-fraud operational committees were created at the end of the pilot scheme. More information available at: <https://www.economie.gouv.fr/codaf-comites-operationnels-departementaux-anti-fraude#>.

⁽²⁶²⁾ Staff member of the National Group for Monitoring, Support and Control in the Directorate General of Labour in France, interview held in April 2023.

Good sanctioning practices

The Federal Ministry of Labour and Social Affairs of Germany mentioned that the freezing of assets of foreign employers without a branch in Germany was good practice, since access to the assets of the perpetrators or the legal entity involved is significantly more difficult or even impossible in these cases after the termination of business activities in Germany. The freezing order can be applied for at the competent district court even before the investigation is completed. The assets then frozen can later be used to satisfy the sanctions, even if the business activity (in Germany) has been discontinued ⁽²⁶³⁾.

Representatives of labour enforcement authorities in France consider that administrative sanctions are very efficient and rapid ⁽²⁶⁴⁾. They are entitled, as part of the administrative sanctions, to suspend the services of companies that are not compliant, which is also an efficient measure ⁽²⁶⁵⁾.

Key issues in inspections

Considering the results of the consultations, it also appears that both small and large construction sites have their own characteristics that make inspection activities challenging. In Belgium, construction sites under EUR 500 000 do not have the checkinetwork requirement, and thus there is not a daily worker registration duty at the site ⁽²⁶⁶⁾. However, according to the German Ministry of Finance, the personnel and organisational effort required for large construction sites is usually higher than for small sites ⁽²⁶⁷⁾.

It has been noted by representatives of labour enforcement authorities in France that inspection difficulties relate mainly to the complexity of the construction site set-up and the lack of knowledge that the contracting authority may have of the construction companies involved, due to multiple layers of subcontracting with companies with different legal entities. The representatives are of the opinion that these difficulties do not, however, apply only to construction sites where workers are posted; posting of workers nevertheless adds an additional layer of complexity. They also flag the non-respect of the obligation to display on the site, for the duration of the permit, their name, trade name or corporate name, and address. It is often observed that this obligation is not respected, particularly by subcontracting companies that assign employees to construction sites ⁽²⁶⁸⁾.

Key issue in imposing sanctions

The two main difficulties affecting the inspection phase are inextricably linked to the nature of posting and the nature of the construction sector; the determination of liability ⁽²⁶⁹⁾ and the difficulty of imposing sanctions in an intra-EU (cross-border) context ⁽²⁷⁰⁾.

Labour enforcement authorities in France stress that in cases of criminal proceedings involving proven fraud in posting rules, the procedures can take several years ⁽²⁷¹⁾.

⁽²⁶³⁾ Staff member of the Federal Ministry of Finance and staff member of the Federal Ministry of Labour and Social Affairs of Germany, interviews held in April 2023.

⁽²⁶⁴⁾ Staff member of the National Group for Monitoring, Support and Control in the Directorate General of Labour in France, interview held in April 2023.

⁽²⁶⁵⁾ Staff member of the National Group for Monitoring, Support and Control in the Directorate General of Labour in France, interview held in April 2023.

⁽²⁶⁶⁾ Staff member of the Social Dumping & Organised Fraudulent Networks at the National Office for Social Security of Belgium, interview held in April 2023.

⁽²⁶⁷⁾ Staff member of the Federal Ministry of Finance and staff member of the Federal Ministry of Labour and Social Affairs of Germany, interviews held in April 2023.

⁽²⁶⁸⁾ Staff member of the National Group for Monitoring, Support and Control in the Directorate General of Labour in France, interview held in April 2023.

⁽²⁶⁹⁾ Social inspector of the National Institute for the Social Security of the Self-employed in Belgium, interview held in April 2023.

⁽²⁷⁰⁾ Official of the Finance Police in the Ministry of Finance of Austria, interview held in April 2023.

⁽²⁷¹⁾ Staff member of the National Group for Monitoring, Support and Control in the Directorate General of Labour in France, interview held in April 2023.

Key issues with temporary work agencies

One of the main problems faced by the Finance Police in the Ministry of Finance in Austria in this context is that temporary employment agencies in the sending Member States hire workers from Austrian temporary employment agencies, which then post these workers to Austrian undertakings (service recipients). In the case of the cross-border recruitment of workers, service recipients are regarded as employers as far as the availability of documents and sanctions under the Austrian Wage and Social Dumping Act is concerned, so that it is easier for control bodies to carry out inspections, impose sanctions and enforce labour mobility rules against an Austrian enterprise (and not the enterprise of the sending Member State, where the enforcement of rules and sanctions usually does not work very well). To circumvent this provision of the law against wage and social dumping, which regulates situations of cross-border recruitment of workers more strictly than 'normal' posting situations, companies from the home Member State 'post' and do not 'hire' workers from the home Member State to the Austrian temporary employment agency, which then hires the workers from the Austrian user companies. In this situation, since the recruitment of the workers does not take place in a cross-border context, but rather in a national context, it is no longer the Austrian service recipients that must keep the documents, but rather the Austrian user company. In fact, this is a 'normal' posting from the Member State of origin to the Austrian temporary employment agency, so the stricter rules that apply to situations of cross-border recruitment of workers do not apply. The 'employer' remains the company in the Member State of origin, so the application of sanctions etc. is more difficult for the Austrian authorities. This is a way of circumventing the Austrian provisions governing the application of EU rules on the mobility of mobile workers in situations of cross-border recruitment of workers and finding a way to carry out 'normal' cross-border posting instead of cross-border recruitment of workers.

In such cases, it is extremely difficult to find out where the workers work, since information is only available regarding the Austrian temporary employment enterprise, and not on the user enterprise in Austria ⁽²⁷²⁾.

5.2 Sanctioning mechanisms

Labour inspectors play a vital role in the protection of workers' rights and the enforcement of employers' obligations, particularly in the context of posted workers. When they encounter cases of non-compliance, they and/or the Court are entitled to issue sanctions. Such sanctions must be effective and dissuasive enough to ensure that employers who might be inclined to bypass or violate posting rules and related labour conditions to save costs or maximise profit reconsider such actions if there is a risk of substantial fines, penalties or other adverse consequences.

Labour inspectors consulted under this study appear to have the necessary sanctioning tools to fulfil their statutory duties. At the same time, they indicated some areas for improvement in their sanctioning regimes:

- introducing a higher ceiling for fines in the case of major breaches of labour laws (Czechia);
- improving access to information in the internal market information system (IMI) module concerning sanctions imposed by other Member States to facilitate the cross-border enforcement of penalties (Spain and Poland);
- prioritising administrative fines over criminal fines, since the criminal procedure (misdemeanour proceedings) requires extra work for labour inspectors in gathering clarifications from the employer and undertaking all the necessary declarations, making it a rather lengthy procedure (Poland);
- facilitating access to expert support for inspectors in more complex infringements while improving the specialisation of the prosecution and the first instance judiciary (Slovenia).

⁽²⁷²⁾ Official of the Finance Police in the Ministry of Finance of Austria, interview held in April 2023.

5.3 Resources allocated to labour inspectors and inspection tools

The construction sector is a sector at risk of non-compliance, with a high proportion of posted workers and a high rate of undeclared work, and is prone to occupational accidents. According to data collected by BUAK, which carries out inspections in the construction sector in Austria, out of the 11 147 foreign construction companies inspected from 2015 to 2020, 38 % were suspected of underpaying their workers. In 12 % of the cases, inspectors went further and charged the inspected company with underpaying its workers. In 2018, nearly half of the companies inspected (47 %) in the construction sector were suspected of some form of underpayment. In addition, posting companies were more than 30 times more likely to be suspected of underpaying workers than companies located in Austria ⁽²⁷³⁾. According to the number of violations identified by Italian enforcement authorities concerning the transnational posting of workers, there were 142 violations (26 % of all violations) in 2019 and 48 violations (15 %) in 2020 in the Italian construction sector ⁽²⁷⁴⁾. In addition, one research project carried out among outgoing Italian posted workers in the sector identified irregularities in the working conditions of 60 % of outgoing posted workers ⁽²⁷⁵⁾. However, according to interviews carried out under this study, enforcement authorities in 10 of the 17 Member States ⁽²⁷⁶⁾ are considered to have insufficient financial and staff resources to properly check abusive practices and violations involving posted workers in the construction sector. Only the labour enforcement authorities of Czechia, Germany and Finland are considered as having enough financial and human resources.

In Austria, the interviewee stressed that BUAK is equipped with financial and personnel resources; however, it does not have the capacity to undertake checks and/or IMI requests after the posting of workers ⁽²⁷⁷⁾. On the other hand, the finance police does not have enough financial and human resources ⁽²⁷⁸⁾. In Italy the interviewee pointed out that a large recruitment process of new inspectors is currently being implemented ⁽²⁷⁹⁾. In the Netherlands, the interviewee was of the opinion that not enough resources are dedicated to the 'construction' programme within the Dutch Labour Inspectorate, but flagged that the Dutch government was investing in an 'employment agencies' programme for the coming years, covering in particular the construction sector ⁽²⁸⁰⁾.

Most of the interviewees mentioned that they do possess the necessary tools to perform inspections. The following is a list of tools they consider efficient and useful to ensure proper inspections at construction sites.

- The possibility for inspectors to have in-person exchanges with employees (Portugal, Sweden).
- The development of and access to databases in order to cross-check information (Germany, Spain, Portugal).
- The right to enter construction sites without prior notification (Finland).
- Information sharing in the workers' mother tongue, using an interpreter when interviewing the workers about their work conditions during the inspections (Finland).
- The possibility for labour inspectors to enter public or private land considered to be a workplace, to communicate with anyone who is at the workplace at the time of the labour inspection, to request information from them, and to request the submission of documentation, the production of photographic documentation or other digital media (Slovakia).

They also flagged the following areas for improvement regarding their inspection tools.

- Access to private premises is only possible with the cooperation of the police (Czechia).
- The sharing of data with other national authorities (e.g. tax authorities) is not obvious or easy and could be improved (Italy, Poland, Finland, Sweden).

According to a representative of BUAK (Austria), more emphasis must be placed on the inspections of the companies in the sending Member States when issuing the prior posting declarations, not only during and after the posting ⁽²⁸¹⁾.

⁽²⁷³⁾ Geyer, L., Premrov, T. and Danaj, S., *Posted Workers from and to Austria: Facts and figures*, Leuven: POSTING.STAT project VS/2020/0499, 2022, pp. 38–39.

⁽²⁷⁴⁾ Dorigatti, L., Pallini, M. and Pedersini, M., *Posted Workers from and to Italy: Facts and figures*, Leuven: POSTING.STAT project VS/2020/0499., 2022, p. 31.

⁽²⁷⁵⁾ *Ibid*, p. 6.

⁽²⁷⁶⁾ Belgium, Spain, Croatia, Italy, the Netherlands, Austria, Poland, Portugal, Slovakia and Sweden.

⁽²⁷⁷⁾ Staff Member of BUAK of Austria, interview held in January 2023.

⁽²⁷⁸⁾ Official of the Finance Police in the Ministry of Finance of Austria, interview held in January 2023.

⁽²⁷⁹⁾ Official of the Italian Labour Inspectorate of Italy, interview held in January 2023. The recruitment of 1 249 permanent inspectors is ongoing, and the recruitment of a further 1 600 positions is planned for the next 2 years.

⁽²⁸⁰⁾ Officials of the *Nederlandse Arbeidsinspectie* [Dutch Labour Inspectorate], interviews held in February and December 2022.

⁽²⁸¹⁾ Staff member of BUAK of Austria, interview held in January 2023.

The representative of a French employer association ⁽²⁸²⁾ is of the opinion that labour inspections on construction sites should also be carried out in the evening and over the weekend to better control illegal work and abusive practices related to non-respect of working conditions (work over the weekend and extra hours), covering construction workers in general but also posted workers.

5.4 Cross-border cooperation between social security and enforcement institutions

The posting of workers implies the involvement of several actors in two or more Member States. An efficient system of exchange of information among Member State authorities is a key factor in monitoring posting situations ⁽²⁸³⁾. Chapter III of the Enforcement Directive aims to improve the administrative cooperation among Member State institutions and thus the enforcement of posted workers' rights in cross-border situations. Article 6 lays down the principle of mutual administrative cooperation, which implies replying to reasoned requests for information from competent authorities and cooperation in carrying out checks, inspections, and investigations with respect to the situations of posting, including the investigation of any non-compliance or abuse of applicable rules on the posting of workers.

According to a study focusing on the German and Dutch construction sector, one of the circumvention practices which is difficult to identify due to limited cooperation among Member State enforcement agencies is related to the lowering of the payment of social security contributions in the receiving Member State ⁽²⁸⁴⁾. In the framework of this circumventing practice, sending companies issue two contracts: one referring to the receiving Member State, which specifies that country's minimum wage with the obligation to pay social security contributions on that amount, and another one in the sending Member State, which specifies that country's minimum wage and the related social security contributions on that amount which is considerably smaller. Thus, the social contributions are paid (in the sending Member State) on the lower salary of the sending Member State, instead of on the basis of the higher salary of the receiving Member State ⁽²⁸⁵⁾. In addition, the manipulation of untaxed allowance and the so-called letterbox companies are very difficult to detect, due to the underdeveloped cooperation between Member States (and also due to low requirements to be met when registering a construction company in other Member States, in the case of letterbox companies) ⁽²⁸⁶⁾.

In the framework of the interviews carried out under this study, labour enforcement authorities had to provide an assessment of the cross-border cooperation between national authorities of receiving and sending Member States on the enforcement of penalties, the cross-border payment of social security contributions, the manipulation of untaxed allowance, the detection of letterbox companies, cross-border recovery and/or payment of fines.

When it comes to social security coordination, stakeholders from Belgium, Poland, Portugal, Slovenia and Sweden expressed some concerns. One interviewee from Portugal stressed that the coordination between Member States could be improved through the participation of the tax administration and the sharing of information regarding the payment/collection of fines. This interviewee suggested in this context that ELA could play a leading role, namely by carrying out joint and concerted inspections, along with offering adequate training and promoting the sharing of experiences and good practices among Member States ⁽²⁸⁷⁾.

In Belgium, Spain, Poland and Sweden, interviewees identified issues with the cross-border enforcement of sanctions. In Sweden, the interviewee was of the opinion that more efficient implementation of the directive is needed on such cooperation ⁽²⁸⁸⁾. In Poland, the lack of information sent to receiving Member States about detected infringements creates difficulties for the sending Member State when undertaking further steps regarding the employers who post workers. For example, the National Labour Inspectorate would be able to apply for removal of the temporary agency undertaking the posting of workers from the list of temporary work agencies if it knew that such an employer continuously violates the regulation. Without feedback information, such operations are considered complex ⁽²⁸⁹⁾. A better flow of information between Member States on detected infringements could improve the enforcement of sanctions in the sending Member States.

⁽²⁸²⁾ Staff member, National Federation of Buildings in France, interview held in May 2023.

⁽²⁸³⁾ Wagner, I., and Berntsen, L., 'Restricted rights: Obstacles in enforcing the labour rights of mobile EU workers in the German and Dutch construction sector', *Transfer: European Review of Labour and Research*, Vol. 22, No 2, 2015, pp. 193–206.

⁽²⁸⁴⁾ *Ibid*, pp. 198–199.

⁽²⁸⁵⁾ *Ibid*, pp. 198–199.

⁽²⁸⁶⁾ *Ibid*, p. 198.

⁽²⁸⁷⁾ Officials of the Inspection Activity Support Services Department, Authority for Working Conditions of Portugal, interview held in February 2023. Staff members of the International Coordination Unit of Portugal, Social Security, interview held in February 2023.

⁽²⁸⁸⁾ Staff member of the Work Environment Authority of Sweden, interview held in January 2023.

⁽²⁸⁹⁾ Staff members of the Department of Legality of Employment of Poland, interview held in January 2023.

Regular exchange between Member States (as in the case of the liaison offices for posting of workers and/or IMI users, in particular through ELA's 'IMI-PROVE' programme) ⁽²⁹⁰⁾ and the establishment of bilateral agreements have been identified as good practices.

One of the key tools for communication between different labour inspectorates is the IMI module on the posting of workers, which is regulated by Regulation 1024/2012 applying to all IMI modules ⁽²⁹¹⁾. IMI is an online tool that facilitates the exchange of information between public authorities involved in the practical implementation of EU law and helps Member State authorities to fulfil their cross-border administrative cooperation obligations in multiple policy areas ⁽²⁹²⁾. Article 21 of the Enforcement Directive specifies that the administrative cooperation and mutual assistance between the competent authorities of the Member States concerning the posting of workers shall be implemented through IMI. This tool was established to improve the exchange of information across borders, allowing authorities to, inter alia, request specific information on employment conditions or posting companies ⁽²⁹³⁾. However, it should be noted that currently IMI does not cover communication among the authorities (with a mandate on social security) issuing the PDs A1.

According to Article 6(6) of the Enforcement Directive, Member States must supply the information requested by other Member States (or the Commission) within 2 working days in urgent cases for the purpose of checking an establishment in another Member State, and up to a maximum of 25 working days from the receipt of the request, unless a shorter time limit is mutually agreed between the Member States. A 2020 Eurofound study provides a good overview of the various feedback from Member States on the use of IMI ⁽²⁹⁴⁾.

In the framework of the interviews carried out under this study, labour enforcement authorities were requested to provide an assessment of the gaps in the IMI module in the context of the construction sector. The only gap concerning the construction sector is that IMI requests cannot be filtered per sector, thus hindering the possibility of collecting data on the number of requests sent and received per sector ⁽²⁹⁵⁾. Labour enforcement authorities in Poland also mentioned that IMI is not set up to take into account the specificities of each Member State ⁽²⁹⁶⁾. Finally, according to the Polish labour inspectorate, the deadlines to provide answers (2 or 25 days) are too short ⁽²⁹⁷⁾. This appears particularly relevant because according to the latest data that have been identified, Poland is the Member State that receives the highest number of requests for information on posting (164 in 2012) ⁽²⁹⁸⁾.

Labour enforcement authorities in Austria flagged that, as with the social security area, the exchange of information among competent authorities is not efficient. One solution could be to open the scope of the IMI module to cover social security coordination ⁽²⁹⁹⁾.

Box 7: Case study on bilateral agreements between Poland and receiving Member States

Cooperation between the Polish Labour Inspectorate and its counterparts in other Member States is mainly aimed at safeguarding the labour rights of Polish citizens working for foreign employers and of workers posted by Polish employers providing services outside Poland. Poland has concluded bilateral agreements with four of the Member States considered in the case studies: Belgium, the Netherlands, Portugal and Slovakia. An agreement between Poland and France is currently being negotiated. These agreements, however, cover all sectors and therefore do not include any specific provisions or arrangements covering the construction industry.

⁽²⁹⁰⁾ Official of the Federal Ministry of Finance and Central Customs Authority transferred by the Ministry of Labour and Social Affairs of Germany, interview held in January 2023.

⁽²⁹¹⁾ Regulation (EU) No 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC ('the IMI Regulation') (OJ L 316, 14.11.2012, p. 1).

⁽²⁹²⁾ Information retrieved from the Commission website on IMI, available at: https://ec.europa.eu/internal_market/imi-net/index_en.htm.

⁽²⁹³⁾ See the Commission website on IMI: https://single-market-scoreboard.ec.europa.eu/enforcement-tools/imi_en.

⁽²⁹⁴⁾ Eurofound, 2020, *Improving the monitoring of posted workers in the EU*, Publications Office of the European Union, Luxembourg, 2022.

⁽²⁹⁵⁾ Official of the Italian Labour Inspectorate of Italy, interview held in January 2023.

⁽²⁹⁶⁾ Official of the State Inspectorate, Service for the supervision of employment, posting and international cooperation of Croatia, interview held in January 2022.

⁽²⁹⁷⁾ Staff members of the Department of Legality of Employment of Poland, interview held in January 2023.

⁽²⁹⁸⁾ Eurodetachment, *Détachement des travailleurs: Améliorer les collaborations entre les partenaires sociaux et les autorités publiques en Europe – Synthèse générale*, 2012, p. 62.

⁽²⁹⁹⁾ Official of the Finance Police in the Ministry of Finance of Austria, interview held in January 2023.

The provisions of existing bilateral agreements allow for the exchange of information on irregularities detected during inspections of the working conditions of posted workers, cooperation in handling complaints sent to the National Labour Inspectorate of Poland in connection with the work of Polish citizens abroad. They also allow for the implementation of other activities related to the application of EU rules in the field of labour mobility, including posting. The agreement between Poland and Belgium mainly covers the exchange of information and also covers, inter alia, infringements found during audits and infringements of workers' rights. The agreement with Portugal, besides focusing on the exchange of information, is also aimed at developing cooperation for the exchange of inspectors and experts. The agreement with the Netherlands is the first one inducing a provision related to the exchange of administrative information via the IMI module, related inter alia to the posting of workers (in particular concerning wages and other benefits of the employment contract and costs incurred by the employee in connection with the posting) or pertaining to abusive practices to the extent necessary to carry out inspections. Lastly, the agreement with Slovakia covers the operations pertaining to persons working on the territory of the other party, including dealing with complaints; preparation of information materials on the OSH and working condition regulations addressed to posted and migrating workers and employers; and exchange of information.

Most of the existing agreements concluded by the National Labour Inspectorate of Poland aimed to establish rules for administrative cooperation in the field of posting of workers prior to the implementation of the Enforcement Directive, which introduced an effective information exchange tool in the form of IMI. Currently, the exchange of information between Poland and the authorities of different Member States takes place mainly through IMI. However, there are bilateral agreements which complement IMI. The fact that an agreement was concluded before (as the one signed with Belgium) or after the introduction of the IMI module for posting (as in the case of the Netherlands and Slovakia) appears extremely relevant, as at the moment a significant portion of the cooperation between Member States takes place precisely through this IMI module.

Of the four agreements considered in this case study, the one signed with Belgium in 2007, is the oldest, while the one with Slovakia is the most recent and was signed in 2019. In the case of Belgium, for instance, the agreement no longer appears to be of particular practical relevance, unlike Member States that have a provision in their cooperation agreement regulating cooperation via the IMI form.

5.5 The role of trade unions in supporting the enforcement of posted workers' rights in the construction sector

In many Member States, trade unions have a role in monitoring and enforcing the rights of posted workers. Interviewees indicated that there are no legal or administrative barriers to accessing trade unions, other than the payment of the trade union membership fee. However, posted workers are less likely to be organised and represented by trade unions than other (migrant) workers. Such a situation can be explained by several factors summarised in a PROMO project briefing paper ⁽³⁰⁰⁾.

- They are highly mobile and fall under different labour regulatory provisions ⁽³⁰¹⁾.
- Their employment conditions and standards in the receiving Member States are better than those in the sending Member State, limiting their need to be affiliated to trade unions ⁽³⁰²⁾.

⁽³⁰⁰⁾ The literature focusing on the different aspects limiting the access to trade unions is summarised in the final paper of the PROMO Project. See: Kall, K. and Lillie, N., PROMO Project, *Protection of Posted Workers in the European Union: Findings and policy recommendations based on existing research*, 2017, p. 30.

⁽³⁰¹⁾ Kall, K., and Lillie, N., PROMO Project, *Protection of Posted Workers in the European Union: Findings and policy recommendations based on existing research*, 2017, p. 30.

⁽³⁰²⁾ Ibid. See also: Houwerzijl, M. S. and van Hoek, A. A. H., *Comparative study on the legal aspects of the posting of workers in the framework of the provision of services in the European Union*, Radboud University Nijmegen, 2011.

- They are very often isolated, without strong relationships with the host communities and domestic workers. They often have limited language skills and they stay in a workplace for a short period of time ⁽³⁰³⁾.
- They are not or scarcely aware of their rights or the means to enforce and defend them, and rarely seek out collective representation due to the fear of reaction from employers ⁽³⁰⁴⁾.

Danaj and Sippola argue that the methods used by trade unions to recruit long-term, permanent resident migrant workers are also applicable to the affiliation of posted workers. However, due to their very short stays, high mobility and posting circumstances, affiliation strategies for posted workers require ad hoc approaches ⁽³⁰⁵⁾. According to their research, the strategies used by trade unions to unionise posted workers can be clustered into four main categories, including the availability and accessibility of unions, direct communication (in-person exchange and informative materials on site), gaining the trust of the workforce and cooperation with other external stakeholders (e.g. media coverage) ⁽³⁰⁶⁾. In addition, the establishment of information centres and the importance of cross-border cooperation between trade unions have been identified in literature as relevant factors ⁽³⁰⁷⁾. Another suggestion raised in the course of the interviews carried out in this study is that contact with trade unions should be encouraged upon entry into the Member State of destination, and possibly in the presence of third-party translators, instead of the employers ⁽³⁰⁸⁾.

The degree of cooperation of trade unions with labour inspectors on enforcement aspects differs from one Member State to another. In Croatia ⁽³⁰⁹⁾ and the Netherlands ⁽³¹⁰⁾, the cooperation was perceived by trade unions as very limited, whereas in Poland it was considered that the cooperation was very close including the organisation of joint initiatives and activities. In France, cooperation is not on enforcement aspects as such but more on awareness-raising campaigns and the dissemination of information ⁽³¹¹⁾.

Box 8: Case study on the enforcement of workers' rights in sending Member States

Key issues in the enforcement of workers' rights in sending Member States

The enforcement of posted workers' rights in EU construction appears to be particularly challenging. Indeed, in addition to the difficulties inherent to posting (i.e. cross-border employment relationships) there are also difficulties posed by the main features of the construction sector (e.g. long subcontracting chains and high worker mobility).

After the posting period, workers who have experienced a violation of their rights will be able to enforce them before the courts of their sending Member State. Often posted workers fear potential retaliation by their employers and, consequently, they usually commence legal proceedings after finishing working for the employer in question ⁽³¹²⁾.

Courts of the sending Member States experience difficulties in identifying the applicable wages and working conditions based on the receiving country's legal framework and/or collective agreements, as they are not used to such legal environments. This is illustrated by the statement of a Polish judge interviewed under this study who considers that judges in such situations must

⁽³⁰³⁾ Ibid. See inter alia: Arnholtz, J. and Hansen, N. W., 'Labour market specific institutions and the working conditions of labour migrants: The case of Polish migrant labour in the Danish labour market', *Economic and Industrial Democracy*, Vol. 34, No 3, 2013, pp. 401–422; Caro, E., Berntsen, L., Lillie, N. and Wagner, I., 'Posted migration and segregation in the European construction sector', *Journal of Ethnic and Migration Studies*, 41(10), 2013, pp. 1600–1620.

⁽³⁰⁴⁾ Ibid. See also: Alberti, A. and Danaj, S., 'Posting and Agency Work in British Construction and Hospitality: The Role of Regulation in differentiating the Experiences of Migrants', *International Journal of Human Resource Management*.

⁽³⁰⁵⁾ Danaj, S. and Sippola, M., 'Organizing posted workers in the construction sector', In Drahekoupil, J. (ed.), *The outsourcing challenge: Organizing workers across fragmented production networks*, 2015, pp. 217–235.

⁽³⁰⁶⁾ Ibid.

⁽³⁰⁷⁾ See: Kall., K. and Lillie, N., PROMO Project, *Protection of Posted Workers in the European Union: Findings and policy recommendations based on existing research*, 2017. See also: Wagner, I. and Berntsen, L., 'Restricted rights: Obstacles in enforcing the labour rights of mobile EU workers in the German and Dutch construction sector', *Transfer: European Review of Labour and Research*, Vol. 22, No 2, 2015, pp. 193–206; Cremers, J. and Bulla, M., 'Collective redress and workers' rights in the EU, AIAS working paper, 2012, p. 118.

⁽³⁰⁸⁾ EURES National Coordinator Italy, reporting a position of an Italian trade union, interview held in December 2022.

⁽³⁰⁹⁾ Regional representative of the Croatian Trade Union of Construction Industry, interview held in April 2023.

⁽³¹⁰⁾ Trade union official – FNV, construction sector and trade union official – CNV, interview held in April 2023.

⁽³¹¹⁾ Staff member of the National Group for Monitoring, Support and Control in the Directorate General of Labour in France, interview held in April 2023.

⁽³¹²⁾ Judge – Labour Court of Portimão in Portugal, interview held in April 2023.

deal with multiple complex aspects, including remuneration, non-cash benefits, rules pertaining to covering the costs associated with posting, and the calculation of working time ⁽³¹³⁾. A judge in Portugal also expressed some difficulties in identifying the employer to whom an employee's rights can be asserted due to the long subcontracting chains ⁽³¹⁴⁾.

For the judges of the sending countries, the main difficulties also revolve around the determination of the monetary value of the infringement, which raises issues especially when it comes to the calculation of overtime ⁽³¹⁵⁾. In all sending countries, no initiatives to support specific judges have been identified.

The role of trade unions in the sending Member State

In sending Member States (i.e. Croatia, Poland, Portugal, Slovenia and Slovakia), trade unions play a key role in supporting workers in the enforcement of their rights, but they experience financial and human resources constraints and lack the necessary language skills to properly provide this support.

5.6 Conclusions on enforcement

Overall, labour inspectors can make use of relevant inspection tools and sanctions to fulfil their statutory duties when dealing with posted workers in the construction sector. However, the identification of some factual elements referred to in Article 4(2) and (3) of the Enforcement Directive remains challenging, notably aspects concerning the undertaking's registered office, administration, tax and social security contributions payment, performance of contracts, turnover size and nature of activities, and the return of posted workers to the sending Member State.

The construction sector is a priority for labour enforcement authorities due to its high-risk nature, significant proportion of posted workers and susceptibility to non-compliance with labour and the OSH legal framework, including in a posting context. Nevertheless, labour inspectors often lack sufficient financial and human resources to effectively counter abusive practices and violations involving posted workers. Enhanced cross-border inspections, fostering improved information sharing and addressing illegal conduct across multiple Member States emerge as effective tools for enforcing posting rules in the construction sector.

⁽³¹³⁾ Judge in Białystok District Court, expert in the posting of workers in Poland, interview held in April 2023.

⁽³¹⁴⁾ Judge – Labour Court of Portimão in Portugal, interview held in April 2023.

⁽³¹⁵⁾ Judge in Białystok District Court, expert in the posting of workers in Poland, interview held in April 2023.

6. Cross-border matching initiatives to address labour market imbalances in the EU construction sector

Main findings

- The construction sector in the EU has been characterised by severe and persistent labour and skill shortages throughout the years in both qualitative (e.g. lack of skills and qualifications required to support the green and digital transition) and quantitative terms.
- Shortages are common among all Member States, but most prominently within central and eastern Member States. The reasons behind this trend include the intra-EU mobility of jobseekers from eastern towards western Member States to leverage the higher living conditions, and the demographic challenges faced by some Member States.
- Russia's aggression against Ukraine, and the subsequent return of Ukrainian men to fight for their country, has amplified shortages in the construction sector in those Member States more reliant on Ukrainian workers such as Poland. Displaced individuals from Ukraine who moved to Member States have different demographics relative to previous migrant inflows from Ukraine, with a majority being (highly educated) women.
- Given the shortages of (qualified ⁽³¹⁶⁾) construction workers within the EU, several cross-border matching initiatives in place within Member States are directed towards the recruitment of TCNs. Those initiatives are often fostered via bilateral agreements with third countries.
- Language and cultural differences and the limited recognition of skills and qualifications across Member States are common barriers to the effectiveness of cross-border matching initiatives.

6.1 Introduction and context

Despite a rich literature on labour shortages and surpluses, and increasing reference to these concepts in policy discussions, there is no widely accepted definition for the concepts ⁽³¹⁷⁾. At its most basic, labour market imbalances can be characterised by a shortage or surplus of workers and/or skills ⁽³¹⁸⁾. Within the EU, the monitoring of labour and skill shortages and surpluses lies within the responsibilities of Member States, as outlined in Article 30 of Regulation (EU) 2016/589 ⁽³¹⁹⁾. This chapter of the report focuses specifically on labour market imbalances within the EU construction sector, examining current trends, assessing the prevailing conditions and exploring examples of cross-border matching initiatives that have been put in place across Member States to address shortages.

In general, labour market imbalances occur when there is a mismatch between labour demand and supply. Employers are in such cases unable to find the needed number of workers with a required skill set to fill their vacancies, at a particular level of wages and working conditions, and at a specific location and point in time ⁽³²⁰⁾. It is useful to distinguish between

⁽³¹⁶⁾ The terminology of skilled/qualified labour in this report follows that of the International Standard Classification of Education (ISCED), as operationalised by Eurostat for example as follows: 'low' educational attainment refers to ISCED levels 0–2 (early childhood, primary and lower secondary education); 'medium' refers to ISCED levels 3–4 (upper secondary and post-secondary non-tertiary education); and 'high' refers to ISCED levels 5–8 (short-cycle tertiary education and tertiary education at the bachelor, master's or doctoral level). Eurostat, *International Standard Classification of Education (ISCED)*, Luxembourg, 2022.

⁽³¹⁷⁾ Eurofound, *Tackling labour shortages in EU Member States*, Publications Office of the European Union, 2021.

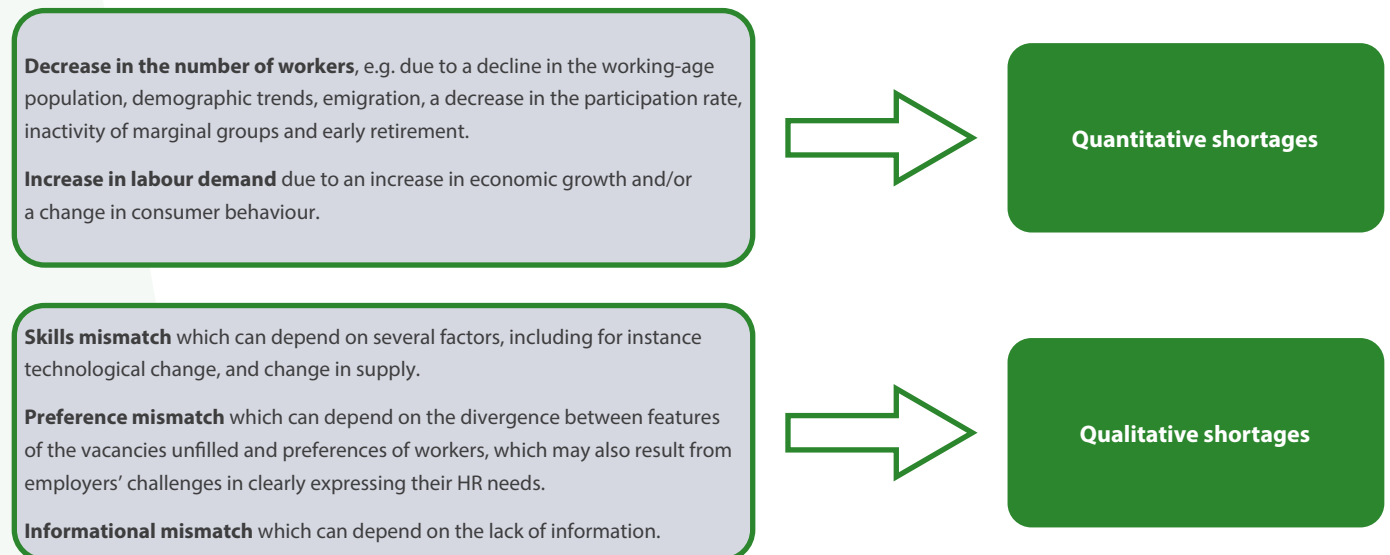
⁽³¹⁸⁾ Organisation for Economic Co-operation and Development, 'Getting Skills Right', *Skills for Jobs Indicators*, 2017.

⁽³¹⁹⁾ Regulation (EU) 2016/589 of the European Parliament and of the Council of 13 April 2016 on a European network of employment services (EURES), workers' access to mobility services and the further integration of labour markets, and amending Regulations (EU) No 492/2011 and (EU) No 1296/2013 (OJ L 107, 22.4.2016, p. 1). Article 30 states that 'each Member State shall, in particular, collect and analyse gender-disaggregated information on: (a) labour shortages and labour surpluses on national and sectoral labour markets ...'.

⁽³²⁰⁾ European Commission, Directorate-General for Employment, Social Affairs and Inclusion, *Labour Market and Wage Developments in Europe, Annual Review*, Brussels, 2022. ELA, *Report on Labour Shortages and Surpluses 2022*, Bratislava, 2023.

quantitative and qualitative shortages ⁽³²¹⁾. Quantitative shortages arise when the overall supply of labour, across all sectors and occupations, falls short of the total demand for labour, resulting in a large share of vacancies that are difficult to fill and a low unemployment rate. Qualitative shortages occur when labour demand surpasses labour supply within a specific sector, occupation or skill level, resulting in a large share of unfilled vacancies together with a high unemployment rate. Some examples of factors that may cause labour shortages are depicted in Figure 3.

Figure 3: Causes of quantitative and qualitative shortages ⁽³²²⁾



Despite disparities in assessments, classification and measurement approaches among Member States ⁽³²³⁾, there is mounting evidence that the construction sector in the EU is facing significant (qualified) workforce shortages. The Centre for the Development of Vocational Training (Cedefop), for instance, estimates that the EU will need around 1 million new and replacement workers in the construction sector by 2025 ⁽³²⁴⁾.

The persistent decrease in the number of workers, which is a trend characterising all sectors, represents a key factor when it comes to the quantitative labour shortages seen in the EU construction sector. As the population ages, fewer young people enter this industry, while the number of experienced workers reaching retirement age is increasing. In addition, the mobility trends characterising the construction sector, with mobile workers moving from eastern to western Member States, create shortages in the former, which seek to address them by recruiting construction workers from outside the EU ⁽³²⁵⁾.

This demand for construction workers is driven not only by a shortage of workers, but also by evolving requirements for knowledge and skills. For instance, factors such as the shift towards green and energy-efficient buildings (boosted by the European Green Deal (EGD) ⁽³²⁶⁾) or the integration of digital technologies and processes are contributing to the qualitative labour shortages in the sector ⁽³²⁷⁾. Those factors result in a growing demand for workers with skills in sustainable construction practices, such as energy-efficient building design and the use of renewable materials, and digital skills to foster the adoption of the so-called Construction 4.0 technologies.

⁽³²¹⁾ Reymen, D., Gerard, M., et al., *Labour market shortages in the European Union*, study for the European Parliament's Committee on Employment and Social Affairs, 2015, p. 20. See also: Adams, J., Greig, M. and McQuaid, R. W., 'Mismatch unemployment and local labour-market efficiency: the role of employer and vacancy characteristics', *Environment and Planning A*, 32(10), 2017, pp. 1841–1856. Zimmer, H., 'Labour market mismatches', *Economic Review*, Brussels: National Bank of Belgium, 2012, pp. 55–68. Eurofound, *Measures to tackle labour shortages: Lessons for future policy*, Publications Office of the European Union, Luxembourg, 2023.

⁽³²²⁾ *Ibid.* ELA, 2023.

⁽³²³⁾ The lack of a common definition for labour market imbalances translates into a wide range of approaches used to calculate labour and skill shortages and surpluses. In general, instruments used to measure them involve the analysis of employment-based, volume-based, or price-based indicators, or indicators of imbalance. Each of those has its own advantages and limitations. Eurofound, 2021.

⁽³²⁴⁾ Brucker Juricic, B., Galic, M. and Marenjak, S., 'Review of the Construction Labour Demand and Shortages in the EU', *Buildings*, Vol. 11, No 1, 2021. Cedefop, Sectoral trends, available online: <https://www.cedefop.europa.eu/en> and <https://www.cedefop.europa.eu/en/tools/skills-online-vacancies/sectors/skills>.

⁽³²⁵⁾ Brucker Juricic, B., et al., 2021.

⁽³²⁶⁾ Under the EGD, the EU aims to achieve climate neutrality (thus reaching net zero greenhouse gas emissions) by 2050. This shift towards sustainability and a net-zero economy has significant implications for the construction sector, e.g. by raising the demand for energy-efficient buildings. More information on the EGD can be found on the Commission website: https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal_en.

⁽³²⁷⁾ Brucker Juricic, B., et al., 2021.

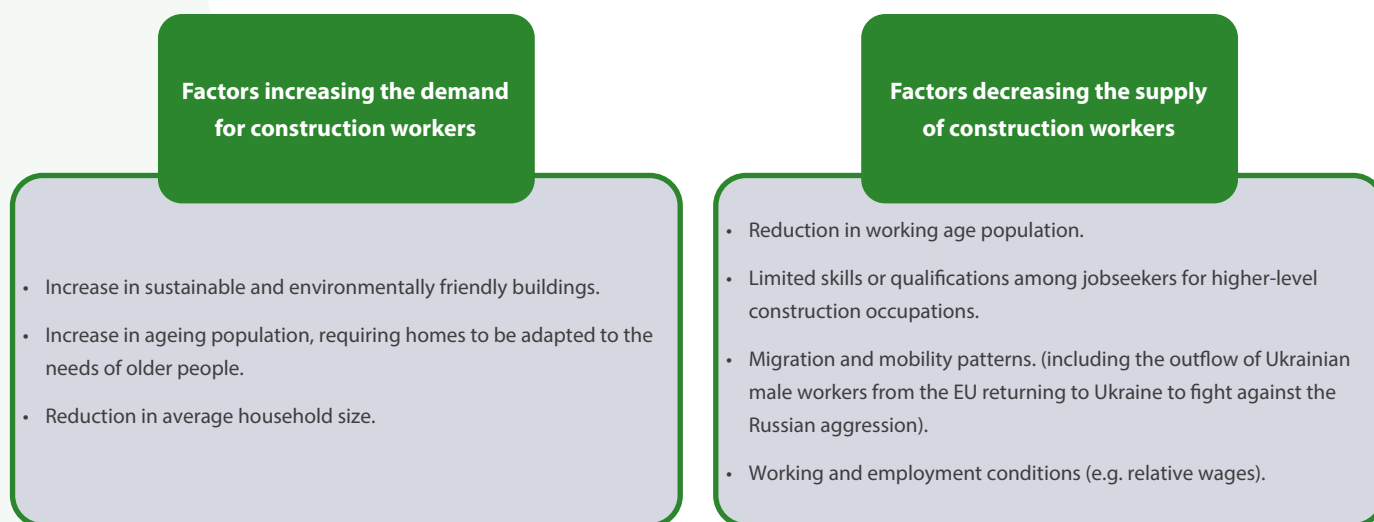
6.2 Trends and state of the art

Labour shortages in the EU peaked just before the COVID-19 crisis. Data from the European Business and Consumer Surveys (EU-BCS) ⁽³²⁸⁾ reveal a significant increase in the proportion of employers in the construction sector who identified labour shortages as a major constraint on their business activities. Between 2013 and 2019, this share rose fivefold, marking the most substantial surge compared to other sectors. The upward trend was then interrupted by the pandemic, but it fully bounced back afterwards. In spite of a slight decrease in the second half of 2022, the prevalence of shortages in the construction sector remains relatively high; 31 % of employers confirm that labour shortages are one of the major factors hindering their production in 2022 ⁽³²⁹⁾.

The 2021 Eurofound study ⁽³³⁰⁾ uses data from EU-BCS to analyse disparities in labour shortages across countries and shows that eastern European Member States record the highest perceived shortages in the manufacturing and construction sectors ⁽³³¹⁾. There are several factors behind the trend, including the increase in economic growth following the COVID-19 pandemic crisis and the resulting expansion of company production capacities, a significant outflow of workers to western Europe and the ageing of the population. In contrast, northern and western European countries recorded the highest labour shortages for companies in the service sector, while southern Europe reported less severe shortages overall ⁽³³²⁾.

Further evidence is given by ELA's yearly publications on labour shortages and surpluses ⁽³³³⁾. In the 2021 report ⁽³³⁴⁾, ELA found that the list of shortages is dominated by just four groups of occupations: construction, healthcare-related occupations, software professionals, and engineering craft workers. These four occupation groups account for 21 out of the 28 most widespread occupations with shortages, and for 64 % of the total employment in these 28 occupations. Those four occupations also remained at the top of the list in the 2022 version of the report, confirming the structural nature of those shortages ⁽³³⁵⁾. A non-exhaustive list of factors that are creating and amplifying the imbalance between demand and supply in construction-related occupations (including skilled jobs) is provided in Figure 4.

Figure 4: Example of factors creating imbalances in the construction sector ⁽³³⁶⁾



Delving deeper into country and regional disparities, the 2022 ELA report on labour market imbalances ⁽³³⁷⁾ confirms the presence of significant shortages in the construction sector of eastern European countries. Poland, for instance,

⁽³²⁸⁾ EU-BCS is an important source for the analysis of labour shortages. The surveys target (quarterly) employers in manufacturing, services and construction with questions on the extent to which labour shortages are hindering their production.

⁽³²⁹⁾ However, the high level of labour shortages is not limited to the construction sector and can also be found in the other two sectors analysed; 26 % of employers in industry and 30 % in services recorded labour shortages as the main factor preventing the continuation of business activities. European Commission, 2022.

⁽³³⁰⁾ Eurofound, 2021.

⁽³³¹⁾ In 2019, 39 % of companies in manufacturing and 42 % of companies in construction in eastern Europe indicated labour shortages as a main factor limiting production. *Ibid.*

⁽³³²⁾ *Ibid.*

⁽³³³⁾ ELA has taken on the responsibility of producing the EU report on labour shortages and surpluses in 2021 from the Commission's Directorate-General for Employment, Social Affairs, and Inclusion to ensure the implementation of Article 30 of Regulation (EU) 2016/589.

⁽³³⁴⁾ McGrath, J., *Report on Labour Shortages and Surpluses 2021*, ELA, Bratislava, 2021.

⁽³³⁵⁾ ELA, 2023.

⁽³³⁶⁾ *Ibid.*

⁽³³⁷⁾ *Ibid.*

experiences shortages in northwestern regions (e.g. Lubuskie, Pomorskie, Dolnośląskie, Wielkopolskie), southern regions (e.g. Opolskie, Małopolskie, Świętokrzyskie, Śląskie) and northern regions (e.g. Kujawsko-Pomorskie, Zachodniopomorskie). In Lithuania, shortages are instead felt throughout the country and are primarily due to intra-EU labour mobility patterns of Lithuanian workers emigrating to other Member States. Consequently, the country has implemented robust policies to attract skilled workers (especially from non-EU countries, such as Ukraine, Russia and Belarus). Even though the situation in western Member States is comparatively more favourable (also thanks to a more prosperous business environment, higher investments and more education facilities), labour market imbalances persist in several countries. Germany, for instance, reports significant shortages of skilled construction workers nationwide. Scandinavian countries also face shortages, albeit with regional variations, typically impacting on the less populated northern regions.

6.3 The impact of Russia's war of aggression against Ukraine on labour market imbalances in the EU construction sector

The Russian invasion of Ukraine in February 2022 has strongly impacted the EU labour market by altering the supply of workers. Between February and November 2022, around 12.5 million people crossed the EU–Ukraine border ⁽³³⁸⁾. These flows are not unidirectional, in that they do not entail only people displaced from Ukraine, but also Ukrainians (previously established in Member States) who returned to fight for their home country. The outflows and inflows of Ukrainians have repercussions on the extent and severity of shortages in several sectors, including in the construction sector.

By the end of April 2023, 4 million people displaced from Ukraine benefitted from temporary protection in Member States, with the main countries hosting beneficiaries (in absolute terms) being Germany and Poland (around 1 million each) ⁽³³⁹⁾. Temporary protection grants beneficiaries access to the EU labour market and can thus represent an opportunity for countries facing labour shortages ⁽³⁴⁰⁾. However, those benefits hardly have any effect on the construction sector, since many workers are not well-suited to fill the job vacancies in the sector due to their young age or caring duties ⁽³⁴¹⁾. In addition, the Russian invasion of Ukraine resulted in thousands of Ukrainian men, who had been relocating to central Europe in the past decade, returning to their home country, thus exacerbating shortages on construction sites, on factory assembly lines and in warehouses. Their departure is leading to rising costs and delays in manufacturing orders and construction work, which have a knock-on effect on economies already weakened by the COVID-19 pandemic and increases in inflation and energy prices ⁽³⁴²⁾. Poland provides a case in point ⁽³⁴³⁾, which is further described in [Box 9: Ukrainians in the Polish construction sector](#).

Box 9: Ukrainians in the Polish construction sector

The Polish construction sector has developed a strong dependency on migrant labour from Ukraine throughout the years. In 2020–2021 around 70 % of all work permits went to Ukrainians and the largest number of the permits concerned the construction sector (17 %), followed by industrial processing (15 %) and transport and storage (14 %) ⁽³⁴⁴⁾. A large number of Ukrainian workers in Poland are posted to other Member States. Between 2018 and 2021, around 80 % of all PDs A1 issued in Poland to TCNs went to Ukrainians. When it comes to the construction sector, Ukrainians were the top nationality among posted TCNs; in 2021, around 17 000 PDs A1 were issued to Ukrainians in the sector, which represents 80 % of all forms issued to TCNs in the sector ⁽³⁴⁵⁾.

⁽³³⁸⁾ European Commission, 2022.

⁽³³⁹⁾ Eurostat, 'Temporary protection for persons fleeing Ukraine – monthly statistics'.

⁽³⁴⁰⁾ Krzysztozek, A., Zachova, A., Hudec, M. and Vantinen, P., 'EU states competing to attract Ukrainian workers', *Euractiv*, 2023 (<https://www.euractiv.com/section/politics/news/eu-states-competing-to-attract-ukrainian-workers/>).

⁽³⁴¹⁾ Brodersen, F., Koper, A. and Kahn, M., 'Exodus of Ukrainian workers hits Europe's emerging economies', *Reuters*, 2022 (<https://www.reuters.com/markets/emerging/exodus-ukrainian-workers-hits-europes-emerging-economies-2022-07-25/>). Indicative evidence suggests that sectors such as accommodation and catering (also affected by labour shortages in several Member States) have benefitted more from the inflow of labour, ELA, 2023.

⁽³⁴²⁾ *Ibid.*

⁽³⁴³⁾ The relevance of such issues for Poland was confirmed by the interviews conducted in the context of this study. Out of all national stakeholders interviewed, only Polish stakeholders raised strong concerns about the impact of the Russian war of aggression against Ukraine on the sector.

⁽³⁴⁴⁾ Lesniak, G., 'W pandemii ponad 70 proc. zezwoleń na pracę dla obcokrajowców zostało wydanych Ukraińcom', *Prawo*, 2021.

⁽³⁴⁵⁾ Kielbasa, M., Szaraniec, M., Mędrala, M. and Benio, M., *Posted Workers from and to Poland: Facts and figures*, Leuven: POSTING.STAT project VS/2020/0499, 2022, p. 111.

Despite contributions from the migrant workforce, the Polish construction sector has been facing significant and persistent labour shortages. According to the EU-BCS, almost half of the firms in industry and construction reported labour shortages as a factor limiting production in 2019, among the highest in the EU ⁽³⁴⁶⁾. During the years when it has been conducted, the Polish Occupational Barometer ⁽³⁴⁷⁾ also shows that the construction industry in Poland has consistently reported the highest number of occupations experiencing shortages. This trend continues in the 2023 projection ⁽³⁴⁸⁾. The onset of the Russian invasion of Ukraine has exacerbated the situation. Although precise data are not available, estimates indicate that around a quarter of Ukrainian workers have left Poland since February 2022 (mostly to go back to Ukraine to fight) and the construction sector has been particularly impacted by those departures ⁽³⁴⁹⁾.

On the other hand, Poland is receiving a large influx of people displaced from Ukraine. The profile of these people is however different from those workers leaving the country. While before the Russian war of aggression against Ukraine Ukrainian workers were mainly men employed in manufacturing and construction sectors, today almost 80 % of adult citizens from Ukraine with a *Powszechny Elektroniczny System Ewidencji Ludności* [Universal Electronic System for Population Registration] number ⁽³⁵⁰⁾ are women ⁽³⁵¹⁾, and most of them have completed tertiary education ⁽³⁵²⁾. Those issues were also raised by the Polish Organisation of Employers in Construction and the Ministry of Family and Social Policy during the interviews conducted in the context of this study. Both stakeholders indicated that the departure of Ukrainian men working in the sector and the loss of the usual supply of workers from Belarus and Russia is amplifying the severity of the shortages and pushing employers to hire from central and eastern Asia ⁽³⁵³⁾.

6.4 Cross-border matching/recruitment initiatives to address labour market imbalances in the EU construction sector

To tackle the issue of labour and skill shortages, Member States have adopted several measures aimed at attracting workers with the needed skill sets. While several of these measures look beyond EU borders (see [Box 10](#)), this section primarily focuses on initiatives targeting workers who have the right to freely move within the EU. The identification of the different measures was primarily based on the outcomes of the interviews with national stakeholders (e.g. employer organisations, public employment services, governmental bodies), conducted in the context of the case study on cross-border matching/recruitment initiatives to address labour and skills shortages in the construction sector.

[Table 10](#) provides an overview of the different cross-border measures, clustering them according to their aim ⁽³⁵⁴⁾: i) enhancing skills development and training opportunities in the construction sector; ii) offering training opportunities at the company level; iii) improving the attractiveness of living and working conditions in a country/region; and iv) fostering cross-border cooperation.

⁽³⁴⁶⁾ European Commission, 'European Construction Sector Observatory', *Country profile Poland*, 2021.

⁽³⁴⁷⁾ Available at: <https://barometrzawodow.pl/en>.

⁽³⁴⁸⁾ Antończak-Świder, K. and Biernat, A., *Occupational Barometer 2023 – report summarising the study in Poland*, Regional Labour Office in Krakow and Ministry of Family and Social Policy Republic of Poland, 2023.

⁽³⁴⁹⁾ Labour shortages in the construction sectors in Poland have been put forward by several sources and articles. See for instance, Rfi, 'Polish businesses face labour shortage after Ukraine war', *Rfi*, 2022. Forbes, 'Odptyw pracowników budowlanych na Ukrainę – co może zrobić wykonawca?', *Forbes.pl*, 2022. Euractiv, 'Labour shortages felt all over Europe', *Euractiv*, 2022. Ciobanu, C. and Gosling, T., 'Labour Pain in Central Europe', *Reporting Democracy*, 2022.

⁽³⁵⁰⁾ This is a unique personal identification number assigned to each Polish citizen, and also to foreign nationals residing in Poland.

⁽³⁵¹⁾ Office for Foreigners, Citizens of Ukraine in Poland – current migration data, 2023, <https://www.gov.pl/web/udsc/obywatele-ukrainy-w-polsce-aktualne-dane-migracyjne> (last accessed April 2023).

⁽³⁵²⁾ Chmielewska-Kalińska, I., Dudek, B. and Strzelecki, P., 'The living and economic situation of Ukrainian refugees in Poland', *Narodowy Bank Polski*, Warszawa, 2022. It is true, however, that despite being highly educated, Ukrainians most often find work in elementary occupations and especially in manufacturing, administrative and support services and transport and storage. Antończak-Świder, K. and Biernat, A., 2023. Gromadzki, J. and Lewandowski, P., 'Refugees from Ukraine on the Polish labour market', *Ubezpieczenia Społeczne, Teoria i praktyka*, no. 4/2022, 2022.

⁽³⁵³⁾ Director at *Polski Związek Pracodawców Budownictwa* [Polish Association of Construction Industry Employers], interview held in April 2023.

⁽³⁵⁴⁾ Eurofound, 2021.

Table 10: Typology of measures and examples of countries

Type of measure	Description	Examples of countries using this approach
Enhancing skills development and training opportunities	Strengthening skills and capabilities of workers in the construction sector by providing training opportunities, promoting vocational education and supporting the development of technical and managerial skills.	Germany, France, Malta, the Netherlands, Portugal
Offering training opportunities at the company level	Providing company-level examples of enhanced (practical) training in line with business needs.	Austria, Poland
Improving the attractiveness of living and working conditions in a country/region	Attracting specific groups of workers and assisting their integration (and that of their families) into the labour market and society.	The Netherlands, Austria
Fostering cross-border cooperation	Cooperating within the EURES Network and via intergovernmental agreements.	Croatia, the Netherlands, Slovakia

In relation to enhancing the skills of workers in the sector, the Netherlands has in place a cross-border recruitment project to support skills development. The Netherlands *Uitvoeringsinstituut Werknemersverzekeringen* [Institute for Employee Insurance] (UWV), which is part of the EURES Network, is collaborating with IW Netherlands (leading provider of electrical and installation technology) and training organisations to recruit and train prospective installation technicians from Spain and Italy. The training lasts for 3 years and includes on-the-job-training. After this period, workers are fully independent technicians already integrated in the Dutch labour market ⁽³⁵⁵⁾. Additionally, Dutch employers often participate in trade fairs and meetings organised within the EU with the aim of recruiting candidates for professions with a shortfall in the Netherlands, including for the construction sector ⁽³⁵⁶⁾.

In France, even if the labour market seems to have fully recovered from the shock of COVID-19, national trends hide regional and sectoral disparities. The net financial situation of SMEs in the construction and manufacturing industry has in fact weakened. In addition, the mismatch between supply and demand in several sectors remains a persistent issue ⁽³⁵⁷⁾. To tackle this, the government, together with social partners, launched a plan in 2021 to reduce recruitment pressures. Among other things, the plan includes an increased training offer for the construction and manufacturing industry (mainly in technical and middle-management types of occupations) ⁽³⁵⁸⁾.

In Germany, the *Deutscher Handwerkskammertag* (German Confederation of Chambers of Skilled Trades) launched an image campaign in 2010 to highlight the positive aspects of the skilled trades sector, which includes several industries facing labour shortages, such as construction. The *Deutscher Handwerkskammertag* initiative is still active at the point of writing (June 2023) ⁽³⁵⁹⁾ and aims not only to promote the benefits of pursuing a career in skilled trades but also to provide information on various trade professions and their respective vocational training programmes through television advertisements, billboard campaigns and events. Additionally, initiatives aiming to develop the required skills or foster qualification recognition are often put in place at the local level and often entail partnerships between German universities/employers and other Member States ⁽³⁶⁰⁾.

In Portugal, there have been several events entitled 'Work in Portugal' designed to foster a match between the needs of employers, including in the construction sector, and jobseekers from all over Europe. In the vocational training field, Portugal has had an ongoing collaboration with Switzerland since the 1980s ⁽³⁶¹⁾. This experience involves direct cooperation between the *Instituto do Emprego e Formação Profissional* [Institute of Employment and Vocational Training] and its training centres, namely *Centro de Formação Profissional da Indústria da Construção Civil e Obras Públicas do Norte* [Centre for the Professional Education and Training of Civil Construction and Public Works of the North] and *Centro de*

⁽³⁵⁵⁾ Staff Member of the UWV, the Netherlands, interview held in April 2023.

⁽³⁵⁶⁾ *Ibid.*

⁽³⁵⁷⁾ Fontaine, F., and Rathelot, T., 'Le marché du travail français à l'épreuve de la crise sanitaire', *Notes du conseil d'analyse économique*, 2022/2, No 71, 2022, pp. 1–12.

⁽³⁵⁸⁾ BusinessEurope, 'Labour force and skills shortages: how to tackle them?', *Policy Orientation Note*, 2022.

⁽³⁵⁹⁾ More information can be found here: <https://www.zdh.de/ueber-uns/imagekampagne-handwerk/>.

⁽³⁶⁰⁾ Social and labour law officer, German Construction Industry Federation representing construction companies, interview held in April 2023.

⁽³⁶¹⁾ More information available at: <https://www.construir.pt/2023/03/01/ciccopn-da-formacao-a-profissionais-da-construcao-que-trabalham-na-suica>.

Formação Profissional da Indústria da Construção Civil e Obras Públicas do Sul [Centre for the Professional Education and Training of Civil Construction and Public Works of the South] ⁽³⁶²⁾. Under this project, Portuguese workers who have been working in Switzerland for at least 6 months, with some training gaps, are eligible to receive specific professional training at these training centres in Portugal. The programmes offered are agreed upon with the Swiss business confederations and materials are provided by them. The project has been successful, and approximately 40 professionals are trained each year, with 38 trainees participating in the 2022 edition ⁽³⁶³⁾.

In Malta, a construction industry skill card system has been developed to address the lack of training and certification in the construction sector. The system is believed to contribute to addressing labour shortages in the sector ⁽³⁶⁴⁾.

Training opportunities at the company level are also common among Member States. For instance, to tackle the significant labour shortages in the construction industry, PORR, an Austrian construction company, established an internal training and education centre in 2019. This full-service provider offers every apprentice an additional 3 weeks of practical training per year, including practice blocks in areas such as bricklaying, formwork construction, civil engineering and paving. PORR also provides individual courses to prepare apprentices for their final exams ⁽³⁶⁵⁾.

In Poland, Erbud, one of the largest employers in the domestic construction industry, has initiated a sponsored classes programme in several vocational schools throughout the country. Under this cooperation model, the school is responsible for organising workshops, trips and apprenticeships and provides teaching and workshop rooms for classes. Erbud serves as the sponsor, providing students with the opportunity to gain practical experience on a construction site, substantive support for vocational subjects, and classroom modernisation/renovation. Students in the sponsored classes can pursue apprenticeships at the company's construction sites, where they have a good chance of obtaining employment after completing their apprenticeship ⁽³⁶⁶⁾.

In the context of attracting specific groups of workers, the Austrian Association of the Building Industry mobilised an employment agent to Romania. The latter provided information about the opportunities and working conditions in the Austrian labour market to find local workers who were willing to relocate to Austria for employment opportunities. The approach resulted in the hiring of around 30 workers. However, due to the outbreak of the pandemic, the initiative was halted and has not resumed since ⁽³⁶⁷⁾. In Austria, the Welcome Tyrol service offers support to workers who are relocating to the region. The service helps them find suitable accommodation, as well as services such as doctors and childcare. It also supports their partners in finding new career opportunities in the area. If necessary, the service can refer workers to language acquisition services and help them engage with the community ⁽³⁶⁸⁾.

Post-recruitment services, in the form of assistance and support with fostering integration into the new working environment and local societies, are often offered by members of the EURES Network. The Dutch UWV, for instance, provides information, advice and extensive onboarding support (e.g. resources, guidance, material and support tailored to the needs of the person) to both employers and new hires, to overcome challenges such as cultural differences and disparities in working methods on the construction sites ⁽³⁶⁹⁾. To enhance the effectiveness of their services and better understand the realities of the territory, UWV is setting up employer service points to support employers and job seekers at the local level ⁽³⁷⁰⁾.

Cross-border cooperation also plays an important role when it comes to addressing labour market imbalances. Several countries, such as Croatia, the Netherlands and Slovakia, leverage the EURES Network to cooperate, align and share good practices with other Member States. For instance, the Dutch UWV uses the network extensively to promote vacancies and facilitate job matching, especially with EURES stakeholders in Spain and Italy. Although the focus is on the overall economy, this channel has proven useful in addressing the ongoing labour and skill shortages within the construction sector in those countries ⁽³⁷¹⁾. Similarly, the National Coordination Office for EURES Croatia highlights the benefits of promoting vacancies related to the construction sector via EURES ⁽³⁷²⁾. The Slovak *Ústredie práce, sociálnych vecí a rodiny* [Central Office of Labour

⁽³⁶²⁾ *Centro de Formação Profissional da Indústria da Construção Civil e Obras Públicas do Norte* and *Centro de Formação Profissional da Indústria da Construção Civil e Obras Públicas do Sul* provide professional training in the civil construction and public work sectors. More information can be found on their websites: <https://www.ciccopn.pt/> and <https://www.cenfic.pt/>.

⁽³⁶³⁾ Director of the Employment Department of Portuguese Employment Services, Institute of Employment and Vocational Training, interview held in April 2023.

⁽³⁶⁴⁾ *Ibid.*

⁽³⁶⁵⁾ Eurofound, 2021.

⁽³⁶⁶⁾ *Ibid.*

⁽³⁶⁷⁾ Member of the Chamber of Commerce of Austria, Association of the Building Industry, interview held in April 2023.

⁽³⁶⁸⁾ *Ibid.*

⁽³⁶⁹⁾ Dutch UWV EURES, interview held in April 2023.

⁽³⁷⁰⁾ More information is available on their website: <https://www.uwv.nl/nl/over-uwv/organisatie/samenwerkingen>.

⁽³⁷¹⁾ Dutch UWV EURES, interview held in April 2023

⁽³⁷²⁾ Head of National Coordination Office for EURES Croatia, interview held in April 2023.

Social Affairs and Family] holds regular meetings with experts from Czechia, Hungary and Poland, in the context of the EURES Network and intergovernmental agreements with those countries, to exchange good practices in recruitment and share information on gaps in the labour market, including in the construction sector ⁽³⁷³⁾.

Box 10: Initiatives targeting TCNs

Labour and skill shortages in the construction sector are a common issue in all Member States. As a result, many countries are turning to recruiting TCNs.

In Poland ⁽³⁷⁴⁾, cross-border initiatives aiming to attract EU workers are taken at low levels of administrative structure, mostly districts but also voivodships. Employers and employer organisations mostly focus on either domestic action (e.g. improving the image of the construction sector among Polish workers) or on the recruitment of TCNs (recently expanding to central and eastern Asia, India and the Philippines). Given the high extent of governance decentralisation, the national government is not usually involved in specific matters related to labour migration. Flexibility in deciding the type of workers and how to recruit is left to employers according to their needs. Even when prompted by a number of non-EU countries (e.g. Kazakhstan, Uzbekistan, Belarus), Poland ruled out entering into any bilateral agreement, in order to support the employer-centred approach.

In Portugal ⁽³⁷⁵⁾, the construction sector is primarily hiring TCN workers mainly from Angola, Brazil, Cabo Verde and more recently from India and Pakistan. The Portuguese government has been negotiating bilateral labour mobility agreements with several non-EU countries, such as India, Cabo Verde, Morocco and Mozambique, to foster recruitment in those countries and streamline procedures. Similarly, Slovenia focuses mainly on hiring from Balkan countries (e.g. Bosnia and Herzegovina, North Macedonia, Serbia). Cross-border matching initiatives within the EU related to the construction sector are thus rather limited in both Portugal and Slovenia.

In Slovakia ⁽³⁷⁶⁾, if an employer is unable to fill a vacancy with national or EU workers, the job is identified as having a shortage and thus an accelerated process can be used for filling the vacancy via TCNs. In addition, the *Zväz stavebných podnikateľov Slovenska* [Association of Construction Entrepreneurs of Slovakia] prepared a strategy ⁽³⁷⁷⁾ to address the massive labour shortage in the construction sector, which is key to the national economy. The proposed solutions entail, among other things, active migration policies (bridging the shortage by facilitating access to the labour market for professionals from third countries).

Several barriers which hamper the effective implementation of cross-border matching initiatives in the EU construction sector were identified during the interviews with national stakeholders. These include the following.

- **Language barriers and cultural differences.** Language was indicated as being one of the strongest barriers limiting cross-border matching or the successful integration of workers in the host-country workplace. In addition, differences in working methods on construction sites and cultural norms between countries can create further challenges.
- **Lack of skills and qualification recognition.** Different countries have different qualification systems and requirements, making it difficult for both employers and workers to understand what they need to do to properly recognise workers' qualifications. Additionally, skills acquired via experience (without formal qualifications) are often not recognised.

⁽³⁷³⁾ Central Office of Labour Social Affairs and Family / Department of Citizen and Employer Services | Department of Intermediary Services | Employment Services Section of Slovakia, interview held in April 2023.

⁽³⁷⁴⁾ Director at *Polski Związek Pracodawców Budownictwa* and Polish Department of Labour Market at the Ministry of Family and Social Policy, interviews held in April 2023.

⁽³⁷⁵⁾ Labour law advisor of *Associação de Empresas de Construção e Obras Públicas e Serviços* in Portugal, and Director of the Employment Department of Portuguese Employment Services, Institute of Employment and Vocational Training, interviews held in April 2023.

⁽³⁷⁶⁾ Senior Field Advisor in the Employment of Foreigners Department at the Employment Service of the Republic of Slovenia, interview held in April 2023.

⁽³⁷⁷⁾ *Sektorovo riadená inovácia, Sektor stavebníctva má plán na riešenie výziev trhu práce do roku 2030, 2022*, <https://www.sustavapovolani.sk/2022/02/sektor-stavebnictva-ma-plan-na-riesenie-vyziev-trhu-prace-do-roku-2030/> (last accessed April 2023).

- **Shortage of (qualified) workers.** The shortage of qualified workers is a major challenge across many industries, including in the construction sector. This can make it difficult for cross-border matching to occur, as employers may struggle to find suitable candidates.
- **Poor working conditions.** In some countries, the wages and working conditions offered by national companies may not be as attractive as those offered in other countries (especially in central and northern Europe), making it difficult to attract non-native workers.

6.5 Conclusions

The construction sector in the EU faces significant labour market imbalances, encompassing not only a scarcity of workforce but also a deficiency in the necessary skill sets needed to support crucial ongoing trends, such as the green and digital transitions. By 2030, it was indeed estimated that an additional 3 to 4 million workers will need training in the construction sector to meet the targets set by the transition to net zero emissions (in the context of the EGD) ⁽³⁷⁸⁾. Despite the potential for new opportunities presented by the green and digital transitions, these advancements cannot be fully concretised in a context of persistent labour and skill shortages. On the contrary, the increased demand is only exacerbating the existing labour market imbalances within the construction sector.

Shortages are relatively more prevalent in central and eastern Member States. The Russian war of aggression against Ukraine has further intensified workforce shortages, particularly in countries more reliant on Ukrainian workers (such as Poland).

To address labour market imbalances, cross-border matching initiatives and measures to facilitate intra-EU recruitment have been implemented across several Member States. These include prioritising skills development and strengthening the link between education and vocational training to meet the needs of the labour market, improving the attractiveness of the host region including providing post-recruitment support to attract and facilitate the integration of EU workers and their families, and leveraging existing cross-border networks (such as EURES). As shortages are common across Member States, intra-EU mobility is often deemed insufficient to address these challenges. Consequently, several Member States are redirecting their focus towards recruiting TCNs, as a means of providing short- to medium-term solutions to the problem.

⁽³⁷⁸⁾ Cedefop, *The green employment and skills transformation: Insights from a European Green Deal skills forecast scenario*, Publications Office of the European Union, Luxembourg, 2021.

7. Operational conclusions

The following operational conclusions were developed based on the outcome of the study and its main findings. These conclusions were developed considering ELA's mandate, but may be relevant for informing a broader set of actors.

1. Information provision

- More concrete focus on the information provision is needed in the sending Member States. While there are many information provision rules and incentives in the receiving Member States, they do not seem to be as prevalent in the sending Member States (except for Croatia). At the same time, actors in the sending Member States can potentially be better placed to bridge the language and other barriers between the worker and receiving Member States' rules, and potentially provide more accessible information. This should be supported and further encouraged or even actively enabled by ELA activities.
- Explore the ways in which user undertakings and main contractors should be encouraged to play a proactive role in informing posting employers about the wages and working conditions applicable to posted workers. This is based on the assumption that users and main contractors are likely to have a much better understanding of their own system and hence be able to guide foreign employers in navigating this set of rules. While this might be an unfamiliar role for users and main contractors, public authorities, and social partners, both at national and European level, could play a pivotal role in this endeavour, notably by raising awareness.
- Encourage development of common template complying with common standards for providing information to companies posting workers and the posted workers. In the beginning its use might be voluntary. At the very least, further harmonisation of the national websites should be encouraged by ELA since the findings in this report reveal the very diverse nature of the information provided on the national websites at the moment.
- Development of user-friendly interactive tools giving workers specific information about their rights and entitlements in the receiving Member State(s). A similar tool might be envisioned also for companies posting workers (this might help SMEs to better navigate the host country's legal framework).
- Facilitate the cooperation between trade unions and employer organisations across borders in exchanging information on working conditions and rules in the construction sector. Dedicated support for social partners to enable and encourage their cooperation in this regard (e.g. covering their costs for translations and development of certain resources).
- Continue to facilitate the cooperation of Member States via EURES on the sharing of information and good practices to help alleviate labour and skills' shortages and surpluses as well as existing successful cross-border matching initiatives.
- Create step by step interactive guides addressed to employers posting workers to provide for dynamic checklists covering the employers' obligations. Ideally, these should integrate country and sector specificities in the steps (e.g. those mentioned in the interviews, such as Italy's compulsory training prior to entering building sites).
- Promote translation facilities at national and EU level as language barriers and the lack of translation of relevant documents remain an obstacle to accessing information regarding wages and working conditions applicable to posted workers. This also concerns information on collective agreements, as these are generally only made available in the official languages of the sending MS.

2. Concerted and joint inspections

- Promote and support targeted joint inspection in the construction sector.
- Encourage and support organisation of general joint inspections in the construction sector. Considering importance of the sector in terms of posting, the cost of organising joint inspections even when no specific risk is highlighted should be balanced against the creation of a 'culture' of joint inspections among national authorities. This will contribute to raising the awareness of the tool and make it easier for national authorities to participate in the organisation of further inspections in the future when problematic cases do arise.
- Support the development of data-driven risk assessment systems to detect targets for inspections in the construction sector. There are several possible criteria flagged by the study that might point towards companies being more likely to breach the rights of workers. Models could be developed to help detect such characteristics that would then, in turn, make the job of choosing inspection targets potentially easier for national enforcement authorities considering the existing lack of resources.

- Ensure a closer follow up to joint inspections to have a feedback loop informing ELA of the results and lessons learnt during previous inspections and also in order to make sure that any breaches discovered have been adequately remedied, especially from the perspective of the workers who had endured inadequate application of their EU-based rights following from instruments within ELA's mandate.

3. Cooperation between Member States

- Support the improvement of existing digital tools to exchange information about PDs A1 between national administrations (e.g. to make it possible for public authorities in the state of arrival to check elements such as the fact that a 'significant share of economic activity' is being performed in the state of origin) and to seek synergies with other cross-border systems of exchange of data involving where relevant national competent authorities for labour social security, taxation but also paritarian institutions.
- Improve the cooperation between public authorities in the enforcement of fines and sanctions with a cross-border element. Facilitate discussions between competent public authorities regarding sanctions and remedies with the goal of improving coherence by encouraging coordination and/or harmonisation. Provide support to Member States to explore the possibilities to develop digital solutions to check the social security situation of posted workers directly during inspections. This should be implemented through technical means which minimise the sharing of data and reduce the difficulties in coordinating data protection standards. The experience of the EU Digital Covid Certificate (EUDCC) could represent a source of inspiration for such a project.

4. Data collection

- ELA should address the lack of data concerning labour mobility and enforcement of applicable legislation in the construction sector. For instance, there is a need of better data on the distribution of posted workers (NACE digit 2 or better) and on checks, violations, and sanctions registered by enforcement authorities.

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Annex 1 – Interviews

The table below lists the first round of interviews carried out in January 2023, at the national and EU level in the framework of this study.

Member State	Interviewee, position, institution, date
Austria	• Staff member of the Construction Workers' Annual Leave and Severance Pay Fund (BUAK) of Austria, interview held in January 2023. • Official of the Finance Police in the Ministry of Finance of Austria, interview held in January 2023. • Official of the Ministry of Labour and Economy of Austria, interview held in December 2022.
Belgium	• Official of the Ministry of Labour of Belgium, interview held in January 2023. • Official of the Office National de Sécurité Sociale [National Office of Social Security] of Belgium, interview held in January 2023. • Staff member of the National Institute for the Social Security of the Self-Employed of Belgium, interview held in January 2023.
Czechia	• Official of the Státní úřad inspekce práce [State Labour Inspection Office] of Czechia, interview held in February 2023.
Germany	• Staff member of the SOKA BAU of Germany (Sozialkassen der Bauwirtschaft), interview held in January 2023. • Official of the Federal Ministry of Finance and Central Customs Authority transferred by the Ministry of Labour and Social Affairs of Germany, interview held in January 2023.
Spain	• Official of the Labour Inspectorate of Spain, interview held in January 2023.
Finland	• Staff member of the Regional State Administrative Agency of Southern Finland, interview held in December 2022.
France	• Staff members of the Union de recouvrement des cotisations de Sécurité sociale et d'allocations familiales [Organisations for the Collection of Social Security and Family Benefit Contributions] (Urssaf) (formerly: Agence Centrale Organismes Sécurité sociale [Central agency for social security bodies]) in France, interview held in January 2023.
Croatia	• Official of the State Inspectorate, Service for the supervision of employment, posting and international cooperation of Croatia, interview held in January 2022.
Italy	• Staff Members of the Commissione nazionale paritetica per le Casse Edili in Italy, interview held in December 2022. • European Employment Services (EURES) National Coordinator Italy, interview held in December 2022. • Official of the Italian Labour Inspectorate, interview held in January 2023.
The Netherlands	• Officials of the Nederlandse Arbeidsinspectie [Dutch Labour Inspectorate], interviews held in February and December 2022.
Poland	• Staff Members of the Department of Legality of Employment of Poland, interview held in January 2023.
Portugal	• Officials of the Inspection Activity Support Services Department, Authority for Working Conditions of Portugal, interview held in February 2023. • Staff members of the International Coordination Unit of Portugal, Institute of Social Security, interview held in February 2023.
Romania	• Officials of the Romanian Labour Inspectorate, interview held in May 2023.
Sweden	• Staff member of the Work Environment Authority of Sweden, interview held in January 2023.
Slovenia	• Official of the Labour Migration Sector at the Ministry of Labour, Family, Social Affairs and Equal Opportunities of Slovenia, interview held in December 2022. • Official of the Labour Inspectorate at the Ministry of Labour, Family, Social Affairs and Equal Opportunities of Slovenia, interview held in January 2023.
Slovakia	• Official of the National Labour Inspectorate of Slovakia, Department of Labour Relations of Slovakia, interview held in January 2023. • Staff Member of the Association of Construction Entrepreneurs of Slovakia, interview held in January 2023.

Member State	Interviewee, position, institution, date
EU Level	• Staff member of BusinessEurope, interview held in December 2022. • Staff members of the European Federation of Building and Woodworkers (EFBWW), interview held in December 2022. • Staff member of the European Trade Union Confederation (ETUC), interview held in December 2022. • Staff member of Faire Mobilität, interview held in December 2022. • Staff member of the European Construction Industry Federation (FIEC), interview held in December 2022. • Staff member of the Labour Mobility Initiative, interview held in December 2022. • Scholar (professor from Finland), interview held in December 2022.

Annex 2 – Case study interviews

The table below lists the second round of interviews carried out in April 2023, at the national and EU level in the framework of the 10 case studies.

Member State	Interviewee, position, institution, date
Austria	Member of the Chamber of Commerce of Austria, Association of the Building Industry, interview held in April 2023. Member of the Chamber of Commerce of Austria, Association of the Building Industry, interview held in April 2023 and lay judge and national expert in the public procurement procedures in the construction sector at the Federal Administrative Court, interview held in April 2023. Head of Department of the Finance Police in the Ministry of Finance of Austria, interview held in April 2023. Members of the Austrian Trade Union of Building and Woodworkers, interview held in April 2023.
Belgium	Labour market analyst at Actiris, the Brussels Regional Employment Office in Belgium, interview held in April 2023. Social inspector of the National Institute for the Social Security of the Self-employed in Belgium, interview held in April 2023. Staff member of Constructiv in Belgium, interview held in April 2023. Official from the Social Intelligence and Investigation Service, Belgium, interview held in April 2023. Staff member of the Social Dumping & Organised Fraudulent Networks at the National Office for Social Security of Belgium, interview held in April 2023. Staff member of EURES Grande Region in Belgium, interview held in April 2023. Study service advisor – International Department – General Labour Federation of Belgium in Belgium, interview held in April 2023.
Germany	Social and labour law officer, German Construction Industry Federation representing construction companies, interview held in April 2023. Legal advisor – posting of workers scheme in Germany, interview held in April 2023. Staff member of the Federal Ministry of Finance and staff member of the Federal Ministry of Labour and Social Affairs of Germany, interviews held in April 2023. Staff member of SOKA BAU in Germany, interview held in January 2023.
France	Staff member, National Federation of Public Works, European Service in France, interview held in April 2023. Staff member of the National Group for Monitoring, Support and Control in the Directorate General of Labour in France, interview held in April 2023. Staff member, National Federation of Buildings in France, interview held in May 2023.
Croatia	Judge at the Municipal Labour Court of Croatia, interview held in April 2023. Head of National Coordination Office for EURES Croatia, interview held in April 2023. Regional representative of the Croatian Trade Union of Construction Industry, interview held in April 2023. Staff member of the regional office of the Croatian Employers' Association in Osijek, interview held in April 2023.
The Netherlands	Member of the Institute for Employee Insurance of the Netherlands, interview held in March 2023. Trade union official – Federatie Nederlandse Vakbeweging [Federation of Dutch Trade Unions] (FNV) construction sector and Trade union official – Christelijk Nationaal Vakverbond [Christian National Trade Union Federation] (CNV), the Netherlands, interview held in April 2023. Policy advisor labour market and social affairs, Bouwend Nederland, interview held in April 2023. Staff member of the Uitvoeringsinstituut Werknemersverzekeringen [Institute for Employee Insurance] (UWV), the Netherlands, interview held in April 2023.
Poland	Director at the Polish Association of Construction Industry Employers, interview held in April 2023. Judge in Białystok District Court, expert in the posting of workers in Poland, interview held in April 2023. Director of the Department of Legality of Employment at the Chief Labour Inspectorate and chief specialist at the Department of Legality of Employment at the Chief Labour Inspectorate in Poland, interviews held in April 2023. Vice-director of the Department of Labour Market at the Ministry of Family and Social Policy in Poland, interview held in March 2023. Vice-president of the ZZ Budowlani trade union in Poland, interview held in March 2023.
Portugal	Labour Law advisor of Associação de Empresas de Construção e Obras Públicas e Serviços in Portugal, interview held in April 2023. Judge – Labour Court of Portimão in Portugal, interview held in April 2023. Services director of the Inspection Activity Support Services Department, Authority for Working Conditions in Portugal, interview held in April 2023. Director of the Employment Department of Portuguese Employment Services, Institute of Employment and Vocational Training, interview held in April 2023.

Member State	Interviewee, position, institution, date
Slovenia	Senior field advisor in the Employment of Foreigners Department at the Employment Service of the Republic of Slovenia, interview held in April 2023. Migration, labour relations and project work assistant, Association of Free Trade Unions of Slovenia, interview held in April 2023. Head of the Labour Migration Division, Ministry of Labour, Family, Social Affairs and Equal Opportunities in Slovenia, interview held in May 2023.
Slovakia	Central Office of Labour Social Affairs and Family / Department of Citizen and Employer Services, Department of Intermediary Services, Employment Services Section of Slovakia, interview held in April 2023.

Annex 3 – Single official national websites

Member State	Website
Austria	https://www.postingofworkers.at/cms/Z04/Z04_10/home
Belgium	https://employment.belgium.be/en/themes/international/posting
Czechia	https://www.suip.cz/web/suip/informace-o-vysilani-pracovniku
Germany	https://www.zoll.de/EN/Private-individuals/Work/Minimum-conditions-of-employment/minimum-conditions-of-employment_node.html
Spain	https://www.mites.gob.es/es/sec_trabajo/debes_saber/desplazamiento-trabajadores-eng/index.htm
Finland	https://www.tyosuojelu.fi/web/en/employment-relationship/posted-worker
France	https://travail-emploi.gouv.fr/droit-du-travail/detachement-des-salaries-posting-of-employees/posting-of-employees/
Croatia	https://mrosp.gov.hr/istaknute teme/information-for-service-providers-performing-temporary-services-in-croatia-posted-workers-and-service-users-5932/5932
Italy	https://distaccoue.lavoro.gov.it/en-gb/
Luxembourg	https://guichet.public.lu/en/entreprises/ressources-humaines/mobilite/detachement.html
The Netherlands	https://english.postedworkers.nl/
Poland	https://www.biznes.gov.pl/en/firma/doing-business-in-poland/posting-of-workers-to-poland
Portugal	https://portal.act.gov.pt/Pages/Home.aspx
Romania	https://www.e-guvernare.ro/en/informations/2-companies/19-employees/31-posting-of-workers/79-posting-of-workers-from-other-member-states
Sweden	https://www.av.se/en/work-environment-work-and-inspections/foreign-labour-in-sweden/Posting-foreign-labour-in-sweden/
Slovenia	https://www.napotenidelavci.si/en/
Slovakia	https://www.ip.gov.sk/posting-workers/?ip=

Source: European Commission website (Your Europe)

Annex 4 – Bilateral agreements between Poland and other Member States

- Agreement of 11 October 2007 between the State Labour Inspectorate of the Republic of Poland and the Social Rights Inspectorate of the Federal Public Employment, Labour and Social Dialogue Service; the Working Conditions Inspectorate of the Federal Public Employment, Labour and Social Dialogue Service with the Social Inspectorate of the Federal Public Social Security Service of the Kingdom of Belgium.
- Agreement on cooperation in the exchange of information between the state inspection of labour in Poland and the inspection of labour and social security in Spain. (The date of the signature of the agreement has not been identified.)
- Agreement on cooperation and exchange of information between the State Labour Inspectorate of the Republic of Poland and the Labour and Mining Inspectorate of the Grand Duchy of Luxembourg. (The date the signature of the agreement has been not identified.)
- Cooperation Agreement of 18 December 2013 between the state inspection of labour in the Republic of Poland and the inspection of social affairs and employment in the Kingdom of the Netherlands.



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Luxembourg: Publications Office of the European Union, 2023

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PDF: ISBN 978-92-9401-399-6 | doi:10.2883/9750 | HP-09-23-367-EN-N