

## Posted workers on the route to a European Labour Market. Case study: OSH-related vulnerabilities of posted workers in Spain

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### Abstract

*The article aims at analyzing the main problems of posted workers in the European Union, especially the elements linked to the relationship between national and European authorities, taking into consideration the European multilevel governance system. The research on which this article is based on is the result of a project that encompasses 9 national study cases, with the aim of understanding how the EU-regulation and national OSH systems affect the health and safety of (posted) workers in a transnational workplace. The data used are gathered through desk-research, as well as fieldwork. The study-case presented within the article is that of Spain. Muddling through the complicated and complex institutional framework, we identified that the main vulnerabilities of the posted workers are related to the a) inequality of payment for the same work; b) poor living conditions; c) cultural and language barriers; d) lack of health insurance and different regulations on work accidents; e) poor representativeness.*

**Keywords:** Posted workers, EU labour market, EU multilevel governance, integration.

### Introduction

Despite the marginal impact of posting on total EU employment rates, it could be considered as an interesting tool to stimulate intra-EU labour mobility, to stimulate intra-EU competition, to increase the income of posted workers<sup>1</sup>, to create social convergence and finally to support adjustment to ‘asymmetric shocks’ (Wispelaere and Pacolet, 2016, p. 24). Posting has implications for health and safety aspects at work, as it can further be seen. The workers are still subject to the regulations of the country of origin and see how some of their rights are violated, for example, in terms of wages, working conditions, union representation, etc.

Some specific limitations on the posting of workers have to do with the fact that the control systems are designed to be applied at the national level. However, when the work activity is taking place between several countries at the same time, the tasks relating verification, confirmation and

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<sup>1</sup> A posted worker is an employee who is sent by his employer to temporarily develop the job in another Member State.



sanctioning face much more difficulties. Despite the reforms of the displacement directive and the attempts to improve, for example, this application of transnational sanctions, they have not yet managed to be effective at the scale that this phenomenon would require.

The current internal (re)evaluation of the EU's integration process and the discussions on the Future of Europe, its internal market and its related policies should have a special focus on the posted workers' issues, given the increasing dimension of this type of economic activity and particularly, the goal of reaching an authentic European labour market. Thus, if the scenarios were to be *Doing Much More Together* (Member States decide to do much more together across all policy areas) or *Those Who Want More Do More* (the EU27 allows willing Member States to do more together in specific areas)<sup>2</sup>, the problem of posting of workers should represent one of the main issues for Europeanization, given its implications for deepening the EU policies' and the progress towards the EU labour market. A real free movement of workers and capital cannot be achieved as long as the regulations regarding working conditions, occupational safety and health or taxing are different in a European single labour market under construction. Moreover, even if the scenario were to be *Nothing but the Single Market* (the EU27 is gradually re-centred on the single market), these elements would be necessary for completing the single market, once it also comprises the labour market. The scenarios that may have negative effects on the progress of the common labour market, including its component regarding posted workers, would be *Doing Less More Efficiently* (the EU27 focuses on delivering more and faster in selected policy areas, while doing less elsewhere) and *Carrying On* (the EU27 focuses on delivering its positive reform agenda). Since it accessed the European Union in 1985 together with Portugal, Spain has been perceived as being a net receiver in terms of posted workers that chose the Spanish national territory as their destination of work. The situation changed with the financial crisis and soon Spain transformed from a net receiver into a net sender between 2010 and 2014 (EU Commission, 2017). According to the European Commission data and comparing the inflows and outflows from Spain over 2010 - 2015 period, we noticed some important differences. Firstly, Spain was no longer the third receiving country but the eighth with only 54,037 posted workers going to Spain in 2015. At the same time the number of Spanish posted workers that left Spain was more than double, i.e. 125 711 persons, making Spain the 5th sending country. As a result, if in 2010 Spain was a net receiver, having more posted workers within its national territory than Spanish workers posted abroad, in 2015 Spain became a net sender.

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<sup>2</sup> European Commission, White paper on the future of Europe: Five scenarios, 1 March 2017, [https://ec.europa.eu/commission/future-europe/white-paper-future-europe/white-paper-future-europe-five-scenarios\\_en](https://ec.europa.eu/commission/future-europe/white-paper-future-europe/white-paper-future-europe-five-scenarios_en)

When Spain entered the EU, there was a huge debate on the topic of Spanish workers that would use the freedom of movement to move for work in a higher-income member state with higher salaries. Thus, the public debates about the potential influx of Spanish workers fostered the legislation changes regarding foreign employers, whether posted or not. However, “it was only after the enlargement of the European Union in 1995 with Austria, Finland and Sweden – potential higher wage receiving countries - that the deadlock in the discussions between supporters and opponents was broken in favour of the former group of Member States” (EU Commission, 2007).

Later on, when other states became part of the European Union, like Romania and Bulgaria, Spain was among the countries that demanded the implementation of several restrictions regarding the domains and the number of possible posted workers from those countries (Wagner, 2015). Until 2010 the situation of posted workers from Spain as a receiving country was not very clear, due to the lack of available data. However, in relative terms it was observed that perhaps due to the restrictions that the country imposed to the new comers, the immigration process was mainly from outside of the EU. Even though there are no official statistics regarding the intra-EU posting, the available data show that most of the posted workers are highly qualified professionals. However, there is also information about workers involved in agriculture and constructions. “In this context, the situation of posted workers has not received very much attention until recently in the context of the decisions of the European Court of Justice on posted workers” (Caprile, 2010).

The current data<sup>3</sup> on posting show that there are 147,424 Spanish workers posted abroad, while 52,353 workers are posted in Spain. The received workers’ estimated share among the working population of the country of destination is 0.3%, most of them coming from Germany, France, Italy, Portugal, Poland and Belgium. The sent workers’ estimated share among the working population of the country of destination is 0.5%, most of them going to France, Germany, Portugal, United Kingdom, Italy and Belgium.

The research on which this article is based is result of a project that encompasses 9 national study cases, with the aim of understanding how the EU-regulation and national Occupational Safety and Health (OSH) systems affect the health and safety of (posted) workers in a transnational workplace. The data used are gathered through desk-research, as well as fieldwork. The desk-research sets the normative framework, mapping the relevant institutional stakeholders and the available statistical data, while the fieldwork offers a deeper understanding of the national OSH system and the problems that are faced by posted workers.

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<sup>3</sup> European Parliament, Posted workers: the facts on the reform, <http://www.europarl.europa.eu/news/en/headlines/society/20171012STO85930/posted-workers-the-facts-on-the-reform-infographic>

The empirical research of the Spanish study-case as receiver and sender is based on seven semi-structured interviews, out of which six were conducted with representatives of the institutions that are involved in formulating the policy, controlling the transposition of regulations and monitoring the implementation of measures that have an impact on the OSH of posted workers, while one interview is with a posted worker.

## **1. Occupational Safety and Health component of the European Labour Market**

### **1.1. OSH-related implications of posting for the European Labour Market**

European regulations should guarantee the application of minimum wages and a series of basic conditions, the control of working conditions, but sometimes this does not happen. Therefore, there are workers who had done the same job for much lower salaries than what they earn in the countries where they are posted. This exploitation and social dumping bring a prejudice to posted workers and ends up being a prejudice to the workers of the countries of arrival as well. In many cases, the salary earned by posted workers is usually higher than what they used to receive in their countries of origin, which may keep them interested in continuing their work out of the country. Nevertheless, it is often found that the companies that post them are also charging them some additional compulsory services, which reduce their earnings compared to local workers which do not undergo the same additional charges, as the interviews highlighted.

In many cases, the company that posts the workers are also providing them with accommodation that might be of very poor quality or inadequate conditions for living over long periods of time. For example, some facilities are old holiday campsites, located outside the city, which force workers to be isolated, without near shops, without access to amenities and that requires long hours of commuting before getting to work. In other cases, the accommodation is owned by the company itself or by collaborating companies, where the companies will charge quite high rents directly deduced from workers' salaries. This is not always the case, but it does appear with some regularity, as indicated in the interviews. Given the fact that Sargeant and Tucker (2009) highlight particular problems of social exclusion/social isolation as a third layer of vulnerability, these accommodation issues would fit in this category.

There are also many cases of letterbox companies. These are companies established in a sending country, but they don't run any type of activity, apart from posting the workers. They appear and disappear very quickly making it difficult to monitor their activity and prosecute them in cases of rule violation. Sometimes, posted workers discover when they return to their home countries that the

company had not paid social security or that it owed them a several months of salary payments. But as the company does not any longer exist, then the workers cannot claim their rights.

To sum up, the main issues faced by posed workers have to do with the violation of wages, equal pay, the right to the same salary for the same work performed and, sometimes, issues of limiting the rights and individual freedoms of these workers.

## **1.2. The OSH-related normative framework regarding the posted workers in the EU and Spain**

The European Union has a series of regulating documents regarding the issue of posted workers, particularly the Council Directive 96/71/EC on the posting of workers, the Directive (EU) 2018/957 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and the Directive 2014/67/EU on the enforcement of Directive 96/71/EC.

In terms of legislation, Spain has a minimum protection of posted workers. However, at the level of sources of minimum salaries, in the Spanish state there are binding collective agreements (European Foundation for the Improvement of Living and Working Conditions, 2010). The Directive 96/71/EC of the European Parliament and Council from 16 December 1996 concerning the posting of workers in the framework of services provision was transposed in the national legislation through the Law 45/1999, from 29 November. Additionally, the Law 31/1995, on Prevention of Occupational Risks is another regulating document regarding occupational safety and health of posted workers in Spain.

In Spain, there are three institutions that are involved in the management of posted workers: The Ministry of Employment and Social Security, the Labour Inspectorate and the National Institute of Safety and Hygiene. The Ministry is the entity responsible for implementing public policies in this regard. In the case of health and safety, almost all of them are transpositions of EU directives. While the Labour Inspectorate is responsible for controlling the compliance with the aforementioned regulations, the National Institute of Safety and Hygiene's role is studying the phenomena and disseminating information.

Apart from public institutions, there are also a number of social partners involved in the process. The most representative union organizations at the national level are Comisiones Obreras (Workers' Commissions) and Unión General de Trabajadores (General Union of Workers). At regional level it is noteworthy the activity of Confederación Intersindical Galega (Galician Unions Confederacy) and of Eusko Langileen Alkartasuna - Solidaridad de los Trabajadores Vascos (Basque Workers' Solidarity).

Trade unions play a horizontal role in pressuring European authorities to implement these types of directives among the Member States. In the case of Spain, unions have played a much more secondary role. The performance of trade unions in Europe has been limited by the decision of the European Court of Justice, which has in many cases limited the action of European trade unions, including their actions relating the posted workers (the *Vicking*, *Laval* cases). They have also limited the capacity of the unions to carry out actions of denunciation of prejudicial consequences of posting workers in their territory. Trade unions are very active in some sectors, such as metalworking, for example, but there are few transnational companies in the metal sector.

According to Art. 5 of Law 45/1999, the business owners that post workers to Spain under the transnational provision of services must notify the posting to the labour authority of the Autonomous Community where the services are to be provided, prior to commencement and irrespective of its duration. If services are to be provided in the Autonomous Cities of Ceuta and Melilla, the information on the posting must be addressed to the work and immigration departments of the respective Government Delegations. There shall be no need to notify the posting if its duration is not more than eight days.

Whether permanent or temporary, the type of employment does not have an impact on the access and type of training regarding occupational health and safety. There is an attempt to create a unified card so that the worker does not have to be re-trained several times. Nevertheless, this measure is criticized because there are different understandings to what does training mean. Sitting at a desk and explaining something to the worker can be considered a good or acceptable training for the employer, but it is not necessarily sufficient and adequate for the worker because it does not guarantee the quality of training.

The difference between various types of regulating documents is given by the profession it is made for, not by the type of contract (permanent or temporary). This is regulated in the sectorial collective agreements. There are some sectors which are very organized and others that are not (eg. commerce and the hotel trade), where there is almost no training. The prevention law is the basic regulation. But in the more hazardous sectors (such as construction, metalworking) certain specific training is required, more technical and involving a greater number of hours, as well as more formative content.

## **2. OSH-related vulnerabilities of posted workers**

Sargeant and Tucker (2009) define migrant workers as workers without a permanent status in the receiving countries, which is applicable to a variety of immigrants, such as recent, temporary,

seasonal and posted migrant workers. This means that a set of issues, unequal treatment and OSH-related dangers can arise from this temporary status.

The problems of posted workers can be explained only by understanding that each case and each sector has its own specific. However, there are some problems that transcend the field of activity and give us a good framework for understanding. It is often the case that the company takes advantage of those matters which are difficult to control by public authorities or which are poorly regulated. To this end, it is the workers who are in a tangled situation, because they do not know the legislation of the hosting countries well enough. Therefore they do not have the means to fight against the treatment they are being exposed to.

The companies that work with posted workers are usually trying to save costs. Thus, it is very likely that they face poor living conditions or that the employers discount the housing costs directly from their salaries. One of the interviewees presented the case of some workers from Portugal that had been complaining about their housing conditions, so they were eventually accommodated in a better place, but the employer lowered their salary, as a result.

The interview with a university professor highlighted that the working and living conditions of workers posted to the Netherlands in the logistics sector are a good example of dealing with problems such as accommodation. The company forced them to live in its own accommodations in order to continue giving them work. These accommodations were cut off from the city life. Thus, when the workers decided that they wanted to go to live in a rented apartment in the centre of the city, in order to be able to learn the language, to have more leisure options or other motivations, the company threatened them that they would be fired. In the end, with this kind of practice, the workers are almost captive.

Another problem has to do with the participation itself or the right for representation, to defend the interests of posted workers in hosting countries. We found that posted workers, in general, do not know about having union representation or representation in the decision-making structures of the company in which they work. What they have is just an informal interlocutor within the company in order to keep an open communication channel. Given that, in general, posted workers do not speak the language of the country where they are, they have limited possibilities for engaging in conversations with other workers, to know the hosting country legislation, or about the existing trade unions. In many cases, the company delegates do not have the right represent or to speak in the name of these workers. They are not authorized to become interlocutors for these workers. In practice, workers are subjected to a series of pressures and difficulties and do not have the required channels of representation that any worker is should be provided, at least within the European Union.

The European health insurance card only covers emergencies and very serious accidents. Workers have to pay beforehand to the health services of the host country and then they get the reimbursement, but it is not direct health care like in the country itself. There are many countries that have not regulated how work accidents must be reported. In Spain, the obligation of reporting a work accident was not regulated until the Royal Decree Law 9/2017. However, regulatory development is needed to verify whether this obligation is met or not.

Another problematic aspect is the language. Many posted workers do not speak the language of the hosting country; therefore, they do not know how to communicate or consult with colleagues about work or other aspects.

Other problems are generated by the fact that workers get to spend just brief periods of time in every workplace. And that also affects their OSH protection, because the organizational culture creates a routine that makes the worker do things easier, reducing risks and which cannot be achieved if workers do not stay long enough for the routine to be established.

Being subjected to some of these very questionable above-mentioned conditions can also imply the impossibility to connect with the authorities or the lack of power to make a real choice when it comes to doing or not doing something dangerous for them (not wearing equipment in a certain situation, for example). Developing a website for them has proved to be insufficient. Most often they cannot get in touch with authorities, nor with delegates or unions.

There can also be language and cultural barriers. There are prevention services that give language courses to workers, but that is when there is a very large presence of workers of that nationality. For example, there are manuals in Romanian to give information to Romanian workers. With the Portuguese there are no problems, as the workers and employers understand each other. The other majority of workers are Hispanic-Americans and there are obviously no language problems. It's up to workers to get over the cultural barriers they encounter, given that the firm has no legal obligation in this sense. Thus, this aspect further deepens the vulnerability of posted workers. Just as Sargeant and Tucker (2009) identified, education and language skills are a second layer of vulnerabilities.

### **3. OSH-related multilevel governance regarding posted workers**

#### **3.1. Roles of the actors of multilevel governance**

The Ministry of Employment and Social Security is the entity responsible for implementing public policies. In the case of health and safety, almost all are transpositions of EU directives. This



Ministry also coordinates with other ministries, according to sector. For example, it collaborates with the Ministry of Health for things of health surveillance and surveillance protocols.

The Labour Inspectorate is responsible for controlling the compliance with the national regulations (many of them being a result of transposing EU directives). There are departments that propose amendments to the laws, on the one side, and there are also the bodies in charge of enforcing them, on the other. There is a Labour Inspectorate office in every province. The organization of the provincial inspectorates depends on the size of the province (for example, we cannot compare Madrid with Huelva). In the larger Inspectorates there is a unit specialized in social security, a unit specialized in occupational safety and health and one that is focused on the law of work and wages. In small Inspectorates, all the inspectors do a bit of everything: there are a number of inspectors who have divided the area, so they have to handle everything that arises in that area, as well as the visits to the companies. Within the autonomous communities there are territorial delegations that coordinate the action at the level of a set of provinces. It is however notable that they are particularly small. There are also the central services that try to guide the activity of provinces: they plan actions in different areas, they solve normative doubts that may arise and they give assistance on international issues in order to facilitate the collaboration with other member states.

The National Institute of Safety and Hygiene is the body in charge of promoting safety and health in terms of carrying out studies and analyses. They also do informative campaigns, with the purpose of disclosure. Nevertheless, although they have an important role in disseminating information, they do not control compliance with the regulations, nor they go to companies for control.

The relationship between the two institutions is tight, given that the Labour Inspectorate is part of the Ministry of Employment and Social Security. Furthermore, the National Institute of Safety and Hygiene is in charge of undertaking the research needed by decision makers in order to have the best set of information when it comes to modifying or introducing new elements into the national legislation.

The task of the Labour Inspectorate within the Ministry of Employment and Social Security is to control the workers, as they have competences in all social areas respective to work (working conditions, safety and health and social security). Then, the work of the inspectorate is conducted through the complaint of the workers themselves and by actions planned by sectors of special risk or of special interest at a particular time. The inspectors pay regular visits in order to verify the identity of the registered workers and to see their working conditions. If deficiencies are detected, the company is sanctioned. Among the powers of the Inspectorate lies its right to control if workers have

a work permit, to detect whether a posted worker is treated as such, while everything is checked to see if the regulations are complied with.

The inspections involving posted workers are particularly complicated as it involves two countries, whereas if one of them does not collaborate, the inspectorate cannot act. When encountering posted workers from another country, the Inspectorate advances the request for collaboration to that country (to verify workers' level of training, or if he has health surveillance in his country of origin). If they get not answer, the mechanism cannot continue. Therefore, if this collaboration does not work, it is impossible to control them.

From the point of view of the Inspectorate, the procedure is to act by complaint, or by planned actions in certain sectors with risks (especially in the sector of security and social health, such as visiting companies, and find out exactly what they are doing, and the work conditions) and, when a deficiency is detected, action is taken.

There is, with the support of computer systems (since much more data is available) a tendency to plan the action according to the statistical data on work accidents emerged. But it is mostly done in social security, where there is more information. In safety and health, the only criteria are the number of work accidents and that of occupational diseases, but it is not a consolidated practice, because there are no consistent figures on these aspects.

To enhance coordination with other states, the Labour Inspectorate of the Ministry of Employment and Social Security of Spain tries to strengthen bilateral relations, especially with the states of main flow of workers. Therefore, there are bilateral agreements with France, Portugal, with Romania and Poland. Meetings are held at the level of the directors (of Inspectorate) and an attempt is made to strengthen the flow of information, based on reinforced cooperation.

The Labour Inspectorate works with the rest of the National Inspectorates through the Network of Senior Labour Inspectors (SLIC). Through the SLIC, IT tools have been created that allow the exchange of information between the Inspectors, such as the Internal Market Information System (IMI). Therefore, if the authority in another state is already checked in the System, a form can be easily filled in, using a series of questions about the regulations of posted workers that can be automatically translated into the other country's language. Within the system, the protection of workers and confidentiality are absolute. There has been an increase in the set of available questions, particularly with regard to safety and health.

Also, if there is a subcontracting relationship, the contractor must check if the subcontractor fulfils its obligations. If the subcontractor / below breaches any obligation, the (main) contractor has a joint liability. Therefore, if the subcontractor receives a fine and if he does not pay, the contractor

has to pay. The prime contractor has the obligation to oversee every aspect, to verify and monitor all the companies that work under them, and to make sure that all workers receive the training, etc.

Company-level committees and worker representatives are two recognized ways of representing workers in Spain. On the one hand there is the representation of the unions themselves, which may be present in the work place, and, on the other hand, there are the work councils which depend on the size of the company (although these are mandatory for larger companies).

In the companies with more than 50 employees, there are delegates of prevention and they are usually chosen between the representatives of the workers at the level of union representation. They are representatives that have competences only in safety and health prevention. Their role is to monitor compliance with all the OSH regulations within the company. When they observe something that is not in accordance with the regulations, they notify the employer or directly the Inspectorate. In the Spanish legislation (more precisely, in the Law 31/1995, on Prevention of Occupational Risks), both the union representatives and the prevention delegates are protected so that they cannot be dismissed.

When drafting a new law, the trade unions are also asked to state their opinion. In addition, when the unions detect something that does not work, they usually submit the complaint to the Inspectorate. They have a very direct contact with the workplace, so they can control everything that happens there and can be among the first to find out about the existing problems. The unions do a lot of work of health and safety disclosure and information provision to workers. It is important to know which are the most representative unions and who have the right to sign collective agreements of general scope. As already mentioned, at national level it would be Comisiones Obreras (Workers' Commissions) and Unión General de Trabajadores (General Union of Workers). At the regional level, it would be Confederación Intersindical Galega (Galician Unions Confederacy) and Eusko Langileen Alkartasuna - Solidaridad de los Trabajadores Vascos (Basque Workers' Solidarity).

The unions follow up and support the most disadvantaged actors. Nevertheless, it is always more difficult in a small company than in a large company, because union membership is always more important in large companies.

In some specific sectors, such as transport, there are also other instances involved that have to do with occupational safety and occupational risks (eg. the General Directorate of Traffic, which depends on the Ministry of the Interior and the Police itself). In Spain the regulation of road traffic depends on the Civil Guard. Being one of the security forces of the state, ordering, monitoring of compliance with the road traffic regulation and verifying the rest time, speed limits, load weight etc are among its powers.

### **3.2. Information dissemination**

Employers are responsible for informing their workers. Historically, starting with the Franco regime, the Spanish information services were customized on the specific of every type of work, but they disappeared over time. Nowadays, it is employers and unions that have the role to disseminate the information to workers. The Labour Inspectorate only advises employers and workers during visits, but it does not also have the role of informing workers. The occupational health and safety cabinets of the autonomous communities have an informative function and promotion of occupational risks.

The Labour Inspectorate's role increases through the transposition of the Framework Directive, given that according to this, the Inspectorate should inform workers of all the health and safety conditions of the specific work post and the general conditions of companies in which they are going to provide services before starting work.

### **3.3. Liability**

Companies are obliged by law to make some cards for each employee based on the level of risk they are exposed to, and they do a training in which they are told what risks are involved by their profession. To this end, there is a person in the company who is dedicated by law to these issues. He is assigned to go to each each worker, explaining and signing a record, which stands as proof that he/she has received training and is aware of the existing risks. This should be done periodically. There are two minimum requirements before a new employee joins the company: medical analysis (that is also a legal obligation) and safety training.

### **3.4. Training**

For those posted workers who come to Spain, the Inspection would control that the workers at that moment have the training, but this depends a lot on the sector, because the training has to be done before they start working. The training must be updated according to the sector, the work to be carried out, and the equipment that is being used. In case workers change the team or go to another work centre with different risks, they have to repeat the training. Afterwards, it is the inspector who determines if the worker has the proper training.

In the transport sector there are small brochures with information for workers in relation to the regulations. In many cases of traffic violations, the workers are not aware of their rights related to the matter.

Companies hire specialized companies for prevention services. They bring manuals, brochures and other materials to help them carry out the training of the workers and, in general, they are those that are in charge of delivering the training.

### **3.5. Artefacts**

There is no minimum equipment provided by legislation. What is provided above all is the protective equipment, which depends on the existing risks. Based on a risk assessment that aims to determine the workplace following the specific activities, a preventive action planning is generated, which is established for each activity. If the worker has to perform the activity with goggles, safety boots, helmet etc., all the protective equipment has to be provided by the company. In addition, companies have the obligation to properly mark when there is a step, risk of falling or electric risk.

### **3.6. Monitoring**

The monitoring procedure is sometimes complicated because the initial training was received in the country of origin. Then, according to some of the experts interviewed, you need to contact the National Inspectorate of the respective country to certify that the worker actually has the training. This is especially important to see if that training is legal, because sometimes the papers are falsified and as they are in another language, the Labour Inspectorate of Spain does not know what the reality is. Therefore, the documents are scanned and sent to the labour inspectorate of the country of origin to confirm the data.

### **3.7. Practices for accidents involving posted workers**

In Spain, the obligation of reporting a work accident was not regulated until the Royal Decree Law no. 9/2017. It is now specifically regulated that if an accident at work occurs, then it must be immediately be reported to the Labour Inspectorate. When posted workers are involved, the case also needs to be reported by the Labour Inspectorate to their counterpart from the country of origin. As it was reported by some of the experts interviewed, whereas there is no functional communication system, the authorities find out when the accident is deadly or serious when it comes out in the press.

When a worker suffers an accident or an injury because of the fault of the employer, he/she should charge a benefit of loss. In this case, the amount of money the worker receives is paid by the employer. Therefore, the Labour Inspectorate has to know what happened in the accident and needs the reports of the transnational parties involved. The report on the accident investigation is requested whenever there is an accident in another state in which a Spanish worker is involved.

Normally, the social security of the state in which the posted worker is providing services is applied, but there are some exceptions. One noteworthy example discussed with the experts interviewed is an accident that a representative of a public authority recalled, involving of a Spanish posted worker in the Netherlands. The Spanish company that was displacing the worker in the Netherlands had an injured worker. The problem appeared when the worker went to the hospital with the European health card and he was not taken care of, because it was not serious or urgent enough. They would have offered him medical services, but only if he paid them, even though he would have been reimbursed later on. He refused the treatment at that point because he did not have money to pay for the service in advance. In the end, he had to come to Spain for healthcare. The employment relationship between the company and the worker in question ceased, and he afterwards sued the company to recover his costs.

## **Conclusions**

The problems encountered by the posted workers involve a wide range of institutions, regulations and practices that should design a joint framework in order to solve them. In Spain, there are three institutions that are involved in the management of posted workers: The Ministry of Employment and Social Security, the Labour Inspectorate and the National Institute of Safety and Hygiene. The Ministry is the entity responsible for implementing public policies in this regard. In the case of health and safety, almost all of them are transpositions of EU directives. The Labour Inspectorate is responsible for controlling the compliance with the aforementioned regulations, while the National Institute of Safety and Hygiene has a role in studying the phenomena and disseminating information. The transportation sector is quite particular, as they are also regulated by other actors, such as the transport authorities themselves.

The problems faced by posted workers, as reported in most of the interviews and in the specific literature refer to: a) inequality of payment for the same work; b) poor living conditions; c) cultural and language barriers; d) lack of health insurance and different regulations on work accidents; e) poor representativeness.

There are two aspects that are noteworthy regarding the equality of payment. First and foremost, the workers should be guaranteed equal payment for the same work, provided in the same area. Even though there were recommendations in this regard, many times it does not happen. Therefore, there are workers who have done the same job with much lower salaries than those that exist in the countries where they are working. However, through the transposition of the new European Directive on Posting, this issue should be solved in two-years' time. Secondly, it is the problem of having important differences of payment for the same work, between countries/regions. This only deepens the gap towards a more cohesive Europe and encourages the mobility of workers, regardless of the living conditions they are offered in the hosting country.

In many cases, the company that posted workers generally provides them with accommodation that, in general, is of poor quality or conditions that are not adequate for long-time living. They face long hours of commuting and many times they live far from the city, thus leaving them with few options on how to spend their free time. The interviewees have also stated that there are cases when the payment for the accommodation and other living costs is directly taken from the payroll. Even worse, the accommodation is not only poor but also overpriced.

The case of Spain is quite particular in what regards the language barriers of the workers that come to work in Spain (whether posted or not). The majority of them come from Portugal or Latin-American countries, which gives them the advantage of communicating easily. However, the problem stays real, as there are also workers that are posted in Spain and do not speak the same language (as it is the case of Romanians), as well as that of Spanish workers posted to work in other European countries. The cultural barrier widens even more if the workers are accommodated far from the cities: they have few interactions with the locals, no social activities, thus leading to a feeling of inadequacy.

When it comes to health services, the European health insurance card only covers emergencies and very serious accidents. Workers have to pay beforehand to the health services of the host country and then they get the reimbursement, but it is not direct health care like in home countries.

There are many countries that have not regulated how work accidents must be reported. In Spain, the obligation of reporting a work accident was not regulated until the Royal Decree Law no. 9/2017. However, the investigation of a work accident of a posted worker requires the cooperation of the responsible institutions in both countries, which makes the process very time-consuming.

The employer is responsible for informing his workers. Historically there were information services in Spain for any type of worker, but they have gradually disappeared. Through the prevention law, which is a transposition of the Framework Directive, the Labour Inspectorate has the obligation to inform workers of all the health and safety conditions of the specific work post and general conditions of the companies in which they are going to provide services before starting work. The

unions do a lot of work of health and safety disclosure and information providing to workers. The unions follow up and support the actors that could be the most disadvantaged. However, in a small company, it is always more difficult than in a large company, because union membership is always more important in large companies. Trade unions play a horizontal role in pressuring European authorities to implement these types of directives among the Member States. In the case of Spain, Spanish unions have played a secondary role. There are also fields in which the unions have played a much more active role, such as metalworking and others.

It is worth noting that, because of the difficulties encountered in communicating with their counterparts from other countries, the Labour Inspectorate of the Ministry of Employment and Social Security of Spain tries to strengthen bilateral relations, especially with the states with which they have the most exchange of workers. There are bilateral agreements with France, Portugal, Romania and Poland. Meetings are held at the level of the directors (Inspectorate) and an attempt is made to strengthen the flow of information. Even though there is the IMI platform at the disposal of the authorities, strengthening the bilateral relations through individual partnerships seems to be more effective.

Recommendations for the workplace would imply organising awareness raising preventive campaigns. Even though the Labour Inspectorate's control visits are the best way to see how the staff is working, what protective equipment they wear and to talk to the workers, it is quite difficult, since it requires a lot of human resources.

As it is very difficult to verify if the posted workers received the initial training before their arrival in the new workplace, the quality of the safety training received when the employee joins the company is very important. The responsibility of the quality of the safety training is at the level of the Labour Inspectorate, whereas the responsibility for delivering the trainings periodically should be at the level of the employer.

In Spain there are many small and medium enterprises. The problem with the OSH representatives is that they are only compulsory in large companies. In small businesses this is a problem, that sometimes there are no OSH representatives and then the workers are not informed, they do not know who to turn to. Hence, in large companies, where there are large committees of prevention representatives, workers are more protected. Within the small companies, it is the Labour Inspectorate that has to fulfil another task, that of advising the workers. It is therefore very important that the Labour Inspectorate pays visits without having a complaint for the investigation, in order to try to reach these small companies, which may lack representativeness. It is a complicated situation, because in companies with 10 workers or less it is a burden to dedicate one employee to this representation activity only.



Therefore, the recommendations regarding the industry level involves supporting the sectorial trade unions so that they could fill in the gap of the representatives in the SMEs.

In terms of social security, the A1 documents can be ordered after posting and then, each control is complicated, because sometimes the workers do not have the A1 and after a month they come with the A1. In Spain, registration in social security must always be prior to the start of work. It is an obligation that devoids the purpose of meaning if it is not done prior. In terms of posted workers, a recommendation at national level would be that the A1 form should be filled in before leaving the country of origin.

Another recommendation would be to create an electronic register that would systematize all data regarding posting, which would be used for the purposes of improving the access to these communications and of cutting the time needed for carrying out of the procedures involved.

A recommendation at the European level regards the communication between the countries that need to share information about posted workers, given that the data should have a fast flow and it should be provided in all relevant languages. The infrastructure at the European level is already being created, but from a certain point on, cooperation is fragmented because of the interests of a certain country involved in the exchanges.

The current proposal of setting a European Labour Agency might be the solution for many of the issues at stake: facilitating and monitoring the dialogue between national counterparts in order to finish the investigations, harmonising practices and quality check of the National Labour Inspectorates. The European Labour Authority was announced in September 2017 by President Juncker in his 2017 State of the European Union address to ensure that EU rules on labour mobility are enforced in a fair, simple and effective way. Following consultations and an impact assessment, a legislative proposal was presented on March 13, 2018. The Authority should be up and running in 2019 and reach its full operational capacity by 2023. This proposal is also part of the roll-out of the European Pillar of Social Rights (European Commission, 2018).

After the transposition of the new EU posting Directive, and reaching the point of having equal pay for the same work provided in the same area, there should be made advancements regarding a minimum wage set at EU-level.

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