



# Posted workers and health and safety in Spain



## A review of the mechanisms for the enforcement of posted workers' health and safety conditions in Spain

With a special consideration regarding two sectors:

- Freight transport by road
  - Construction



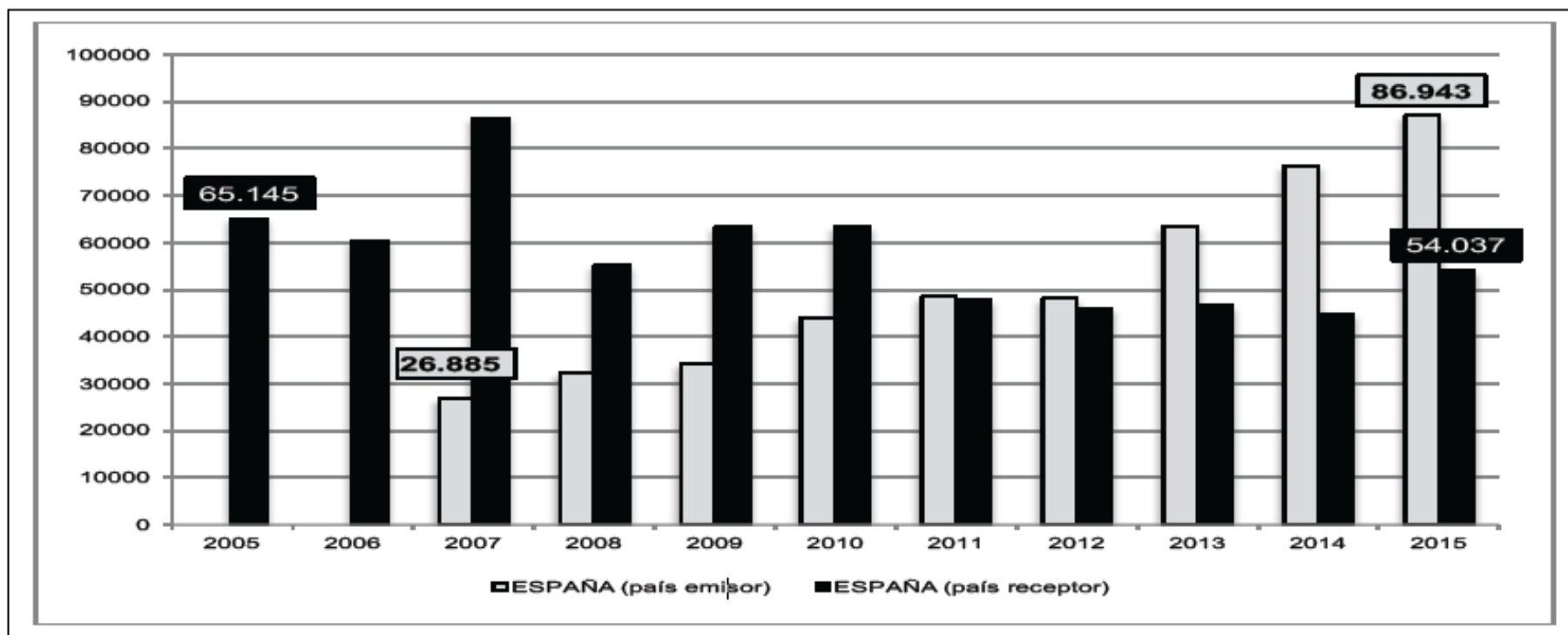
- Workers with high or medium-high qualifications, posted for employment in “qualified” positions.
- Workers with low or medium level of qualifications, posted for sectors with **high work intensity** (as construction or freight transportation by road).

This second type of workers, displaced to achieve a reduction in labor costs for enterprises, needs protection



## Riesco, García y Maira (2017, in print)

Gráfico 2: Evolución del número de solicitudes de desplazamiento (a un único país) en España (2005-2015). Datos unidades



Fuente: Elaboración propia a partir de datos sobre E-101 y A1 recogidos en: 2005-2009 (Ismeri Europa, 2012); 2010-2015 (Pacolet y De Wispelaere, 2014, 2015 y 2016).



Gráfico 10. Trabajadores desplazados (países receptores) en 2014 según sector de actividad y nivel salarial del país. Unidad: %

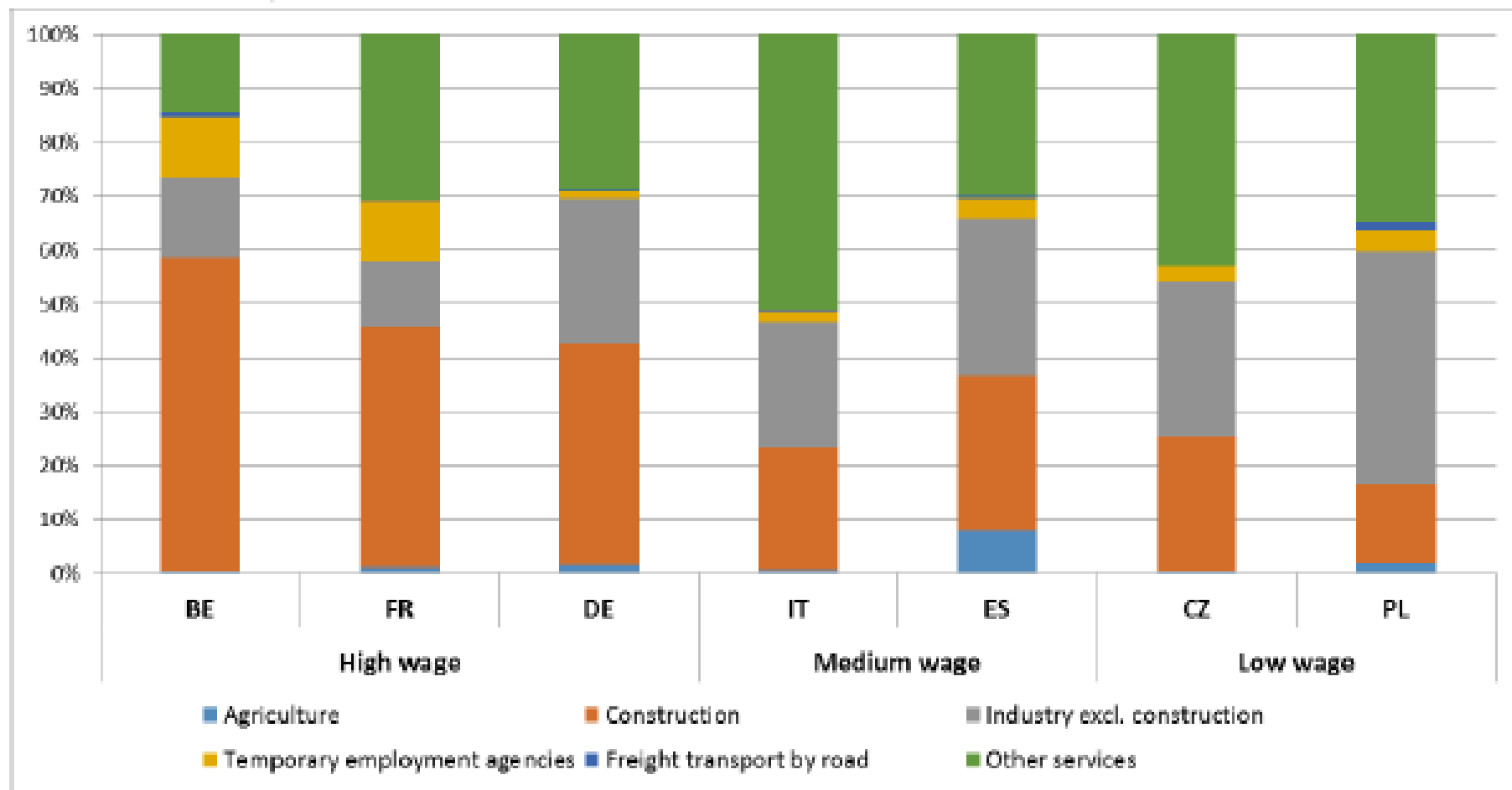
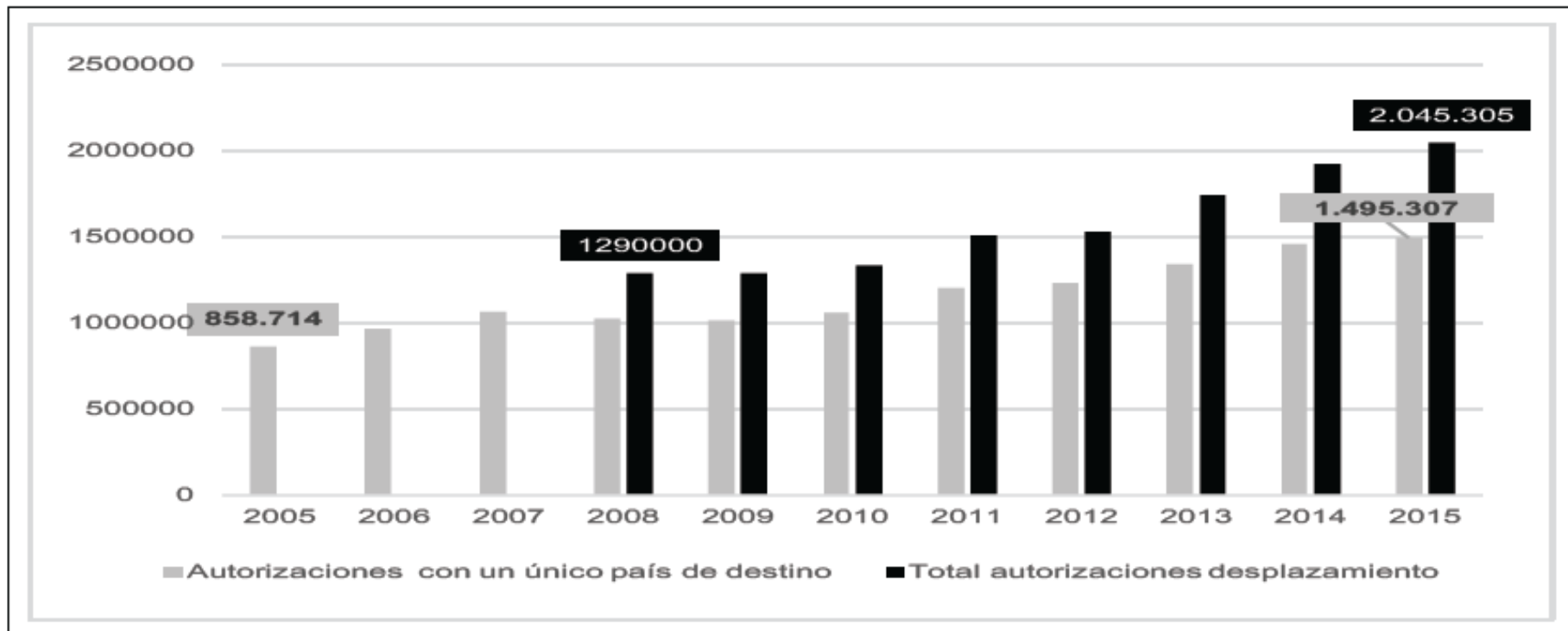




Gráfico 1: Evolución del número de solicitudes de desplazamiento (a un único país y total) en el seno de la UE-EFTA (2005-2015). Datos unidades



Fuente: Elaboración propia a partir de datos sobre E-101 y A1 recogidos en: (Ismeri Europa, 2012)= autorizaciones con un único país como destino 2005-2009; (Pacolet y De Wispelaere, 2014, 2015 y 2016)= autorizaciones con un único país como destino 2010-2015; (Pacolet y De Wispelaere, 2016; Comisión Europea, 2016b)= total de autorizaciones 2008-2015.



- Directive 96/717 + Directive 2014/67 → Law 45/1999, amended in 2017
  - Technical Guidelines for the Labour and Social Security Inspection (97/2016) on Posting of workers in the framework of the provision of services
- Ley 14/1994, de empresas de trabajo temporal
- Law on subcontracting of works and services (ET Art. 42, LPRL, etc.)
- Collective bargaining



Workers posted to Spain are to be provided with the **working conditions** set forth in:

- Spanish labour legislation,
- the related implementing regulations,
- collective bargaining agreements and arbitral decisions applicable to the location and sector or line of activity in question

no matter the legislation applicable to their employment contract

Art. 3.1.e: explicitly mentions OHS Prevention Law





Workers posted to Spain are to be provided with the **working conditions** set forth in:

- Spanish labour legislation,
- the related implementing regulations,
- collective bargaining agreements and arbitral decisions applicable to the location and sector or line of activity in question

no matter the legislation applicable to their employment contract

Art. 3.1.e: explicitly mentions OHS Prevention Law



## **Occupational health and safety provisions**

### **Complete coverage by Spanish law**

- Article 19 of the Workers' Statute
- Law 31/1995: Occupational Risks Prevention law



Business owners must notify the Labour Authority in writing, as determined by regulations, of any harm to the health of posted workers caused during or by the work performed in Spain.

- Is a minor infraction: Failure to report minor occupational accidents and minor work-related illnesses to the competent labour authority in a timely and correct manner, pursuant to prevailing provisions.
- Is a serious infraction: ...when such accidents and illnesses are serious, very serious or result in death.



- Ley 32/2006, de 18 de octubre, Reguladora de la subcontratación en el sector de la construcción y su desarrollo en Real Decreto 1109/2007
- VI CONVENIO GENERAL DEL SECTOR DE LA CONSTRUCCIÓN -26/9/2017





## Construction - Additional obligations of undertakings that post workers to Spain

- **Additional obligations of undertakings that post workers to Spain to carry out work under a system of subcontracting in the construction sector**
  - Shall provide documentation that proves compliance with the obligations on "Protective and preventive services" and "Training of workers" according to the Spanish transposition of [Directive 89/391/EEC](#).
  - In the event of postings for longer than eight days, to register with the [Register of Accredited Companies \(REA\)](#) of the labour authority in whose territory the services are to be provided in Spain (certification of capacity and quality in H&S)
- Unions are present in the main firms: according to law, the OSH committee represents all the workers in the contract chain



# Freight transport by road sector

Drivers suffer pressures to accept worse working conditions, as companies use:

- Letter box companies,
- a Spanish internal factor: uneven collective contracts conditions in different parts of Spain (52 provinces)

Result: extension of the working day, more tasks, more control, more exposition to dangerous conditions

= more fatigue, worse health, worse living conditions





# Problems for the enforcement of H&S working conditions of posted workers, in Spain

- 📖 High proportion of small and micro companies
- 📖 Labour inspection is **generalist**, with a weak supervision of H&S conditions
- 📖 In Spain, in some sectors, there is a great internal unevenness in collective agreements set at provincial-level (fringe transport by road).
- 📖 Unions do not have enough/adequate resources for monitoring all workplaces: there are not territorial unions' delegates.

How to ensure the same salary for the same work in the same place and full entitlement of posted workers to all pay and working conditions in collective agreements between employers and trade unions?

Is there a need for further specific actions to protect workers' H&S?





## European Labour authority - a new European inspection and enforcement body - Aims:

- To strengthen administrative cooperation and mutual trust for a fair mobility in the Single Market
- Pool existing tools for cross-border mobility
- Take action against infringements of labour and social legislation and organize joint border control activities
- Build on existing agencies and structures to better manage cross-border and joint activities, for instance in terms of skills forecasting, health and safety at work, the management of restructuring and tackling undeclared work.



- Under the Act of Posting Workers, the Occupational Health Care Act applies also to posted workers. Therefore a foreign employer is required to provide his employees with **statutory occupational health care** for the duration of those employees' work in Finland.
- *There must be an unambiguous agreement on the occupational health care agreed upon with the employer.*



- *“The revision of the Posted Workers Directive is important and will make a difference in the fight against social dumping, but it won’t eradicate the problem. Action would still be needed to stop letter box companies being set up to exploit workers, and to strengthen labour inspectorates so that they can properly enforce labour law and deal with issues such as bogus self-employment and the abuse of temporary agency workers.”*

Luca Visentini, General Secretary of the European Trade Union Confederation



Good working conditions make good health and safety conditions, health, safety and wellbeing

It's necessary,  
• It's possible



- *I find it shocking that some governments want their country to export their own citizens as cheap labour. This short-changing their own citizens has to be stopped. Lower-wage economies should support pay rises and closing the pay gap instead of embracing the exploitation of their own people.*

Luca Visentini, General Secretary of the European Trade Union Confederation



Thank you

[cnarocki@istas.ccoo.es](mailto:cnarocki@istas.ccoo.es)