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**POOSH - Occupational Safety and Health of Posted Workers: Depicting  
the existing and future challenges in assuring decent working conditions  
and wellbeing of workers in hazardous sectors (Project number  
VS/2016/0224; 2017 – 2018)**

**Work Package 4  
COMPARATIVE RESEARCH STUDY**

**POOSH COUNTRY Report in Belgium**

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## Executive Summary

- According to the LIMOSA registration system, the number of individuals posted to Belgium between 2009 and 2015 almost tripled (2009: 83,958; 2015: 210,815) (Idea & Ecorys, 2011; De Wispelaere & Pacolet, 2017a).
- In 2015, the 71.5% of incoming posted workers worked in the industrial sector (50.5% construction) and the 28% in the service sector (European Commission, 2016). Considering the data on individual posted workers, 130,597 workers were employed in the construction sector (61.9%) (De Wispelaere & Pacolet, 2017a).
- Belgian regulation on the posting of workers applied a broad protection level compared to what is provided by Directive 96/71/EC (Pallini & Pedersini, 2010) establishing the minimum remuneration set by collective national contracts. The Loi du 4 août 1996 relative au bien-être des travailleurs lors de l'exécution de leur travail (Act of 4 August 1996 on well-being of workers in the performance of their work), which regulates provisions on OSH, is applied to both workers hired by Belgian companies and posted workers.
- Posted workers employed in hazardous sectors in Belgium usually experience working conditions characterized by numerous irregularities with regard to remuneration, the payment of social security contributions and working conditions (including OSH conditions). The wage differential compared to the countries of origin is one of the reasons because many of posted workers agree to work for lower wages than prescribed by law and in exploitative conditions (social dumping).
- Regarding housing conditions, respondents reported cases of overcrowding and poor housing conditions due to the fact that employers try to lower costs further.
- In many cases the posted workers are not adequately informed about their OSH rights and in some cases, they are forced to work in dangerous situations, without having all the necessary collective and individual protection measures. In some cases, the sending and receiving companies do not respect the OSH legislation, thus lowering labour costs and obtaining additional profits.
- The enforcement of OSH regulations is based on a very complex system of prevention and protection, which can be considered among the most advanced at the European level. The prevention and protection system that companies must use is based on both internal services and external services.
- There are various forms of cooperation between the various actors both at the national level and the transnational level, mainly concerning: the establishment of policies adopted to protect workers' OSH (including posted workers); the information and training on the phenomenon of transnational posting; the collaboration between inspection bodies and social partners in the Member States; the inspection area.

- Belgian labour inspectorates mainly use the SLIC-KSS platform, developed by the Committee of Senior Labour Inspectors (SLIC), in order to exchange information with labour inspectorates of the sending countries with regard to the regulations in force in the various countries and to accidents at work.
- In Belgium it is possible to access information materials on working conditions and OSH issues in various languages, both directly on the workplace and through the trade unions.
- Trade unions intervene to contact and to protect posted workers using different tools and approaches: - by resorting to union officials that speak the languages of the countries of origin of the posted workers; - by cooperating with trade unions in the countries of origin of the posted workers.
- In the event of accidents at work, posted workers can access medical treatments in Belgium using the European Health Insurance Card and the A1 Portable Document or S1 form. In the case of irregular posting, injured workers can access medical treatments and they will be protected according to the provisions that apply in national contracts to workers employed directly by Belgian companies. In case of serious accidents, irregularly posted workers may claim compensation from the Agence fédérale des risques professionnels (FEDRIS - Federal Agency for Occupational Risks).
- The principle of joint liability of the subcontracting chain is applicable only for the remuneration. There are three different levels of joint liability that exclude each other: the general principle; the joint liability applicable to the construction sector (Enforcement directive); the joint liability applicable in case of workers from third countries without a regular permit of stay (Sanction Directive).
- The language and cultural barriers contribute to make workers more vulnerable, as posted workers have many difficulties to fully understand the set of instructions and procedures that must be respected in order to prevent OSH risks.
- In terms of grievance procedures, the research has shown that the lack of knowledge of French, Dutch and German or of a vehicular language makes particularly difficult the interaction with posted workers.

# 1. Introduction

## 1.1. A quick overview of OSH and posted work in the country

According to the statistical studies published by the European Commission on the Portable Documents A1, in 2015 Belgium ranked third for incoming postings (156,556 PDs A1), following Germany and France. Yet, if we consider statistics obtained from databases of the LIMOSA registration system, Belgium has registered 210,815 individual posted workers (European Commission, 2016a; De Wispelaere & Pacolet, 2017a, 2017b)<sup>1</sup>. The sending countries were mainly neighbouring States, such as the Netherlands, Germany, France and Luxembourg and a set of countries with the highest number of outgoing posted workers, such as Poland, Portugal, Romania and Slovakia.

Belgian regulation on the posting of workers applied a broad protection level compared to what is provided by Directive 96/71/EC (Pallini & Pedersini, 2010) establishing that the minimum remuneration is set by national collective agreements.

The Loi du 4 août 1996 relative au bien-être des travailleurs lors de l'exécution de leur travail (Act of 4 August 1996 on well-being of workers in the performance of their work), which regulates provisions on OSH, is applied to both workers hired with national contracts and posted workers. The bodies responsible for monitoring the implementation of the OSH legal framework are: the General Directorate for the Supervision of Social Legislation (Direction générale Contrôle des lois sociales), the General Directorate for the Supervision of Wellbeing at Work (Direction générale Contrôle du bien-être au travail) and the General Directorate for Individual Labour Relations (Direction générale des relations individuelles du travail).

Literature on the OSH conditions of posted workers in Belgium focuses mainly on the construction and road transport sectors and different industrial branches. These case reports highlight frequent irregularities in regard to remuneration, welfare and insurance contributions and working conditions, which are generally worse than average (Centre for Equal Opportunities and Opposition to Racism, 2013; Cremers, 2011; European Commission, 2016a; Fondazione Giacomo Brodolini, & COWI, 2016; Ouali, 2012; Perrillo, 2015).

The purpose of this research report is to deepen the study of this issue through a qualitative research aimed at detecting: the OSH and working conditions of posted workers employed in hazardous sectors; the preventive practices adopted in transnational workplaces; the legal and health care mechanisms

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<sup>1</sup> The database on PDs A1 provides information on the total number of forms from a sending perspective, while the LIMOSA registration system provides data on individuals from a receiving perspective. In fact, individuals who work at least one day in Belgium during the year without to be subject to the Belgian social security system must fill the LIMOSA declaration. The LIMOSA declaration must be presented by employers and self-employed persons before the work in Belgium begins ([https://www.international.socialsecurity.be/working\\_in\\_belgium/en/limosa.html](https://www.international.socialsecurity.be/working_in_belgium/en/limosa.html)). The LIMOSA database is considered more accurate than the database on the PDs A1 due to the mandatory nature of the LIMOSA declaration and due to "differences in the scope of posting between Directive 96/71/EC and Regulation (EC) No 883/2004, [which causes that] the number of issued PDs A1 may not fully reflect the characteristics and the scale of posting under the Posting of Workers Directive in the EU" (De Wispelaere & Pacolet, 2018, p. 9).

and practices adopted in case of accidents at work involving posted workers; the practices adopted to cope with language and cultural barriers. The research also aimed at providing policy recommendations in order to reduce OSH-related vulnerabilities both at the systemic and workplace level. The qualitative research is based on the thematic analysis of nine interviews carried out with experts, labour inspectors, representatives of trade unions and employers' organisations, representatives of the Ministry of Labour and Social Affairs, posted workers.

## 1.2. Main Findings

The fieldwork research highlighted that posted workers in Belgium face numerous issues related to their working and living conditions, particularly when employed in hazardous sectors – such as the building industry, the road transport sector, the cleaning services, or the meat industry. Moreover, in many cases they are not informed about their rights and are forced to work in dangerous situations, without having all the necessary collective and individual protection measures.

Obligations related to the application of OSH regulation are mainly a responsibility of employers. The enforcement of OSH regulations is based on a very complex system of prevention and protection, which includes internal services (Internal Service for Prevention and Protection at Work) and - in case these are not sufficient - external services (External Service for Prevention and Protection at Work).

Monitoring of the application of the OSH regulation involves many actors operating at various levels and cooperating with each other both at national and transnational level. The labour inspectorates can monitor companies that employ posted workers through the LIMOSA and DIMONA databases. There are specific taskforces in charge of monitoring the employment of posted workers.

Through the fieldwork research we found that posted workers employed in hazardous sectors are particularly vulnerable in terms of OSH as there are many problems related to their information and training on OSH, although the sending companies have the obligation to inform and train them before the posting and in the receiving countries it is possible to access information materials in various languages.

In case of OSH issues, posted workers can contact the local labour inspectorates. Alternatively, they can contact trade unions, which often resort to union officials who speak the languages of the countries of origin of posted workers. In case of accidents at work, posted workers can access medical treatments in Belgium using the European Health Insurance Card and the A1 Portable Document or S1 form<sup>2</sup>. In case of irregular posting, injured workers can access medical treatments and if it is proven by labour inspectors that in reality the posted worker was working for a Belgian employer, the posted worker is considered to be a Belgian worker and should be covered by the insurance of the Belgian entrepreneur. The three types of joint liability principles applicable in Belgium, however, apply only in

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<sup>2</sup> The S1 form is a certificate of entitlement to healthcare issued to persons who don't live in the country where they are insured, such as posted workers, cross-border workers, pensioners and civil servants and their dependants ([https://europa.eu/youreurope/citizens/work/social-security-forms/index\\_en.htm](https://europa.eu/youreurope/citizens/work/social-security-forms/index_en.htm)).

cases of missing remuneration and are based on the Act of 12 April 1965 on the protection of workers' wages and salaries (Loi du 12 avril 1965 concernant la protection de rémunération des travailleurs).

The main findings of the fieldwork suggest the need for changes in the policies aimed at protecting posted workers' rights concerning both working conditions and OSH. The specific vulnerabilities of posted workers must be addressed: - by introducing specific rules regarding the OSH protection of posted workers, including joint liability with regard to the OSH of posted workers; - by strengthening the role of the structures that represent the workers; - by introducing the same working conditions and OSH protection measures in all EU countries; - by introducing a specific legislation that makes the payment of social contributions and taxes mandatory in the countries where posted workers are working.

### **1.3. Structure of the country report**

The first part of the country report focuses on the main characteristics of the Belgian context and the socioeconomic transformations affecting the Belgian labour market since the global economic crisis started in 2008. Moreover, the report presents the main data regarding posted workers from and to Belgium, the legal framework on the posting of workers (including OSH regulations) and the roles of the main actors involved in monitoring the implementation of the legal framework. The second part of the country report presents the main findings of the fieldwork of the POOSH project, focusing on: - the OSH-related vulnerabilities of posted workers employed in hazardous sectors; - the OSH institutional framework, including the roles of different actors, the mechanisms and procedures adopted at different levels and the national and transnational actors interaction and cooperation; - the OSH practices adopted in transnational workplaces; - the issue of language and cultural barriers in transnational workplaces. The third part presents the recommendations based on the policy implications of the findings of the fieldwork research.

## **2. Country Context**

### **2.1. Socio-economic overview**

The Belgian economy has been marginally affected by the global economic crisis compared to other EU Member States. The GDP growth has reached the pre-crisis levels since 2010 and, apart from the 2012-2013 stagnation period, it has maintained a steady growth rate (European Commission, 2018). Unlike the Eurozone, industrial production is higher than its pre-crisis level and has grown by 6.1% compared to 2008 (BLCC, 2017). Even the construction sector, which is the sector employing the largest number of posted workers, has withstood better the impact of the crisis than the Eurozone: "Production in the construction sector in Belgium remained relatively stable between 2008 and 2015 compared to the Eurozone (-5.7% against -23.6%). Indeed, the lack of a Belgian real estate market bubble helped to cushion the effects of the crisis unlike the situation in some European countries affected by business bankruptcies and the burst of the housing bubble" (BLCC, 2017, p. 7).

These positive trends are also reflected on the labour market. The employment rate (2008: 68%, 2015: 67.2%, (BLCC, 2017) and the unemployment rate (2008: 7.0%, 2017: 7.2%, European Commission,

2018) remained almost unchanged, although there were strong regional differences and greater difficulties in entering the labour market between older and low skilled workers and people with a migrant background (European Commission, 2018; Eurofound, 2018; SPF, 2018). In particular with regard to immigrant workers, in 2016 the employment rate of Belgian citizens was 69%, that of immigrant citizens from EU countries 67.8% and that of immigrant citizens from non-EU countries 41.8%. With regard to citizens who have immigrated to Belgium in less than five years, only 32.2% of immigrants from non-EU countries worked, compared with 69.3% of immigrants from EU countries (SPF, 2018).

One area where the crisis was felt is in the working conditions. Since the beginning of the crisis there has been an increase in the level of precariousness through the increase of fixed-term contracts and involuntary part-time, and consequently a growth of workers with lower average wage levels (Vandenbrande et al. al., 2013). In particular, between 2008 and 2015 the percentage of full-time jobs fell from 55% to 49%, part-time jobs rose from 28 to 30%, and fixed-term contracts rose from 16 to 20% (Goesaert and Struyven, 2017, p. 5).

## **2.2. OSH and posting in the country**

### ***2.2.1 OSH legal framework***

The Belgian legislation has applied a broad protection level based on the provisions of the Directive 96/71/EC, including the national legislation and collective agreements, which are universally binding by law. As for temporary workers, complete legislation is applied (Pallini & Pedersini, 2010). The Loi belge du 5 mars 2002 (Belgian Act of 5 March 2002), indeed states that “an employer who employs a posted worker in Belgium is obliged to respect, for what concerns the work performed therein, the conditions of work, remuneration and employment provided for by law, regulation or convention, which are punishable by law” (Art. 5, §1).

Issues on the safety and health protection of workers, psycho-social aspects, ergonomics, and hygiene of work are regulated by Loi du 4 août 1996 relative au bien-être des travailleurs lors de l'exécution de leur travail (Act of 4 August 1996 on well-being of workers in the performance of their work).

### ***2.2.2 OSH and Posting Stakeholders***

The bodies responsible for monitoring the implementation of the legal framework are:

- the employers;
- the Internal Service for Prevention and Protection at Work (or, in alternative, the External Service for Prevention and Protection at Work);
- the trade unions;
- the prevention institutes;
- the inspection agencies supervised by the Federal Public Service Employment, Labour and Social Dialogue (Service Public Fédéral Emploi, travail et concertation sociale). They include: the General

Directorate for the Supervision of Social Legislation (Direction générale Contrôle des lois sociales); the General Directorate for the Supervision of Wellbeing at Work (Direction générale Contrôle du bien-être au travail); the General Directorate for Individual Labour Relations (Direction générale des relations individuelles du travail);

- the federal Ministry of Employment, Labour and Social Dialogue.

### **2.2.3 Data on posting**

According to statistical studies published by the European Commission, in 2015 Belgium ranked third for incoming postings (156,556 PDs A1), following Germany (418,908 PDs A1) and France (177,674 PDs A1). Yet, if we consider statistics obtained from databases of the LIMOSA registration system, Belgium has registered 210,815 individual posted workers (European Commission, 2016b; De Wispelaere & Pacolet, 2017a, 2017b)<sup>3</sup>. Between 2009 and 2015, POW saw a marked constant increase, which has almost tripled the total number of individual posted workers (2009: 83,958) (Idea & Ecorys, 2011).

In 2015 Belgium has received posted workers mainly from neighbouring countries, such as the Netherlands (55,793), Germany (19,199), France (16,321) and Luxembourg (8,338). Moreover, it was the secondary destination for a set of countries with the highest number of outgoing posted workers, such as Poland (28,689), Portugal (15,938), Romania (12,207) and Slovakia (14,484).

Belgium is included among countries issuing between 50,000 and 100,000 PDs A1 yearly. The receiving countries are mainly the neighbouring countries, such as France (23,292), the Netherlands (15,852), Germany (6,338) and Luxembourg (7,164) (European Commission, 2016b).

### **2.2.4 Sector(s) characteristics**

In 2015, 71.5% of incoming posted workers worked in the industrial sector (50.5% construction) and 28% in the service sector (13.4% Financial and insurance, Real estate, Professional, scientific and technical activities, Administrative and support service activities; 8.8% Education, health and social work, arts and other services) (European Commission, 2016b). When considering data on individual posted workers, 130,597 workers were employed in the construction sector (61.9%) (De Wispelaere & Pacolet, 2017a).

As for the insertion sectors, in 2015, 38.8% of outgoing posted workers worked in the industrial sector (21.3% construction) and 60.6% in the service sector (35.5% Financial and insurance, Real estate, Professional, scientific and technical activities, Administrative and support service activities; 18.2% Education, health and social work, arts and other services) (European Commission, 2016b).

### **2.2.5 Specific issues for migrant and posted workers**

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<sup>3</sup> See footnote 1.



Literature on the OSH conditions of posted workers in Belgium focuses mainly on the construction and road transport sectors and different industrial branches highlighting frequent irregularities regarding remuneration, welfare and insurance contributions and working conditions, which are generally worse than average (Centre for Equal Opportunities and Opposition to Racism, 2013; Cremers, 2011; European Commission, 2016a; Fondazione Giacomo Brodolini, & COWI, 2016; Ouali, 2012).

Previous studies indicate substantial wage differences between local workers and posted workers. Data from the European Commission indicate “the wage gap (in compliance with the Directive) is estimated about 25% - 35% in the construction sector, and up to 50% in the road transport sector” (European Commission, 2016a, p. 13). In the road transport sector, Hungarian and Romanian workers may earn 1,100/1,500 euro a month, i.e. around half of what Belgian truck-drivers are paid (2,800 euro a month) (Ouali, 2012). Another study on ground handling services in Liege and Brussels airports found out that Romanian workers received wages and working conditions of their home country (Perrillo, 2015). Posted workers can be employed beyond the maximum number of hours allowed by law, particularly in the road transport sector (Ouali, 2012) and in cleaning services (Centre for Equal Opportunities and Opposition to Racism, 2013). Moreover, they are employed in very dangerous activities, such as the use of chemical substances without adequate protection (Ouali, 2012).

Numerous studies report that posted workers live under poor housing conditions due to the overcrowding of dwellings (10-15 people in an apartment) or to the type of dwelling concerned (containers in construction sites) (Ouali, 2012). An example of extremely precarious and dangerous housing conditions is the case of two Polish truck-drivers who died on April 1st 2012 in the fire of the hangar where they slept and lived during their time off work. Lastly, wages may be further reduced due to “unreasonably high expenses to housing and transportation as a part of the allowances specific to the posting” (Fondazione Giacomo Brodolini, & COWI, 2016, p. 114).

### **3. Methodology**

#### **3.1. Data collection**

The report is mainly based on the results of fieldwork research, as the literature related to the posting of workers in Belgium mostly analyses the issues of social dumping, unfair competition, social fraud, and the consequences of POW on the national labour market, whereas the literature on working conditions does not consider the specific issue of the OSH of posted workers. The data collected through the fieldwork research focus on workers posted to Belgium, as the respondents have had specific expertise about the national context, while they did not have relevant information on the conditions of workers posted abroad by Belgian companies.

The fieldwork was based on both face-to-face interviews and telephone interviews and was carried out between October 2017 and February 2018. The focus of the research is mainly the construction industry, as it is the main sector of employment of posted workers in Belgium, and the transport sector.

The OSH conditions of workers posted abroad by Belgian companies have not been analysed as the data collected through the fieldwork research focus on workers posted to Belgium.

As for the geographical coverage, the interviews were carried out with respondents both at national and regional level. Respondents include: four representatives of different DGs of the Federal Public Service Employment, Labour and Social Dialogue, in charge of inspections on different domains related to the working conditions of posted workers; an expert on the topic of posting of workers; a trade unionist; a representative of a joint body, expert on wellbeing at work<sup>4</sup>. Moreover, the fieldwork includes short interviews with five posted workers, a cross-border worker, and an immigrant worker. These interviews were conducted during two inspections at the borders of Belgium organised by the Direction générale Contrôle des lois sociales of the Service public fédéral Emploi, Travail et Concertation sociale. The report also included the field notes related to the discussions with the labour inspectors who were carrying out the controls.

BE_EXP01	Lawyer and professor of Labour Law
BE_EXP02	C.G. FGTB (TU, Construction sector, Charleroi /Sud-Hainaut Region)
BE_EXP03	Representative of DG Relations individuelles du travail - Service public fédéral Emploi, Travail et Concertation sociale (General Directorate for Individual Labour Relations - Federal Public Service Employment, Labour and Social Dialogue)
BE_EXP04	Representative of Constructiv Belgium
BE_EXP05	Representative of Direction générale Humanisation du travail - Service public fédéral Emploi, Travail et Concertation sociale (Directorate-General for Humanisation of Labour - Federal Public Service Employment, Labour and Social Dialogue)
BE_EXP06	Representative of Division de la gestion des connaissances en matière de bien-être au travail - Federal Public Service Employment, Labour and Social Dialogue (General Directorate for the Supervision of Wellbeing at Work - Federal Public Service Employment, Labour and Social Dialogue)
BE_EXP07	Representative of Direction générale Contrôle des lois sociales - Federal Public Service Employment, Labour and Social Dialogue (General Directorate for the Supervision of Social Legislation - Federal Public Service Employment, Labour and Social Dialogue)
BE_EXP08	Labour inspector
BE_EXP09	Labour inspector
BE_PW01	Posted worker – Transport sector
BE_PW02	Posted worker – Transport sector
BE_PW03	Posted worker – Transport sector
BE_PW04	Posted worker – Construction sector
BE_PW05	Posted worker – Transport sector
BE_CBW01	Cross-border worker – Transport sector
BE_IMM01	Immigrant worker – Transport sector

### 3.2. Analysis

Data collected through field research were analysed using the thematic analysis method and taking into account the main results of the literature review. The analysis is based on the multilayered approach adopted by Sargeant and Tucker (2009) in their analysis of the risks that increase the OSH vulnerabilities of migrant workers and influence their access to regulatory protection<sup>5</sup>. The thematic analysis of the interviews, combined with the multi-layered approach of Sargeant and Tucker, made it

<sup>4</sup> The expertise on wellbeing at work includes both OSH conditions and psychosocial well-being.

<sup>5</sup> The multilayered approach of Sargeant and Tucker include the analysis of the migration factors, the characteristics of migrant workers and the receiving country conditions.

possible to identify the main issues related to the working and OSH conditions of posted workers in Belgium and the preventive and protective measures put in place to guarantee their safety and health at work.

### **3.3. Challenges and limitations**

One of the main challenges during the fieldwork concerned the possibility of interviewing posted workers, both because in many cases they prefer not being interviewed for fear of retaliation by their employers, and because in many cases the respondents who were able to meet posted workers no longer maintained contacts with them. This problem was overcome thanks to the support of the Service public fédéral Emploi, Travail et Concertation sociale (Federal Public Service Employment, Labour and Social Dialogue), which allowed us to participate in two border inspections. During these inspections, several interviews were collected, but some of the interviewees were quite reticent because of the context in which the interviews were conducted (inspections, presence of border police, etc).

## **4. Results**

### **4.1. OSH-related vulnerabilities of migrant and posted workers**

Posted workers in Belgium face numerous issues related to their working and living conditions, particularly when employed in hazardous sectors – such as the construction industry, the road transport sector, the cleaning services, the meat industry.

One of the main problems related to the posting of workers in Belgium concerns the salary. A trade union representative interviewed reported that about half of posted workers employed in construction sector does not get paid the Belgium minimum salary. The representative of the Directorate-General for Individual Labour Relations highlighted that in some cases employers pay the wages of the countries of origin, knowing that wages in Belgium are much higher than the average of most European countries. The wage differential compared to the countries of origin is one of the reasons because many posted workers agree to work for lower wages, even when they are informed of the minimum standard to be applied. As reported by a representative of the General Directorate for the Supervision of Social Legislation:

the problem is that the salary difference is too big. If you look at the minimum salary in Bulgaria or in Romania, it is less than 2€ per hour, if you work in Belgium in a construction site that's at least 15€. [...] I always give the example of Spain and Portugal. Minimum salary in Portugal is 650€ brut per month and how long are they already in the EU? [...] But when are the Portuguese going to have our minimum salary? Never, we will never see that. It's even worse because of the crisis. They have lowered the minimum salary in Greece, they lowered the

minimum salary in Spain also. And someone from Serbia or from Montenegro earns even less than someone from Bulgaria and now they are being posted.

Respondents reported irregularities concerning the payment of taxes and social security contributions in the countries of origin. Furthermore, regarding the spread between the sending and receiving countries contribution levels, representatives of the Federal Public Service for Employment, Labour and Social Dialogue pointed out that the posting of workers allows the exercise of social dumping.

Several respondents also highlighted numerous irregularities on working hours and breaks. The posted workers employed in hazardous sectors frequently work beyond the limits allowed by Belgian legislation. For example, the representative of Constructiv Belgium reported that in the construction sector the posted workers employed in about half of the building sites work for 11 or 12 hours a day, including Saturday and Sunday, and pointed out that the exceeding of the limits allowed by the law is imposed by both the contractor and the supervisor of the building site. In the road transport sector, labour inspectors detected cases in which the sending companies have tampered with the tachograph to exceed the limit of permitted hours of work and not to comply with the mandatory rest, in order to be able to carry out the transport service faster. Moreover, several respondents reported that very often employers do not pay the rates provided for in case of overtime.

All respondents reported cases of overcrowding and poor housing conditions, as employers try to lower labour costs also by cutting the costs of housing posted workers. A trade unionist mentioned cases of workers employed in the construction sector who live for several months in containers inside the building site. In the road transport sector, most of the workers interviewed reported that they sleep regularly in their trucks not only during rest breaks, but also on weekends, when the truck circulation is banned, due to the fact that they are too far away from their house and staying in hotels is too expensive. A Romanian truck driver employed by a Slovenian sending company reported that he spends the weekly rest periods in a garage, which he shares with other truck drivers who are constantly changing. In addition, a lawyer and a couple of representatives of the Federal Public Service Employment, Labour and Social Dialogue interviewed for this study said that in some cases the housing costs are illegally deducted from the salary of posted workers, so as to further lower labour costs.

With regard to health and safety at work, all respondents have found numerous cases in which the posted workers are not informed about their rights and are forced to work in dangerous situations, without having all the necessary collective and individual protection measures. A representative of the General Directorate for the Supervision of Wellbeing at Work highlighted that

posted workers are often employed to carry out activities in conditions of poor security, which the Belgian workers would never accept. Posted workers agree to do so because they earn more than in their countries of origin.

The OSH conditions of posted workers can also be deeply influenced by working and housing conditions. A representative of the General Directorate for the Supervision of Social Legislation reported the case of a Polish posted worker employed in the construction sector, who

worked every day for two months: he worked 7 days a week, 12 hours a day and then, after two months, he had a work accident, because of working 7 days 12 hours... That's 90 hours a week and after 2 months he had a work accident. So, the prosecution officer asked us to

investigate about the working conditions of that man, and he worked effectively for two months consecutive and that's why he was very tired he had a working accident. And he brought his case to the criminal court.

Several respondents mentioned also cases denounced by construction workers employed in transnational workplaces in which injured posted workers were sent immediately to their country of origin to avoid controls and sanctions. A representative of General Directorate for the Supervision of Social Legislation reported the case of a worker irregularly posted in Belgium:

He had a very bad work accident while he was working in a construction site. The boss put him in his car, drove 10 km away and threw him out of the car. He was found by a few Belgians when he was laying there, and they called the ambulance, he was brought in hospital, afterward he could tell us what happened.

According to a trade unionist, posted workers' vulnerability in terms of OSH is strictly related to the issue of social dumping:

The first cause of vulnerability is due to the fact that they depend on the social security and taxation of the countries of origin. So, this concept that Europe has established in a legal way, namely the possibility of exercising social dumping, the competition between workers, is already a first factor. Since [posted workers] are cheaper, it is certain that they will be used. And when they are used because they are cheaper, [their employers] take delinquent shortcuts, which allow them to do everything, no matter what and with whom.

The importance of the phenomenon of social dumping in relation to the spread of exploitation conditions is also indirectly confirmed by a representative of the Directorate-General for Individual Labour Relations, which highlighted how conditions of extreme exploitation are made possible by the economic dependence of the posted workers with respect to their employers:

they are workers who need to work, they need to make money, so they are in a position of submission to their employers. Economic dependence is the factor that increases the risks, especially if the employer is a non-responsible person, who does not respect its employees and does not respect the basic rules of protection of its employees. There are situations in which workers suffer physical threats, their employers are real criminals, they have mafia behaviours.

Posted workers' vulnerability in terms of OSH tends to vary depending on the sector of employment. All respondents pointed out that in the sectors based on manual labour the OSH vulnerability higher than the average, because it is precisely in these sectors that the existing regulation on working and OSH conditions is more frequently not respected. Furthermore, the representative of the General Directorate for the Supervision of Wellbeing at Work highlighted that

although the application of OSH regulation mainly depends upon the mentality of employers rather than the sector itself, the sectors where problems are bigger than in other sectors are especially those where the difference between the cost of doing the job in a proper way and with a proper protection is much more expensive than doing a job in an improper way and a cheaper way. So, when the difference between the price when you do it in a proper way and the price when you do it wrongly is huge, we see of course the main problems.

The representative of the General Directorate for the Supervision of Wellbeing at Work highlighted also the influence of the temporary nature of posted workers' employment on their vulnerability:

there can be an indirect correlation with temporary contracts where work is just temporary. Maybe the training will not be sufficient. Efforts are being done by many institutions in Belgium for providing facilities for training those people and informing them, but it's never enough. And it's also very often, not far too often, the intention of the one hiring those persons or those companies just to provide its training or to guarantee that people have got this training, as they want the job to be done as soon as possible and as cheap as possible.

The posted workers' vulnerability in terms of OSH is affected also by the continuous mobility between different jobs and workplaces that present different OSH risks and different preventive procedures. Moreover, according to a representative of Constructiv Belgium, another factor that influences the posted workers' vulnerability in terms of OSH is the lack of knowledge of the language of receiving countries, which means that the instructions for carrying out a task are not fully understood and therefore high-risk situations are created.

## 4.2. OSH Institutional Framework

### 4.2.1. Actors' roles

According to the "Act of 4 August 1996 on well-being of workers in the performance of their work" (Loi du 4 août 1996 relative au bien-être des travailleurs lors de l'exécution de leur travail), obligations related to the application of OSH regulation are mainly a responsibility of *employers*. They shall identify and assess the risks in the company and subsequently implement all measures aimed at eliminating or reducing existing risks and preventing any risks in the field of safety and health protection of workers, psycho-social aspects, ergonomics, and hygiene at work. They are also responsible for the embellishment of the workplace and measures of the undertaking regarding the environment. In addition, employers must comply with the rules contained in the "Act of 4 August 1996 on well-being of workers in the performance of their work" regarding risks related to specific activities and specific processes.

The enforcement of OSH regulations is based on a very complex system of prevention and protection: it considers OSH in its widest sense and, as highlighted by the representatives of the Federal Public Service Employment, Labour and Social Dialogue, it can be considered among the most advanced at European level. The prevention and protection system to be used by companies is based on internal services (*Internal Service for Prevention and Protection at Work*) and - in case these are not sufficient to cover all the prevention areas - on external services (*External Service for Prevention and Protection at Work*) certified by the Ministry of Employment, Labour and Social Dialogue<sup>6</sup>. Regarding the external services for prevention and protection at work, they are on the responsibility of a department charged

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<sup>6</sup> The External Service for Prevention and Protection at Work is a paid service. The rates are calculated relative to the individual employee and vary according to the sector, since the most risky areas involve a greater number of evaluations. There are 11 external prevention services, employing occupational physicians, engineers specialized in occupational safety, psychologists, ergonomists...

with multidisciplinary risk management and a department for medical supervision. As highlighted by a representative of the General Directorate for the Supervision of Wellbeing at Work, the implementation of this system of prevention and protection at work presents many problems in the case of foreign companies, including those employing posted workers. These companies must apply the Belgian OSH regulation and must introduce this system of prevention and protection at work. However, the representative of the General Directorate for the Supervision of Wellbeing at Work said that foreign companies

...do not have the same level of protection (they should have it theoretically). But they can show that they have also health surveillance (for instance in the country of origin) that apparently has to be accepted [by labour inspectorates], even if it cannot be proven that the level of protection is the same, or the quality of the service is the same. But the fact that every foreign company employing foreign workers must be surveyed by Belgian external prevention service might be considered by European Commission, as some kind of obstruction of the free market and so on, so on...<sup>7</sup> All that can lead to complicate discussions, but we [the labour inspectorates] think principally that if they work in Belgium, they should affiliate to an external prevention services in Belgium and they should have the same OSH service as another company. Now, very often this service is not present and, as a consequence, very often the protection also is not present.

The interviewee also highlighted that employers and management can significantly influence the application of the OSH standards and reported that

in many companies where foreign workers are working the management is doing their best to give clear instructions and to guarantee safety at work for the foreign employees, from subcontractor also, such as posted workers. They really respect rules for protecting those workers and also protecting their own workers or their own installation. But of course, there are also those that want to make only more profit from posted workers. They are not so scrupulous and might not respect the rules at all. They say: "ok, the posted worker can come and can do a very dirty job for a couple of weeks and is getting some more money that he can ever gain at home and I send them back home". So, there's a problem there. In that case the person is not protected.

In addition to employers, the enforcement of OSH regulations involves:

- *the unions* contribute to the enforcement of OSH regulations through participation in the Committee for Prevention and Protection at Work (Comité pour la prévention et la protection au travail). It is a joint body that is set up in companies with more than 50 employees and is made up of delegates elected by the workers and delegates of the management personnel designated by the employer (or the employer himself). Alongside the Committee for Prevention and Protection at Work, workers' union representatives play an important role, as they allow workers to express themselves as regards the well-being at work.

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<sup>7</sup> Regarding the issue of the implementation of the Belgian regulation on the external prevention service, a representative of the the Directorate-General for Humanisation of Labour highlighted that: "if foreign companies do not adopt these services, a situation of unfair competition is created, as Belgian companies must comply with the legislation and pay for the prevention services".

- *the prevention institutes*: in Belgium there are four prevention institutes (Constructiv Belgium, Prevent, Provinciaal Veiligheidsinstituut, Prevention & Interim), which are joint bodies set up by trade unions and business organisations and are in charge of improving the safety, health and wellbeing at work through awareness raising campaigns, workers' training and specific services for employers (advice and assistance on preventive measures). Regarding the advisory role, Constructiv has 20 Conseillers who visit the construction sites every day and draw up reports that are sent to the general contractor and the company visited. If the company is a foreign company, it is not possible to send the report directly, but -as reported by the representative of Constructiv Belgium- the general contractor should be asked to send the findings to the subcontracting companies, as he is obliged to ensure the correct application of the OSH legislation;

- *the inspection agencies*: the three main inspection agencies are supervised by the Federal Public Service Employment, Labour and Social Dialogue (Service Public Fédéral Emploi, travail et concertation sociale) and perform different tasks in the monitoring the enforcement of OSH regulations. The inspection agencies include:

a) The General Directorate for the Supervision of Social Legislation (Direction générale Contrôle des lois sociales) controls that labour legislation and collective contracts are applied (e.g. hours, wages, etc.). Moreover, it provides information to employers and workers, gives advice and reconciles. The inspectors responsible for the Contrôle des lois sociales "may carry out regular checks on construction sites and workplaces of the client, the main contractor or the foreign employer's client" and have administrative and criminal powers<sup>8</sup>.

b) The General Directorate for the Supervision of Wellbeing at Work (Direction générale Contrôle du bien-être au travail) controls the enforcement of the regulation concerning the well-being at work. It is divided into three divisions : Division du contrôle des risques chimiques (Division for chemical risks control); Division du contrôle régional du bien-être (Division for Regional Control of the Well-being at work); Division de la gestion des connaissances en matière de bien-être au travail (Division for knowledge management of the Well-being at work). It coordinates 8 regional Directorates. It controls the well-being of workers, especially regarding: "Safety at work, protection of the health of the worker, psychosocial burden caused by work, ergonomics, occupational hygiene, beautification of workplaces, occupational accidents and measures taken within the framework of environmental protection"<sup>9</sup>. The inspectors responsible for the Contrôle du bien-être au travail can issue administrative and criminal sanctions.

c) The General Directorate for Individual Labour Relations (Direction générale des relations individuelles du travail) is responsible for providing information to employers and workers posted to Belgium about labour law.

- *the federal Ministry of Employment, Labour and Social Dialogue*: the High Council for Prevention and Safety at Work, established within the federal Ministry of Employment, Labour and Social Dialogue and composed by representatives of workers and employers, provides advice on the implementation of the OSH regulation;

<sup>8</sup> <http://www.employment.belgium.be/defaultTab.aspx?id=38244>

<sup>9</sup> <http://www.emploi.belgique.be/defaultTab.aspx?id=38245>



- *the media*: the media have often reported cases of serious accidents at work and of exploitative working conditions that have affected the posted workers and have favoured the awareness raising among the wider public.

#### 4.2.2. Mechanisms and procedures at different levels

The monitoring of the implementation of OSH regulation is carried out by the National Labour Inspectorates of the General Directorate for the Supervision of Social Legislation, the General Directorate for the Supervision of Wellbeing at Work and the General Directorate for Individual Labour Relations. As emerged during the fieldwork, companies to be controlled are selected according to various methods: - inspections following an accident at work; - inspections following a complaint; - inspections following a request by judicial authorities (labour auditor, prosecutor or investigating judge); - proactive inspections based on specific campaigns of monitoring specific groups of workers or specific sectors; - proactive inspections based on centralised monitoring through the Limosa and Dimona systems.

During the inspection visits that follow a complaint, companies are controlled upon specific complaints made by: - private citizens (including the posted workers and workers employed in the same workplace), who may report illegal situations to the labour inspectorates, considering the skills of each institution/body; - trade unionists who monitor labour conditions in workplaces and may report illegal situations to the labour inspectorate; - different branches of Labour Inspectorates, who monitor workplaces.

The proactive inspections based on specific campaigns of monitoring are carried out periodically by multidisciplinary taskforces which involve the labour inspectorates, the federal and local police, the inspection services of the Regions responsible for the control of work permits, the finance police... There are different types of taskforces that have specific monitoring functions: - the transport unit (cellule transport), which monitors and controls the compliance with the regulations applicable to the sector transport; - the Covron unit, which monitors and controls the cross-border companies and foreign companies active in Belgium that employ posted workers; - the «travail transfrontalier GOTOT» unit, which monitors and controls whether posted workers are employed under the statutory conditions concerning social security (Vanden Broeck, 2013).

In case of proactive inspections based on centralised monitoring, the labour inspectorates can identify the companies to be controlled through the LIMOSA and DIMONA databases. The LIMOSA database allows access to data on mandatory registrations of posted workers (both subordinated and self-employed). The DIMONA database allows access to data related to the mandatory communications of any entry and exit of service of a worker to the National Social Security Office (Office national de sécurité sociale) (Vanden Broeck, 2013).

A representative of the General Directorate for the Supervision of Wellbeing at Work reported that if the social inspectors, during the controls, "detect situations not complying with the existing regulation, they provide indications to regularize the situation, whether the company is employing Belgian workers, or whether posted workers". In this case, the inspectors set a time limit within which the offender must regularise his situation and, if this does not happen, they can issue a report (Pro Justitia)

applying administrative or criminal sanctions. Furthermore, if workers' health and safety are highly at risk, inspectors can order production shutdowns. As highlighted by the representative of the General Directorate for the Supervision of Wellbeing at Work, in the case of inspections concerning posted workers or contract and subcontracting workers, problems may arise "when the employer or the site manager does not do what is required: because it is necessary to know who are the employers of whom, the OSH inspection service asks for the support of the Inspection Service of Social Legislation to draft any minutes (procès verbal - pro justitia)".

The largest part of inspections is carried out following an accident at work or a complaint, while a minimum part of inspections is carried out on a proactive basis. This situation is due to the scarcity of means of labour inspectorates<sup>10</sup>: as pointed out by a couple of interviewees, it "strongly limits the inspectors' activity in the field, forces them to focus on the truly urgent and most catastrophic issues" and ensures that "workplaces that are inspected are a small part of all workplaces in Belgium".

### 4.2.3. National and transnational actor interaction and/or cooperation

#### *Cooperation and interaction at the national level*

The Social Information and Investigation Service (Service de Recherche et d'Information Sociale – SIRS) is the main organisation in charge of coordinating the different national authorities involved in the fight against social fraud and undeclared work<sup>11</sup>. This organisation coordinates also the national authorities responsible for the implementation of the legislation on the posting of workers and the occupational safety and health, as the fight against social fraud and undeclared work is aimed also at combating the social dumping's effects derived from the false statuses of self-employed workers, the false postings, the "frauds" in the matter of postings, the delivery of false E101 / A1 forms to a group of workers<sup>12</sup>.

The Social Information and Investigation Service was set up by the Ministry of Employment, Labour and Social Dialogue, the Ministry of Justice and the Ministry of Social Security and carries out different tasks, such as: "the implementation of the policies defined by the Council of Ministers; the leading of preventive actions and training actions; the support to inspection services and district taskforces; the development of international cooperation between inspection services; the preparation of

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<sup>10</sup> As highlighted by one trade unionist, this situation is strictly related to the political orientation of the current government: "In Belgium there is currently a right-wing government and we can see that most of the funds that are used in inspections aimed at combating the social fraud of workers or beneficiaries of allowances, rather than devoting means to services of inspections that play a role in the collective sphere through the control of companies in their entirety and through the detection of offenses committed in the context of social legislation at work, or rules on OSH, or environmental protection standards. The individual-level inspection, aimed at identifying the worker or the beneficiary who is defrauding, is more favoured".

<sup>11</sup> The following inspection bodies belong to the Central Committee of the SIRS: S.P.F. Emploi, Travail et Concertation sociale; S.P.F. Sécurité sociale; Contrôle des lois sociales du S.P.F. Emploi, Travail et Concertation sociale; Inspection sociale du S.P.F. Sécurité sociale; service d'inspection de l'Office National de Sécurité Sociale; service d'inspection de l'Office National de l'Emploi; Institut national d'assurances maladie-invalidité; FAMIFED; Office national des pensions; services d'inspection des Régions compétents en matière de contrôle des permis de travail; Collège des Procureurs généraux (represented by the Public Prosecutor with criminal law in his / her attributions).

<sup>12</sup> [https://socialsecurity.belgium.be/sites/default/files/jaarverslag-sociale-inspectie-2016-fr\\_0.pdf](https://socialsecurity.belgium.be/sites/default/files/jaarverslag-sociale-inspectie-2016-fr_0.pdf)

collaboration protocols between the Federal Authority and the Regions to organise the fight against illegal work and social fraud; the development of strategic and operational plans and the evaluation of their implementation”<sup>13</sup>.

At the local level the fight against social fraud and undeclared work, including the actions aimed at irregular postings, is carried out by the district taskforces (cellules d’arrondissement). The district taskforces are composed of various social inspectorates, who share certain jurisdictional competences, can access common databases and can organize joint inspections (Vanden Broeck, 2013).

The cooperation between the inspectorates and the representative organisations of the social partners takes place mainly with regard to the sending of complaints. Respondents reported that there are also collaboration agreements in construction, cleaning, gardening and meat sectors.

### *Cooperation and interaction at the transnational level*

The cooperation between the various actors at the transnational level concerns: the establishment of policies adopted to protect workers' OSH (including posted workers); the information and training on the phenomenon of transnational posting; the collaboration between inspection bodies and social partners in the Member States; the inspection area.

The establishment of policies is carried out by the representatives of the Ministry of Employment, Labour and Social Dialogue, who take part in specific working groups at the European Commission and in the discussions of the Council of the European Union. As highlighted by a couple of interviewees, the Belgian representatives have strongly encouraged the revision of Directive 1996/71 /EC in order to mitigate the effects of social dumping on the internal labour market.

The Belgian inspection bodies and social partners collaborated in various transnational projects in the information and training area aimed at sharing knowledge, experience and good practices. Representatives of the Belgian inspectorates are members of the Committee of Senior Labour Inspectors (SLIC), which organises specific training programmes for inspectors at European level. Regarding the collaboration between the trade unions of the Member States, a union representative of the construction sector reported a case of cooperation with Italian unions in order to support a group of posted workers claiming unpaid salaries from an Italian sending company which employed them in a big construction site in Charleroi.

The transnational cooperation within the inspection area is based on the Internal Market Information system, which involves labour inspectorates, financial inspection services, police forces... of the various Member States, and on the Knowledge Sharing System (KSS platform), which was developed by the Committee of Senior Labour Inspectors (SLIC). The respondents highlighted the difficulties encountered in the use of the IMI platform, as it covers a very large number of issues that goes beyond working conditions and OSH and often provides too general answers, forcing the Belgian inspectors to make direct contact with the inspectors of the sending countries. Moreover, in many cases the

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<sup>13</sup> <http://www.emploi.belgique.be/sirs.aspx>

questions posed to the sending countries authorities do not get satisfactory answers. Indeed, as highlighted by a representative of the Directorate-General for Individual Labour Relations,

The levels of use also depend on the economic situation of the countries that use IMI: countries that are exporters of labour force, because they have a low wage regime, and that receive a few posted workers also have less interest in asking questions on the platform, even if there are exceptions, as in the case of Poland.

According to a union representative of the construction sector, "the difficulties of cooperation with some sending countries are due to the political will [of these countries] not to use the cooperation structures that exist [...] because today they are earning from this movement of workers in the framework of the transnational posting".

As regards the cooperation in the inspection area, respondents mentioned also bilateral agreements between Belgium and other Member States (France, Luxembourg, the Netherlands, Portugal) particularly aimed at fighting social fraud and undeclared work.

### **4.3. OSH in practice in transnational workplaces**

#### ***4.3.1. Preventative practices in transnational workplaces***

The protection of the safety and health of workers is regulated by the Act of 4 August 1996 on the well-being of workers in the performance of their work (Loi du 4 août 1996 relative au bien-être des travailleurs lors de l'exécution de leur travail)<sup>14</sup>. This Act establishes that "Employers shall take the necessary measures to promote the well-being of the workers at work" and shall apply the general principles of prevention regarding the risks, the collective protective measures, the individual protective measures, the implementation of policies regarding the well-being of the workers, the information aimed at workers on the nature of their work and related risks (Art. 5. - § 1).

Employers have the same obligations regarding the OSH of posted workers as for Belgian workers. A representative of the Directorate-General for Humanisation of Labour explained that as far as information and training are concerned, employers must provide the certificates demonstrating that posted workers have received the mandatory information on preventive measures and the mandatory training. As highlighted by a lawyer interviewed, the Belgian legislation on the well-being at work includes

a section that provides that all OSH measures should be understandable for posted workers. In principle, the employer is obliged to prove that the rules are known and that the workers posted workers can easily access information. There are good practices in this field: for example, some companies translate all the provisions that workers need to know. However, there are also situations where this does not happen.

<sup>14</sup> <http://www.employment.belgium.be/WorkArea/DownloadAsset.aspx?id=1896>

This material has received financial support from the European Union Programme for Employment and Social Innovation "EaSI" (2014- 2020). For further information please consult: <http://ec.europa.eu/social/easi>

The other respondents also reported that in some cases training courses and information materials on OSH are provided in various languages. For instance, the representatives of the Federal Public Service Employment, Labour and Social Dialogue explained that in some cases posted workers are informed about the preventive measures and trained through video materials in a language that they can understand and then they are required to complete a questionnaire to verify the correct understanding of the instructions. In the construction sector, Constructiv Belgium prepared tables with illustrations related to well-being at work and participated in the development of CONTRACTERANTO, which is an online lexicon of work-related terminology<sup>15</sup>. The Federal Public Service Employment, Labour and Social Dialogue is also carrying out a project aimed at publishing a multilingual brochure on the rights of posted workers, including those related to OSH, as part of the implementation of the Enforcement Directive. Furthermore, as emerged during the fieldwork, Constructiv Belgium "encourages general contractors to ensure that there is at least one person in the subcontracting teams who speaks French, English or Dutch in order to ensure communication with other workers on site".

However, as reported by some respondents regarding the use of video materials, in some cases posted workers "do not understand the languages used in the videos, however they pass the test by receiving in advance the answers to be given, and can start working, even if they have not understood anything". This stratagem allows companies to circumvent the law that requires them to check that workers have effectively understood the instructions. Moreover, according to a trade unionist of the construction sector,

These procedures are rarely explained in a clear manner to posted workers and there is rarely enough time to provide mandatory preventive information regarding the organisation of the site. [...] The person in charge of the security of the company has the task of providing this information, but I think he is merely doing the minimum. Often the coordinator of the sending companies, who knows a little French, receives this information and must pass it on to his colleagues. But I think this is rarely done as it should be done.

The obligation to use collective and individual protective equipment is not always respected: a trade unionist of the construction sector reported a number of cases in which groups of posted workers had the bare minimum equipment for their own protection.

Moreover, a couple of respondents reported that in some cases the main contractor and the contracting companies insert clauses into subcontract procurement contracts stating that the subcontracting companies have been informed about the Belgian OSH regulation and that they are responsible for any accidents, the failure to secure the workplace, etc.

#### **4.3.2. (Migrant and/or Posted) Worker Representation and Protection**

At the workplace level, posted workers can ask to be represented and protected in the OSH domain by trade unions in different ways:

- in undertakings with at least 50 employees, posted workers can seek support from the workers' representatives that are members of the Committee for Prevention and Protection at Work (Comité

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<sup>15</sup> <http://contracteranto.com/>

This material has received financial support from the European Union Programme for Employment and Social Innovation "EaSI" (2014- 2020). For further information please consult: <http://ec.europa.eu/social/easi>

pour la prévention et la protection au travail) and have been elected by the employees and nominated by trade unions, (see 4.2.1);

- when the Committee for Prevention and Protection at Work has not been established in the undertaking where posted workers are employed, they can seek support from the trade union delegation (Délégation syndicale), which depends upon the social bargaining agreements at the sectorial level;

- posted workers can also be represented and protected by the trade union officials.

As highlighted by a representative of Constructiv Belgium, workers' delegates often report to the Committee for Prevention and Protection at Work cases in which the posted workers do not have adequate personal protective equipment and request the situation to be regularised. A couple of respondents reported also that at local level, the trade unions can resort to officials who speaks the language of the countries of origin of the posted workers, as in the case of the Confédération des Syndicats Chrétiens (CSC) in Antwerpen and the case of the FGTB (Fédération Générale du Travail de Belgique) in Charleroi.

Trade unions defend the rights of both regularly and irregularly posted workers. In the second case, as explained by a trade unionist of the construction sector,

union officials try to help the worker on the basis of the actual problem, they explain the rules regarding posting and ask if they can intervene in his defence. We never do anything if the worker does not give us the mandate to do it, because we know that intervening in certain areas can be risky for the worker, and therefore we never do anything if he does not want.

However, the trade unionist interviewed reported also that in many cases workers ask for help from unions when their situation is too difficult:

Often posted workers knock on the door of our union offices to refer difficult and delicate situations. Sometimes they have not been paid, sometimes the working conditions are so harsh that they cannot continue to work anymore. But unfortunately, they never ask us for advice at the beginning of the construction site. Often, we are the ones who have to run around problems and we can never anticipate them. They also often come in groups. It is difficult for them to turn to the unions individually, because if it is known that they have turned to the unions, they cannot work anymore.

At national and transnational levels, the main Belgian trade unions organised awareness raising campaigns against social dumping and the exploitative working conditions of posted workers. These campaigns also contain the claims for “an upward harmonization of decent wage conditions and social security schemes” and for “normal working conditions, a stable income and a decent life for every European worker”, in order to improve working conditions at European level, to have the same treatment for all workers and to avoid downward competition among workers both at transnational level and within the Belgian labour market<sup>16</sup>. Moreover, a trade unionist of the construction sector explained that Belgian trade unions involved in specific cases of posted workers’ protection

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<sup>16</sup> <http://www.accg.be/fr/dossier/stop-au-dumping-social>

This material has received financial support from the European Union Programme for Employment and Social Innovation "EaSI" (2014- 2020). For further information please consult: <http://ec.europa.eu/social/easi>

collaborated with the sending countries' union in order to support the workers also in their countries of origin.

### **4.3.3. OSH-related grievance procedures in transnational workplaces**

Posted workers can access medical treatments in Belgium using the European Health Insurance Card and the A1 Portable Document or S1 form. These documents demonstrate that the holder is paying her/his social security contributions in another Member State and entitle the reimbursement of the expenses for medical care by the social protection system of the sending country. The application of the Belgian or foreign regulation is related to the "identification of the employer", but, as reported by a lawyer interviewed that becomes particularly difficult in the case of letterbox companies and companies without resources.

As reported by a representative of Constructiv Belgium, in case of an accident, if the posted worker was working for a foreign entrepreneur

as regards the first medical treatments and access to hospitals, the procedure applied also to Belgian workers is followed, the expenses for medical treatments are charged to the health insurance of the foreign employer who hired the posted workers. However, if the social inspectors prove that in reality the posted worker was working for a Belgian employer, then the posted worker is considered to be as a Belgian worker and refers to the insurance of the Belgian entrepreneur, who will assume all the expenses.<sup>17</sup>

Furthermore, a lawyer interviewed explained that "in the event of an irregular posting, a worker who suffers a serious accident may claim compensation from the Agence fédérale des risques professionnels (FEDRIS - Federal Agency for Occupational Risks)"<sup>18</sup>. FEDRIS "compensates the victims of work-related accidents who are not insured and acts as a guarantee fund if the employer has not concluded the compulsory employment accident insurance contract or if the insurance company remains in default. FEDRIS then claims reimbursement of the expenses to the employer or to the insurance company in question"<sup>19</sup>. The victims or claimants in the event of a fatal accident at work can be informed through personal mail or through the visit of Fedris social workers.

The joint liability principles apply only in case of tax and social contributions on the wages and in case of remuneration. In the first case,

At the moment of settlement of the invoice, the purchaser of the services or user undertaking is obliged to assess whether the contractor (service provider) has an open fiscal debt by means of an online tool. If so, the purchaser of the services has the obligation to withhold the fiscal debt from the bill and has to transfer it to the public authorities. In case the service recipient

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<sup>17</sup> In order to apply this procedure, it is necessary that the Belgian social inspectors contact the competent authorities of the sending country, who will revoke the PD A1, so that the worker will not be registered in two different social security systems for the same employment contract. After cancellation, the worker is registered with the Belgian social security system and the Belgian employer must refund the expenses to the Belgian health insurance system.

<sup>18</sup> <http://fedris.be/fr/home>

<sup>19</sup> <https://fedris.be/fr/propos-du-fat/que-faisons-nous>

fails to do this, it will become liable itself for this tax debt. This system applies to service recipients towards contractors and to contractors towards subcontractors. By means of this controlling system, the Belgian legislator wants to ensure that both local and foreign construction companies pay the right social security and taxes on the wage of the workers (van der Vlies, 2018, p. 59-60).

In the second case, it is possible to apply the Act of 12 April 1965 on the protection of workers' wages and salaries (Loi du 12 avril 1965 concernant la protection de rémunération des travailleurs), which contains rules concerning three joint liability regimes that coexist and that can be applied to posted workers, as they are valid for all workers active in Belgium:

- the general regime (general régime), which applies to certain activities defined by the royal decree, both in cases of direct contractual relationships (lien direct entre deux contractants) and indirect relationships (within the subcontracting chain);
- the special regime relating exclusively to the joint liability of the direct contractor for activities in the construction sector (régime particulier portant exclusivement sur la responsabilité solidaire du contractant direct en cas d'activités dans le domaine de la construction), which derives from the transposition of article 12 of the Enforcement Directive and concerns the direct contractual relationship between two contractors in the subcontracting chain (main contractor and contractor, or contractor and subcontractor);
- the special regime in case of occupation of a third-country national staying illegally (Régime particulier en cas d'occupation d'un ressortissant d'un pays tiers en séjour illegal), which derives from the transposition of the Sanction Directive and which applies in the case of employment of illegally staying third-country nationals.

As highlighted by van der Lies,

Within this system, user undertakings, contractors, and subcontractors could be held liable for the payment of the wages of (posted) workers as of 14 days after being officially informed by the Labour Inspectorate or a worker about the situation. This liability goes further than a liability of the user undertaking and covers the whole chain and is thus referred as a chain liability. On the other hand, the liability is restricted to the wage debts which occur after a period of 14 days after the notification by the Belgian Labour Inspectorate or the worker; and at the same time, the liability will be restricted to the payments of wage over a maximum of one year. In case of a notification, it is likely that the contractor terminates the contract with the (foreign) subcontractor in order to avoid the situation in which the contractor becomes liable itself (van der Vlies, 2018, p. 60).

## **4.4. Language and cultural barriers in transnational workplaces**

### **4.4.1. Prevention**

The factors that contribute to make posted workers more vulnerable include language and cultural barriers. The lack of knowledge of the language of the receiving country increases the OSH related



risks, particularly when in the same workplace are employed posted workers from different countries<sup>20</sup>, as most of our respondents confirmed. A trade unionist of the construction sector highlighted that

Most of the workplaces with the biggest risks to OSH are construction sites where there is a strong presence of posted workers. Because it is not easy to organise work, because it is not easy to communicate. We know cases in which workers do not understand French and it is difficult to coordinate among different teams. So, it is evident that it becomes difficult to coordinate on OSH matters.

Several respondents reported that prevention can be also affected by cultural barriers since posted workers come from countries where the level of OSH protection is lower than in Belgium. As referred by a representative of the General Directorate for the Supervision of Wellbeing at Work, this means that even during the period of posting, workers accept working conditions below the standard:

posted workers do not have the same concept on how they should be protected, so they accept very often very bad conditions. For them it is normal, maybe better than in the country of origin. They gain much more money compared to what they can gain in their home country and they just don't care. So, this is really a problem for consistent OSH protection. When the people themselves are not aware of working conditions and working environment which are unacceptable, then if no specialists comes there and passes there by chance, they will work under these bad conditions.

However, as highlighted by a trade unionist, the same Belgian preventive practices can be influenced also by economic factors not related to the posting of workers:

I believe that in the history of Belgium there is a greater awareness regarding the question of OSH. Obviously, the epochs also influence Belgium. When the economic situation becomes more difficult, more pressure is placed on working conditions. A person can say: "The situation today is so difficult, there are so many people who are without work, that one eye is closed above all on wages and OSH, because we are going through a difficult economic situation".

Moreover, a representative of the General Directorate for the Supervision of Social Legislation reported that posted workers can be at their first work experience in a specific sector and therefore do not have enough experience, further increasing the risks to health and safety at work:

We've had for example, posted workers that in their home country were farmers, and what did they do here? They were building, they were manual labourers. In a construction site, for example, the main contractor complaint to us, he said that they don't know how to work... He had down it and to rebuild because the work was not done properly. That's a problem if you send a farmer to do a construction activity.

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<sup>20</sup> Most of the respondents reported examples related to the construction industry.

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#### 4.4.2. Grievance management

The lack of knowledge of the French, Dutch or German or of a vehicular language makes the interaction of posted workers with labour inspectors and trade unions' representatives particularly difficult. A couple of respondents pointed out that trade unions circumvent this obstacle during the workplace controls and possible grievances involving the posted workers by resorting to trade union officials speaking the languages of the sending countries (see 4.3.2).

In the case of labour inspections, the representatives of the Federal Public Service Employment, Labour and Social Dialogue explained that the inspectors often check the posted workers' employment contracts through the IMI system, which allows them to contact the inspectors of the sending Member States. The various inspection bodies use questionnaires on working conditions translated into the language spoken by posted workers and, based on the information collected, can decide to further investigate. Labour inspectors can also ask the help of the supervisors of sending companies. However, this method can influence the results of the inspections, as posted workers can provide incorrect information due to fear of supervisors or the supervisors might be manipulating the conversation between the worker and the inspector.

## 5. Synthesis and Conclusions

Posted workers employed in hazardous sectors in Belgium tend to be concentrated primarily in the construction and the road transport sectors and secondarily in the cleaning services and the meat industry. Field research confirmed what emerged from the literature review and highlighted frequent irregularities as regards remuneration, welfare and insurance contributions and working conditions, including occupational safety and health, which are generally worse than average.

Posted workers employed in hazardous sectors face numerous issues related to their working and living conditions, such as the salary, the payment of the social contributions in the sending countries, the payment of overtime, working hours, breaks, housing conditions, the health and safety at work. In many cases they are not informed about their rights regarding occupational safety and health and they are forced to work in dangerous situations, without having all the necessary collective and individual protection measures. Their OSH vulnerability is also affected by the social dumping effects on their working conditions, by the temporary nature of their employment and the continuous mobility between different jobs and workplaces that present different OSH risks and different preventive procedures.

The fieldwork research highlighted that employers and management can significantly influence the application of the OSH standards, as the application of OSH regulation is mainly their responsibility. The enforcement of OSH regulations is based on a very complex system of prevention and protection, which includes internal services (Internal Service for Prevention and Protection at Work) and - in case these are not sufficient - external services (External Service for Prevention and Protection at Work).

In addition to employers, the enforcement of OSH regulations involves a number of other subjects, such as: the trade unions; the prevention institutes; the inspection agencies of the Federal Public

Service Employment, Labour and Social Dialogue (the General Directorate for the Supervision of Social Legislation, the General Directorate for the Supervision of Wellbeing at Work and the General Directorate for Individual Labour Relations); the federal Ministry of Employment, Labour and Social Dialogue; the media. These actors are involved at various levels and with different roles in monitoring the implementation of OSH regulation. The labour inspectorates can monitor companies that employ posted workers through the LIMOSA database, which allows access to data on mandatory registrations of posted workers, and the DIMONA database, which allows access to data related to the mandatory communications of any entry and exit of service of a worker to the National Social Security Office. There are specific taskforces in charge of monitoring the employment of posted workers, such as the transport unit, the Covron unit and the «travail transfrontalier GOTOT» unit. Companies to be controlled are selected according to various methods: - inspections following an accident at work; - inspections following a complaint; - inspections following a request by judicial authorities (labour auditor, prosecutor or investigating judge); - proactive inspections based on specific campaigns of monitoring specific groups of workers or specific sectors; - proactive inspections based on centralised monitoring through the Limosa and Dimona systems.

Research has shown that there are various forms of cooperation between the various actors both at the local level, the national level and the transnational level. At the local level, the different branches of labour inspectorates cooperate through the district taskforces (cellules d'arrondissement). At the national level, the cooperation mainly depends on the Social Information and Investigation Service (SIRS), which coordinates the different national authorities involved in the fight against social fraud and undeclared work, including in the domain of the posting of workers. The transnational cooperation is mainly based on the Internal Market Information system and on the Knowledge Sharing System (KSS platform). As regards the information and training area, the Belgian inspection bodies and the social partners have been involved in various transnational projects aimed at sharing knowledge, experience and good practices.

Regarding the preventive practices in transnational workplaces, the fieldwork research highlighted the coexistence of good and bad practices. For example, the use of video materials in various languages in order to inform and train posted workers regarding OSH issues is quite widespread. However, in some cases employers use the training by video-materials as a stratagem to circumvent the law that requires them to check that workers have effectively understood the instructions. Moreover, in some cases the general contractor and the contracting companies insert clauses into subcontract procurement contracts stating that the subcontracting companies have been informed about the Belgian OSH regulation and that they are responsible for any OSH issues regarding posted workers. Within this context, the language and cultural barriers contribute to make workers more vulnerable, as posted workers have many difficulties to fully understand the set of instructions and procedures to be respected in order to prevent OSH risks.

In case of OSH issues, posted workers can contact the local labour inspectorates, who will carry out the necessary checks, possibly contacting the labour inspectorates of the sending countries. In alternative, they can contact trade unions through the workers' representatives of the Committee for Prevention and Protection at Work or the trade union delegation. They can also contact the trade union officials, which often resort to union officials who speak the languages of the countries of origin of posted workers.

In case of accidents at work, posted workers can access medical treatments in Belgium using the European Health Insurance Card and the A1 Portable Document or S1 form. In case of irregular posting, injured workers can access medical treatments and if it is proven by labour inspectors that in reality the posted worker was working for a Belgian employer, the posted worker is considered to be as a Belgian worker and refers to the insurance of the Belgian entrepreneur. The joint liability principles apply only in case of missing remuneration and are based on the Act of 12 April 1965 on the protection of workers' wages and salaries (Loi du 12 avril 1965 concernant la protection de rémunération des travailleurs).

Also, with regard to the grievance procedures, the research has shown that the lack of knowledge of French, Dutch, German, or of a vehicular language makes it particularly difficult to interact with posted workers. While trade unions circumvent this obstacle by resorting to trade unionists of immigrant origin, for the labour inspectorates there is no provision for the use of interpreters.

In conclusion, posted workers employed in hazardous sectors constitute a part of the labour force that is particularly vulnerable, both in terms of working conditions and in terms of OSH. The research has revealed a stratification of working conditions between workers employed with Belgian contracts and posted workers that is closely linked to the attempt to lower labour costs, particularly in labour-intensive sectors, such as the building industry, the road transport sector, the cleaning services, the meat industry. Moreover, particularly in the construction sector, the presence of this group of precarious workers is helping to replace the local workforce. This “replacement” effect, together with the social dumping effect, is contributing to reinforce the tendency towards the growth of the precarity that has been recorded in the Belgian labour market in the last decade.

It was precisely the impact of these processes on the Belgian labour market one of the reasons that caused a deep reaction by social partners, politicians and State institutions, who have denounced the social dumping effect of the posting of workers. On the one hand, this reaction has meant that Belgium has been at the forefront of promoting the revisions of the Directive 96/71/EC in order to guarantee better working conditions for posted workers and, consequently, to protect also the working conditions of the local labour force. On the other hand, this reaction has favoured the emergence of a system of monitoring and support for posted workers that is very articulate and that, despite the limits reported by respondents, is among the best at European level.

## 6. Policy Implications and Recommendations

The main findings of the fieldwork concerning the Belgian case highlight that posted workers constitute one the most vulnerable groups employed in hazardous sectors – such as the construction industry, the road transport sector, the tourist sector, the meat industry, etc. These findings suggest that, even if Belgium is one of the countries that has adopted a comprehensive policy which includes a number of good practices, aimed at protecting posted workers' rights concerning both working conditions and OSH, further measures can be introduced in order to improve the conditions of posted workers.

A part of these policies must address the specific vulnerabilities of posted workers. First of all, it is necessary to strengthen the existing measures aimed at providing effective information and training by sending companies before and during the posting.

At the workplace level, respondents recommend informing employers of posted workers as regards the OSH regulation, as in many cases they are not sufficiently informed. Furthermore, it has been suggested to give greater importance to the role of the structures that represent the workers (e.g. the Committee for Prevention and Protection at Work) and to introduce representative structures even in companies with less than 50 employees, by adopting territorial representative bodies, which can be referents for all companies in a given territory.

At the national level, respondents suggest introducing specific rules regarding the OSH protection of posted workers in the Belgian legislation. This legislation should include rules on joint liability with regard to the OSH of posted workers. Furthermore, the financial resources and personnel of labour inspectorates dealing with working conditions and OSH should be increased.

At the EU level, respondents propose to strengthen the existing forms of cooperation between labour inspectorates of sending and receiving countries to ensure that postings take place on a regular basis. With regard to the regulatory system, the social charges applied by the various countries should be harmonized to prevent the phenomenon of social dumping.

Respondents recommend the introduction of a specific legislation that makes the payment of social contributions and taxes mandatory in the countries where posted workers are working. Furthermore, the implementation of OSH legislation should be harmonized in an improving manner, relying on existing directives and introducing the same working conditions and OSH protection measures in all EU countries.

Finally, the European framework directive on OSH should include an article that prohibits the possibility for a general contractor to avoid its responsibilities in the field of OSH by delegating them to contractors and subcontractors.

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