



Funded by
the European Union



ȘCOALA NAȚIONALĂ DE STUDII
POLITICE ȘI ADMINISTRATIVE

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 Spain

Ioana Antoaneta DODI

Ioana Roxana MELENCIUC

National University of Political Studies and Public Administration

November 2018

Executive Summary

This endeavour is part of a wider research, that encompasses 9 national study cases, with the aim of understanding how the EU-regulation and national OSH systems affect the health and safety of (posted) workers in a transnational workplace. All study cases are based on a common methodology, so that the data are comparable.

The data used for the Spanish report are gathered through desk-research, as well as fieldwork. The desk-research sets the normative framework, mapping the relevant institutional stakeholders and the available statistical data, while the fieldwork offers a deeper understanding of the national OSH system and the problems that are faced by posted workers. The empirical research is based on 7 semi-structured interviews, out of which 6 were conducted with representatives of the institutions that are involved in formulating the policy, controlling the transposition of regulations and monitoring the implementation of measures that have an impact on the OSH of posted workers. The 7th interview is with a posted worker.

At national level, the actors relevant for the development and implementation of the Spanish OSH System are The Ministry of Employment and Social Security, the Labour Inspectorate and the National Institute of Safety and Hygiene. The Ministry is the entity responsible for implementing public policies in this regard, which in the case of health and safety are almost all of them transpositions of EU directives. The Labour Inspectorate is responsible for controlling the compliance with the aforementioned regulations, while the National Institute of Safety and Hygiene's role is studying the phenomena and disseminating information. The trade unions also play an important role in setting the agenda. In the case of Spain, the unions in the field of construction are not that influential, but there are other sectors (like metalworking) in which they have significantly contributed to shaping the OSH practices of the employers.

The key findings of the report are:

- With the eruption of the financial crisis, the **socio-economical context** of Spain transformed a lot: between 2010 and 2014, the country changed from a net receiver to a net sender. The current data on posting show that there are 147,424 Spanish workers posted abroad, while 52,353 workers are posted in Spain. This has an impact on the development of the OSH system, as the focus switched from controlling the activity of companies that are receivers of posted workers to that of monitoring and protecting the national workers that work abroad.
- At the **individual level**, the problems faced by posted workers are inequality of payment for the same work provided, poor living conditions, cultural and language barriers, lack of health insurance, and poor representativeness. These factors increase the OSH vulnerabilities of posted workers.
- The **normative framework** mainly consists of the transposition in the national legislation of the Directive 96/71/EC, through the Law 45/1999 of 29 November. According to Art. 5, all business owners in Spain have to notify posting workers from and to Spain to the labour authority, prior to commencement and irrespective of its duration. The workers can be notified either at regional level or national level. On the other hand, the A1 form for the social security of the worker can be requested even after the beginning of the contract. It is therefore difficult to control the exact moment when the posted worker began his/her activity.

- Even though the National Labour Inspectorates have access to the IMI system, through which they can get in contact with inspectors from other countries, with the aim of conducting transnational inspections, communication is very often fragmented. It is noteworthy that the Labour Inspectorate of the Ministry of Employment and Social Security of Spain tries to strengthen bilateral relations, especially with the states with which they have the most exchange of workers. There are bilateral agreements with France, Portugal, Romania and Poland. This approach seems to be more effective.
- Although there are many small and medium enterprises in Spain, OSH representatives are compulsory only in large companies. The task of advising workers on OSH matters is therefore left to the Labour Inspectorate. If there are not enough labour inspectors at the regional level, then they focus predominantly on inspections based on complaints, and not on preventive and formative activities.

The main policy implications and recommendations drawn from this report are:

- After the transposition of the new EU posting Directive and achieving equal pay for the same work provided in the same area, further advancements should be made regarding a minimum wage set at EU-level.
- The future European Labour Agency (ELA) should act as a mediator between the National Labour Inspectorates so that communication between them becomes more effective when conducting transnational inspections. Furthermore, ELA should play an important role in bridging the regulatory gaps among different countries.
- The National Labour Inspectorates are the main actors responsible for monitoring and controlling the implementation of the regulations in the field of OSH. The role of the inspectors could switch from a controlling paradigm (as it is now) to an approach based on preventive and formative actions if there were enough inspectors at national and regional region.
- The A1 form should always be filled before the posted worker leaves the country of origin.

1. Introduction

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

Since it entered the European Union in 1985 together with Portugal, Spain has been perceived as being a net receiver in terms of posted workers that chose the Spanish national territory as their destination of work. The situation changed with the eruption of the financial crisis and soon Spain transformed itself from a net receiver into a net sender between 2010 and 2014 (EU Commission, 2017). According to the European Commission data and comparing the inflows with the outflows from 2010 till 2015 in and from Spain we notice some important differences. Firstly, Spain was no longer the third receiving country but the eighth with only 54,037 posted workers going to Spain in 2015. At the same time the number of Spanish posted workers that left Spain was more than double, i.e. 125 711 persons making Spain the 5th sending country. As a result, if in 2010 Spain was a net receiver, having more posted workers within its national territory than Spanish workers posted abroad, in 2015 the number of outgoing Spanish posted workers was strikingly higher than that of posted workers coming to Spain.

Taking into consideration that this study is part of a larger research that encompasses many EU states, the research question is the same in all the cases, namely:

How does the interplay of EU-regulation and national OSH systems affect the health and safety of (posted) workers in a transnational workplace?

To answer this question, we used the following sub-questions:

- *How do national and transnational OSH and employment regulation interact in transnational workplaces within the EU common market?*
- *What are the OSH-related vulnerabilities of posted workers stemming from the existing systems? (Access, quality of service and protection, ...)*
- *How do OSH preventative practices manifest in transnational workplaces?*
- *How are OSH-related grievances addressed in transnational workplaces?*
- *What are the legal and health care mechanisms and practices in case of work-related accidents in which posted workers are involved?*
- *How are language and cultural barriers managed in transnational workplaces, in terms of prevention as well as grievance management?*
- *What measures can be developed at the systemic and workplace level to reduce OSH-related vulnerabilities?*

The data used in this report was gathered through desk-research and fieldwork. Desk research focused on understanding the normative framework as well as putting together the statistical data available, while the fieldwork, which consisted of 7 semi-structured interviews, aimed to offer an in-depth perspective of the problems faced by posted-workers, covering health, security and social aspects.

1.2. Main Findings

- With the eruption of the financial crisis, the **socio-economical context** of Spain transformed a lot: between 2010 and 2014, the country became from a net receiver to a net sender one. The current data on posting show that there are 147,424 Spanish workers posted abroad, while 52,353 workers are posted in Spain. This has an impact on the development of OSH system, as the focus switched from controlling the activity of companies that are receivers of posted workers to that of monitoring and protecting the national workers that work abroad.
- At the **individual level**, the problems faced by posted workers are inequality of payment for the same work provided, poor living conditions, cultural and language barriers, lack of health insurance, and poor representativeness. These factors increase the OSH vulnerabilities of posted workers.
- The **normative framework** mainly consists of the transposition in the national legislation of the Directive 96/71/EC, through Law 45/1999 of 29 November. According to Art. 5, all business owners in Spain have to notify posting workers from and to Spain to the labour authority, prior to commencement and irrespective of its duration. On the other hand, the A1 form for the social security of the worker can be requested even after the beginning of the contract. It is therefore difficult to control the exact moment when the posted worker began his/her activity.
- Even though the National Labour Inspectorates have access to the IMI system, on which they can get in contact with inspectors from other countries, with the aim of conducting transnational inspections, the communication is very often fragmented. It is noteworthy that the Labour Inspectorate of the Ministry of Employment and Social Security of Spain tries to strengthen bilateral relations, especially with the states with which they have the most exchange of workers. There are bilateral agreements with France, with Portugal, with Romania and with Poland. This approach seems to be more effective.
- Although there are many small and medium enterprises in Spain, OSH representatives are compulsory only in large companies. The task of advising workers on OSH matters is therefore left to the Labour Inspectorate. If there are not enough labour inspectors at the regional level, then they focus predominantly on inspections based on complaints, and not on preventive and formative activities.

1.3. Structure of the country report

The present report is organized in four sections: firstly, it presents the context of posting in Spain (the legal framework, the main actors and their responsibilities, the available statistical data and the socio-economical context). Secondly, it presents the methodological framework of the research, the process of data gathering and data analysis, the challenges of the study and its limitations. The third section presents an in-depth description of the problems faced by posted workers and an understanding of the factors that lead to these issues. This section is mainly based on the analysis of the fieldwork data. Last, but not least, the study encompasses the conclusions and the recommendations that the research team developed based on both desk and field research findings.

2. Country Context

2.1. Socio-economic overview

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

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

OSH and posting in the country

2.2.1 OSH legal framework

Regarding the legislation, as in the case of Romania, Spain is characterized by having a minimum protection of posted workers. However, unlike the Romanian state, at the level of sources of minimum rates of pay, in the Spanish state there are binding collective agreements. (European Foundation for the Improvement of Living and Working Conditions, 2010).

The Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services is transposed in the national legislation through the Law 45/1999, of 29 November.

Law 31/1995, on Prevention of Occupational Risks is another regulating document regarding occupational security and health of posted workers in Spain.

2.2.2 OSH and Posting Stakeholders

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

Apart from the public institutions, there are a number of social partners involved in the process. Most representative union organizations are:

At the national level:

- Comisiones Obreras (Workers' Commissions).
- Unión General de Trabajadores (General Union of Workers).

At the regional level:

- Confederación Intersindical Galega (Galician Unions Confederacy).
- Eusko Langileen Alkartasuna - Solidaridad de los Trabajadores Vascos (Basque Workers' Solidarity).

2.2.3 Data on posting

The current data on posting show that there are 147,424 Spanish workers posted abroad, while 52,353 workers are posted in Spain in 2017. The received workers' estimated share among the working population of the country of destination is 0.3%, most of them coming from Germany, France, Italy, Portugal, Poland and Belgium. The sent workers' estimated share among the working population of the country of destination is 0.5%, most of them going to France, Germany, Portugal, United Kingdom, Italy and Belgium.

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

3. Methodology

3.1. Data collection

The desk research method was used in order to: analyze the legal and institutional framework regarding the occupational health and safety norms in the workplace (the domestic law, the main stakeholders in Spain that deal with the issue of migrants and posted workers, their competences on

the labour market and their role in protecting the rights of Spanish migrants outside Spain and the rights of foreign workers working on the Spanish labour market), identify the trends regarding posting (from the country, to the country), identify the number of Spanish migrants and posted workers in Europe and the number of foreign workers in Spain in order to establish if this state is a country of origin or a country of destination. Last, but not least, the literature review was used in order to identify the grey literature on OSH and posting in the case of Spain. The analysis of the legislation and regulation texts provided the frame under which OSH operates in Spain. The review of the grey and academic literature provided the first input on the implementation of these rules and regulations, which were used both to prepare the analytical framework of the current study, as well as a way to triangulate the research findings.

The fieldwork was carried out in Spain or by Skype through the methods of semi-structured interviews. The interviews were divided in large groups: representatives of the actors involved in the process, such as policy-makers, state agencies, trade unions representatives, OSH representatives and other experts. To complement our understanding of OSH practices in the workplace, we also conducted one interview with a Spanish posted worker, in which issues related to health and safety were discussed in order to retrieve valuable insight from the people that are directly affected by these practices.

In the first category we conducted six interviews:

- 1 with a representative of the Comisiones Obreras Trade Union;
- 1 with a representative of the Unión General de Trabajadores Trade Union
- 1 with a Labour Inspector of the Ministry of Labour and Social Security
- 1 with a Labour Inspector of the Basque Country
- 1 with a professor of International Public Law in the Basque Country
- 1 with a professor of Applied Sociology in the Complutense University in Madrid.

As already mentioned above we also conducted one interview with a Spanish posted worker.

All interviews were carried out between October and January 2017, in Madrid, Spain and from Bucharest, Romania, by Skype.

3.2. Analysis

Once the interviews were conducted and all the data was collected, we proceeded to carry out the analysis. Taking into consideration the structure of the interviews grid, the questions were clustered around specific themes:

- The main actors that are involved in the process of developing/implementing/monitoring OSH related issues;
- The main vulnerabilities regarding OSH;
- OSH in practice at transnational working places;
- Language/cultural barriers for the posting workers/migrants.

Sargeant and Tucker's (2009) layered framework to assessing the OSH vulnerabilities of migrant workers was used to set the criteria of evaluation of the collected data.

3.3. Challenges and limitations

Regarding the limitations that the research team encountered when carrying out the fieldwork, there are several important factors: the reluctance of posted workers to reply to the interviews due to the fear of possible negative repercussions at work; the reluctance of the representatives of employers to give interviews; the highly bureaucratized national, central institutions that postponed or even made impossible the development of interviews with their representatives.

Regarding the interviewed posted workers, there was an additional challenge to spot them and even more so to convince them to give an interview.

4. Results

4.1. OSH-related vulnerabilities of migrant and posted workers

4.1.1. Problems of posted workers

Sargeant and Tucker (2009) define migrant workers as workers without permanent status in the receiving countries, which is applicable to a variety of immigrants, such as recent, temporary, seasonal and posted migrant workers. This means that a set of issues, unequal treatment and OSH-related dangers can arise from this temporary status.

The problems of posted workers can be explained only by understanding that each case and each sector has its specifics. However, there are some problems that transcend the field of activity and give us a good framework of understanding. Very often the company takes advantage of those matters that are difficult to control by the public authorities or that are regulated poorly. The workers in the end are in a tangled situation, because they do not know the legislation of the hosting countries well enough, therefore they do not have the means to fight against the treatment they are facing.

If posted workers are hired, much is being done to save costs. Then, it is very likely that they face poor living conditions or that the employers discount the housing costs directly from the salaries of the employees. One of the interviewees presented the case of some workers from Portugal that had been complaining about their housing conditions so they were accommodated in a better place but then the employer lowered their salary.

The interview with a university professor highlighted that the working and living conditions of workers posted to the Netherlands in the logistics sector are a good example of dealing with problems such as accommodation. The company forced them to live in its own accommodations to continue giving them work. These accommodations were pretty cut off from the city life and when the workers decided that they wanted to go to live in a rented apartment in the centre of the city in order to be able to learn the language, to have other leisure options sometimes or other motivations, the company threatened them or directly said they no longer counted with their services and that they would be fired. In the end, with this kind of practice the workers are almost captive.

Another problem has to do with the participation itself or the right to representation, to defend the interests of the posted workers in the countries where they carry out their activities. We find in different cases that posted workers, in general, do not know about having union representation or

representation in the decision-making structures of the company in which they work. What they have is an interlocutor within the company, an informal interlocutor able to keep an open communication channel, but in general posted workers do not speak the language of the country where they are, thus they have little possibility of engaging in conversations with other workers or to know the legislation that is applied in the country they go to and the trade unions of the host countries. The company delegates do not have the right, in many cases, to represent or to speak in the name of these workers. They are not authorized to become interlocutors for these workers. In practice, workers are subjected to a series of pressures and difficulties and do not have the channels of representation that any worker is recognized, at least within the European Union.

4.1.2. Problems that make workers vulnerable in terms of health and safety at work

The main problems that make workers vulnerable in terms of health and safety at work are: housing, transport, social risks (because they are isolated from their company of origin, from their country of origin) and also the health problems: medical examinations, care for injured people.

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

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

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

Being subjected to some of these very questionable above-mentioned conditions can also mean being unable to connect with the authorities or not having the power to make a real choice when it comes to doing or not doing something dangerous for them (not wearing equipment in a certain situation, for example). Developing a website for them has proved to be insufficient. Most often they cannot get in touch with authorities, nor with delegates, nor with the unions and then they are at the mercy of others who signed for them.

Implications of posting for aspects of health and safety at work

Posting has implications for health and safety aspects at work, as it can further be seen. The workers are still subject to the regulations of the country of origin and see how some rights are violated, for example, in terms of wages, working conditions, union representation, etc.

European regulations should guarantee the application of minimum wages in a series of basic conditions, the control of working conditions and all that type of supplements that are very important in the monthly remuneration of a worker, but sometimes this does not happen. Therefore, there are workers who have done the same job with much lower salaries than those that exist in the countries where they are working. This exploitation and social dumping is a prejudice to the posted workers and ends up being a prejudice to the workers of the countries of arrival. In many cases, the salary received by posted workers, compared to what they receive in their countries of origin, may be higher, which may keep them interested in continuing their work out of the country, but it is often found that the companies that post them charge a series of services almost compulsorily, which reduces their salaries compared to local workers which do not undergo the same additional charges.

In many cases, the company that posts these workers, provides them with accommodation that, in general, is of very poor quality or conditions that are not adequate to living over long periods of time. For example, there are facilities that are old holiday campsites, which are located outside the city, which force workers to be isolated, without shops, without the possibility of doing activities, with long hours of commuting to get to work or accommodations that may be owned by the company itself or by collaborating companies, where the companies will charge quite high rents deducted from workers' salaries directly. This does not happen always, but it does appear with some regularity. Given the fact that Sargeant and Tucker (2009) highlight particular problems of social exclusion/social isolation as a third layer of vulnerability, these accommodation issues would fit in this category.

There are also many cases of letterbox companies. These are companies established in a sending country, but they don't run any type of activity, apart from posting the workers. They appear and disappear very quickly making it difficult to monitor their activity and prosecute them in cases of rule violation. Sometimes, posted workers discover when they return to their home countries that the company had not paid social security or that it owed them a series of months of salary payments. But if the company doesn't exist any longer, then the workers cannot claim their rights.

Fundamentally, the main problems have to do with the violation of wages, equal pay, the right to the same salary for the same work performed and, sometimes, issues of limiting the rights and individual freedoms of these workers.

4.1.3. Obstacles to access and type of training with respect to health and safety at work

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

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

training is required, more technical and with greater number of hours, as well as more formative content than to a worker that is in an office with a computer.

4.2. OSH Institutional Framework

4.2.1. *Actors' roles*

The **Ministry of Employment and Social Security** is the entity responsible for implementing public policies, which in the case of health and safety are almost all transpositions of EU directives. The Ministry also coordinates with other ministries, for example with the Ministry of Health for things of health surveillance and surveillance protocols, depending on the sector.

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

The **National Institute of Safety and Hygiene** is the body in charge of promoting safety and health from the point of view of carrying out studies and analyses, so they do not control compliance with the regulations. They also do informative campaigns, with the purpose of disclosure. They do not go to the companies to control, but they do have an important role in disseminating information.

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

There are no other state agencies on this issue.

4.2.2. *Mechanisms and procedures at different levels*

The task of the **Labour Inspectorate** within the Ministry of Employment and Social Security is to control the workers, as they have competences in all social areas respective to work (working conditions, safety and health and social security). Then, the work of the inspectorate is conducted through the complaint of the workers themselves and by actions planned by sectors of special risk or of special interest at a particular time. The inspectors pay regular visits in order to control the material conditions, to identify the workers, see how they work and from there the inspection action begins. If deficiencies are detected, the company is sanctioned. One of the powers of the Inspectorate is to

control if workers have a work permit, to detect whether a posted worker is treated as such and everything is verified to see if the regulations are complied with.

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

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

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

The contractor must check that the subcontractor fulfils its obligations. In these cases, if any obligation is breached by the subcontractor / below, the (main) contractor has a joint liability, that is, if the subcontractor receives a fine and if he does not pay, the contractor has to pay. The prime contractor has the obligation to oversee every aspect, to verify and monitor all the companies that work under them, and to make sure that all workers receive the training, etc.

In the companies there are **delegates of prevention** and they are chosen between the representatives of the workers at the level of union representation, among them, in the companies with more than 50 employees. They are representatives that have competences only in safety and health prevention. Their functions are to be in the company and monitor compliance with all regulations. When they see something that is not observed, they notify the employer or directly the Inspectorate. In addition, the employer has the obligation to transmit certain documentation. When a company does risk assessment, activity planning, or is going to implement a new technique in the company, they meet with them to see what the best way to do things is and which can be improved. In the Spanish legislation, more precisely in the Law 31/1995, on Prevention of Occupational Risks, both the normal representatives and the prevention delegates are very protected by the regulation: they cannot be dismissed, the contract cannot be terminated, and they have a fixed number of hours to perform their functions, but they exist only in the big companies.

When drafting a new law, the trade unions are also asked to state their opinion. In addition, when the unions detect something that does not work, they usually submit the complaint to the Inspectorate. They have a very direct contact with the workplace, so they can control everything that happens there and can see what might occur. The unions do a lot of work of health and safety disclosure and information provision to workers.

4.2.3. National and transnational actor interaction and/or cooperation

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

The Labour Inspectorate works with the rest of the National Inspectorates through the Senior Labour Inspectors (SLIC). There they interact with the rest of the Work Inspectors through the working groups. Through the SLIC, IT tools have been created that allow the exchange of information between the Inspectors, such as the Internal Market Information System (IMI). Therefore, if the authority in another state is already identified, there is a form that can be filled for all the states, for the companies, for the workers. There is a series of questions already asked about the regulations of posted persons that can be made to the other country and automatically translated into the language of the other country. With this system, the protection of workers and confidentiality are absolute. There has been an increase in the set of questions, especially with regard to safety and health.

4.3. OSH in practice in transnational workplaces

4.3.1. Preventative practices in transnational workplaces

In the case of Spain, matters of safety and security of work are, above all, the responsibility of the **Labour Inspectorate**, which has fairly broad competences. There are countries in the European Union where job security functions are differentiated or separated, compared to other aspects related to one's working conditions, wages, etc. In the case of Spain, the Labour Inspectorate encompasses all these aspects and monitors that the rights of workers are respected.

The **National Institute for Safety and Hygiene at Work**, which also belongs to the Ministry of Employment, does the important work of research even with respect to occupational risks.

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

In the case of sectors such as transport, other instances are involved that have to do with occupational safety and occupational risks, such as the transport authorities themselves, not only the Labour Inspectorate but also the General Directorate of Traffic, which depends on the Ministry of the Interior and the Police itself. In the case of Spain the regulation of road traffic depends on the Civil Guard, which is one of the security forces of the state that has among its powers the ordering, the monitoring of compliance with the road traffic regulation and the verification of rest time, speed limits, the weight of the load of the vehicles, etc.

4.3.1.1. Information dissemination

Employers are responsible for informing their workers. Historically there were information services in Spain for any type of worker since the Franco regime, but they disappeared with time. Nowadays

information to workers is disseminated by employers and unions. The Labour Inspectorate only advises employers and workers during visits, but does not have the function to inform workers. The occupational health and safety cabinets of the autonomous communities have an informative function and promotion of occupational risks.

Through the prevention law, which is a transposition of the Framework Directive, the Labour Inspectorate has the obligation to inform workers of all the health and safety conditions of the specific work post and general conditions of the companies in which they are going to provide services before starting work.

4.3.1.2. Training

For those posted workers who come to Spain, the Inspection would control that the workers at that moment have the training, but this depends a lot on the sector, because the training has to be done before they start work.

The training must be updated depending on the sector, the work to be carried out, and the equipment that is being used. In case workers change the team, or go to another work centre with different risks, they have to repeat the training. Then, the inspector determines if the worker has the proper training.

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

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

4.3.1.3. Artefacts

There is no minimum provided for in the legislation.

What is provided above all is protective equipment, depending on the existing risks. You have to do a risk assessment, which is basically to see the risks that exist in the workplace depending on the activities that are there and based on that a preventive action planning is generated, which is established for each activity, how the activity has to be done and with what means of protection. If the worker has to provide activity with goggles, safety boots, helmet etc., all the protective equipment has to be provided by the company.

In addition, companies have the obligation to properly mark when there is a step, risk of falling or electric risk. There are entrepreneurs who give them informative brochures, but it is not mandatory at the level of legislation.

4.3.1.4. Monitoring

The monitoring procedure is sometimes complicated because the initial training was received in the country of origin. Then, you have to contact the National Inspectorate of the respective country to certify that the worker actually has the training.

This is especially important to see if that training is legal, because sometimes the papers are falsified and as they are in another language, the Labour Inspectorate of Spain does not know what the reality is, so the documents are scanned and the documents are sent to the labour inspectorate of the country of origin to confirm the data.

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

4.3.2.1. OSH Representatives

In the construction sector there are no security representatives because the works last very short time and there are no company committees and prevention delegates in almost no workplace, since the works do not last long enough for representation of the workers, given that the construction sector often implies short term contract (or none at all). The unions act in an external way, they have made agreements at sectorial level with the employer's organization. They have established employer-union controls that run through construction sites and also make recommendations. In case they do not comply with the recommendations, they report it to the Labour Inspectorate. But the personnel representatives play no role in the construction and most of the displacements are in construction

4.3.2.2. Trade Unions

In Spain, unions can be present in the workplace, in the territory, in the social dialogue. In the workplaces there are the representatives of the workers who are elected by the whole of the workforce, who are generally related to the unions, but represent the union only for local matters - for the calculation of the number of delegates. It is important to know who the most representative unions are and who have the right to sign collective agreements of general scope. As already mentioned, at the national level it would be Comisiones Obreras (Workers' Commissions) and Unión General de Trabajadores (General Union of Workers), whereas at the regional level, it would be Confederación Intersindical Galega (Galician Unions Confederacy) and Eusko Langileen Alkartasuna - Solidaridad de los Trabajadores Vascos (Basque Workers' Solidarity). Sargeant and Tucker (2009) argue that if the conditions of recruitment are solid, i.e., regular contracts according to local national laws and/or collective agreements in place, migrant workers are more protected, but this is not an automatic mechanism, given the fact that the representativeness of the unions is looked at by the number of delegates in the workplace. Then, the most representative trade unions, which may have the title of most representatives, through collective bargaining, which in Spain are of general scope, cover the most diverse situations even in places where there are no members. Therefore, any worker enjoys the benefits of collective bargaining, which generally has better conditions than the minimum wage and the statute. Hence there are negotiations with the most representative trade unions, which also have to consult with social agents on certain political measures and once again benefit all the workers, not just the members.

In the transport sector, the European level plays a very active role. There are some practices that violate basic rights of workers and especially when it comes to letterbox companies, the European Trade Union Confederation of the construction sector played a very important role in trying to defend the workers' rights. The European directive on posted persons was built foremost with workers in the construction sector in mind. In the road transport sector or in the construction sector (which also registers or is very affected by this phenomenon of the posting of workers), pressure is exerted against

social dumping, unfair competition, wage and employment disparities, the work standards of some countries and others.

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

Trade unions play a horizontal role in pressuring European authorities to implement these types of directives among the Member States. In the case of Spain, Spanish unions have played a much more secondary role. The performance of trade unions in Europe has been limited by the decision of the European Court of Justice, which has in many cases limited the action of European trade unions, the trade union action linked to the posted workers (the Vicking, Laval cases). They also limited the capacity of the unions to carry out actions of denunciation, of the presence of prejudicial consequences of posting workers in their territory.

Trade unions are very active in some sectors, such as metalworking, but there are few transnational companies in the metal sector.

4.3.3. OSH-related grievance procedures in transnational workplaces

4.3.3.1. Legal and health care mechanisms and practices for accidents involving migrants and posted workers

If an accident at work has occurred, then it must be reported to the Labour Inspectorate. When posted workers are involved, the case also has to be reported by the Labour Inspectorate to their counterpart from the country of origin. As it was reported by some of the experts interviewed, there is no functional communication system and the authorities find out when the accident is deadly or serious because it comes out in the press.

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

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

4.3.3.2. Liability

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

4.4. Language and cultural barriers in transnational workplaces

4.4.1. Prevention

There are prevention services that give language courses to workers, but that is when there is a very large presence of workers of that nationality. For example, there are manuals in Romanian to give information to Romanian workers. With the Portuguese there are no problems, as the workers and employers understand each other. The other majority of workers are Hispanic-Americans and there are obviously no language problems.

It's up to the workers to get over the cultural barriers they encounter, given that the firm has no legal obligation in this sense. Thus, this aspect only deepens the vulnerability of posted workers, just as Sargeant and Tucker (2009) had identified education and language skills as a second layer of vulnerabilities.

4.4.2. Grievance management

After the interviews' analysis, the conclusion was that there was no data on this aspect.

5. Synthesis and Conclusions

The problems encountered by the posted workers attract a wide range of institutions, regulations and practices that should create a joint framework in order to solve them. In Spain, there are three institutions that are involved in the management of posted workers: The Ministry of Employment and Social Security the Labour Inspectorate and the National Institute of Safety and Hygiene. The Ministry is the entity responsible for implementing public policies in this regard, which in the case of health and safety are almost all of them transpositions of EU directives. The Labour Inspectorate is responsible for controlling the compliance with the aforementioned regulations, while the National Institute of Safety and Hygiene has a role in studying the phenomena and disseminating information. The transportation sector is quite particular, as they are also regulated by other actors, such as the transport authorities themselves, not only the Labour Inspectorate but also the General Directorate of Traffic, which depends on the Ministry of the Interior and the Police itself.

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

- a) There are two aspects that are noteworthy regarding the equality of payment: first and foremost, the workers should be guaranteed equal payment for the same work, provided in the same area. Even though there were recommendations in this regard, many times it does not happen. Therefore, there are workers who have done the same job with much lower salaries than those that exist in the countries where they are working. However, through the transposition of the new European Directive on Posting, this issue should be solved in two-years time. Secondly, it is the problem of having important differences of payment for the same work, between countries/regions. This only deepens the gap towards a more cohesive Europe and encourages the mobility of workers, regardless of the living conditions they are offered in the hosting country.
- b) In many cases, the company that posted these workers provides them with accommodation that, in general, is of very poor quality or conditions that are not adequate for long-time living. They have long hours of commuting and many times they live far from the city, thus leaving them with few options on how to spend their free time. The interviewees have also stated that there are cases when the payment for the accommodation and other living costs is directly taken from the payroll. Even worse, the accommodation is not only poor but also overpriced.
- c) The case of Spain is quite particular in what regards the language barriers of the workers that come to work in Spain (whether posted or not). The majority of them come from Portugal or Latin-American countries, which gives them the advantage of communicating easily. However, the problem stays real, as there are also workers that are posted in Spain and do not speak the same language (as it is the case of Romanians), as well as that of Spanish workers posted to work in other European countries. The cultural barrier widens even more if the workers are accommodated far from the cities: they have few interactions with the locals, no social activities, thus leading to a feeling of inadequacy.
- d) The European health insurance card only covers emergencies and very serious accidents. Workers have to pay beforehand to the health services of the host country and then they get the reimbursement, but it is not direct health care like in the country itself. Cases have been reported in which the workers could not access health care as they did not have the money to pay for the services in advance.
 There are many countries that have not regulated how work accidents must be reported. In Spain, the obligation of reporting a work accident was not regulated until the Royal Decree Law no. 9/2017. However, the investigation of a work accident of a posted worker requires the cooperation of the responsible institutions in both countries, which makes the process very time-consuming.
- e) The employer is responsible for informing his workers. Historically there were information services in Spain for any type of worker, but they disappeared. Through the prevention law, which is a transposition of the Framework Directive, the Labour Inspectorate has the obligation to inform workers of all the health and safety conditions of the specific work post and general conditions of the companies in which they are going to provide services before starting work. The unions do a lot of work of health and safety disclosure and information providing to workers. The unions follow up and support the actors that could be the most disadvantaged. However, in a small company it is always more difficult than in a large company, because union membership is always more important in large companies than in a small company. Trade unions play a horizontal role in pressuring European authorities to implement these types of directives among the Member States. In the case of Spain, Spanish unions have played a much

more secondary role. There are fields in which the unions have played a much more active role (such as metalworking), and others.

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

6. Policy Implications and Recommendations

✓ At the workplace level

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

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

✓ At the industry level

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

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

✓ At the national level

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

recommendation at national level would be that the A1 form should be filled in before leaving the country of origin.

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

✓ At the EU level

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

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

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

References

- Caprile, Isabel (2010). Spain posted Workers. Eurofund. Available at: <https://www.eurofound.europa.eu/observatories/eurwork/comparative-information/national-contributions/spain/spain-posted-workers>
- EU Commission (2007): Communication on Posting of workers in the framework of the provision of services: Maximising its benefits and potential while guaranteeing the protection of workers (COM(2007) 304 final), p. 17
- European Commission (2018). European Labour Agency, available at <http://ec.europa.eu/social/main.jsp?catId=1414&langId=en>
- European Commission (2016). Posted Workers- Spain available at: <http://ec.europa.eu/social/keyDocuments.jsp?pager.offset=20&&langId=en&mode=advanceSubmit&advSearchKey=PostWork> accessed on May, 5 2017, p. 1
- European Foundation for the Improvement of Living and Working Conditions (2010), Posted workers in the European Union, p.12
- European Parliament (2018). Posted workers- Spain overview, Available at http://www.europarl.europa.eu/infographic/posted-workers/index_en.html#overview
- Posting of workers to Spain in the framework of the transnational provision of services, http://www.empleo.gob.es/es/sec_trabajo/debes_saber/desplazamiento-trabajadores-eng/desplazamiento/index.htm#section1
- Law 31/1995, on Risk Prevention Labor, <https://www.boe.es/buscar/pdf/1995/BOE-A-1995-24292-consolidado.pdf>
- Sargeant, M., & Tucker, E. (2009). Layers of vulnerability in occupational safety and health for migrant workers: case studies from Canada and the UK. Policy and practice in health and safety, 7(2), pp. 51-73.
- Wagner, Ines (2015). Posted Work and Deterritorialization in the European Union. A study of the German Construction and Meat Industry, Jyväskylä Studies In Education, Psychology And Social Research.p45

*The content of the report was used presented and discussed at the EURINT International Conference „Reflecting on Europe’s (dis)order: scenarios for the EU’s future”, held on the 18th - 19th of May 2018, at Alexandru Ioan Cuza University in Iași.

**The academic article “Posted workers on the route to a European Labour Market”, currently under the process of publication, it is also based on this research.