



Guidelines

Cross-border cooperation agreement between the Spanish and the Portuguese Labour Inspectorates

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Risks or concerns addressed by the agreement

As of the publication of the first Directive on the posting of workers, in December 1996 (Directive 96/71/EC), an appeal to the authorities of Spain and Portugal was made by European authorities, urging them to actively collaborate to respond to the different situations that were occurring in the two countries with the increase in cross-border service provision. This call for collaboration was never formalized in any official documents and the content for such collaboration was not made explicit.

On 30 November 1998, a Declaration of Intentions on Cooperation and Technical Assistance in Labour and Social Affairs was signed between the Ministry of Labour and Social Affairs of the Kingdom of Spain and then the Ministry of Labour and Solidarity of the Republic of Portugal. In order to give content to this collaboration, a working team was formed that was in charge of designing this collaboration agreement.

In the Portuguese-Spanish summit of 2002, the cooperation agreement in force until today was signed.

One of the greatest strengths attributed to this agreement has been that, despite the governmental changes in both countries, this agreement has remained in place.

Beside the intense flow of cross-border workers and the peak in the provision of transnational services following the approval of the Posting of Workers Directive, the agreement stems from concerns about:

a) The existing information deficit:

- About companies: real or fictitious, on either side of the border that provide such services
- About the activity carried out by these companies
- About the employment relationship established with the workers who perform the services: qualification, working hours, salary, bonuses, etc.
- Regarding Social Security: registration status in SS, contributions, and where the contributions are made; and

b) Difficulties in both countries to guarantee the enforceability of the sanctioning measures adopted due to:

- Contribution or salary differences
- Differences in surcharge on benefits

All these aspects led the two authorities to consider the need to sign an agreement.

It is based on the conviction that cooperation will reduce the information deficits detected and, thus, the agreement designs and also organizes the form and procedures for carrying out the successive activities derived from the inspection activities in both countries.

Objectives

The general objective of the agreement is to facilitate cooperation when implementing Directive 96/71/EC. Correct application of the directive requires close cooperation between the two countries. The following specific objectives are therefore established:

Firstly: Establishment of a **permanent collaboration framework**, which will be annually reviewed, in the following areas of action:

1. Occupational Health and Safety
2. Work Accidents
 - a) Reports of accidents at work
 - b) Immediate notification of the accident report
3. Work permit for non-EU citizens
4. Prior verification actions and disciplinary proceedings with companies domiciled in the neighbouring country
 - a) Citations, requests for documentation, notification of requirements and other actions that require the location of the company and identification of its legal representative
 - b) Notification of infraction records
5. Exchange of information on the flow of workers
6. Cooperation and assistance derived from Directive 96/71 /EC (Law 6451/1996), on the posting of workers in the framework of the provision of transnational services, in the field of information

Secondly: Establishment of direct communication links in the terms expressed in the first point according to the following criteria:

1. Direct communication between the bordering regional authorities

Initially the direct communication points established on both sides of the border were:

- Territorial Director of Galicia (ES) - Delegate of Viana do Castelo and Vila Real (PT)
- Territorial Director of Castilla y León (ES) - Delegates of Braganza, Guarda and Covilha (PT)
- Territorial Director of Extremadura (ES) -Delegates of Castelo Branco, Portalegre and Évora (PT)
- Territorial Director of Andalusia (ES) - Delegates of Beja and Faro (PT)

Currently, the same points are maintained by Spain, coinciding with the territorial inspections of the border provinces in Spain. In Portugal, after a new administrative reorganization, these territorial points have changed, becoming local information centres, spread throughout the country.

2. Direct communication between central authorities

- Concerning Spain: State Agency for Labour Inspection and Social Security. General Sub-Directorate of Institutional Relations and Technical Assistance
- Concerning Portugal: The Working Conditions Authority (Autoridade para as Condições do Trabalho, ACT).

3. Creating a Mixed Monitoring Commission

This inter-administrative monitoring committee must ensure compliance with the agreement, define the agenda and specify the measures to be adopted. It serves as a liaison body for the exchange of information and cooperation between the authorities and the inspection bodies of both states.

With the entry in force of Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ("IMI Regulation"), it was agreed to channel requests concerning posting through the IMI system rather than through communications between the liaison persons identified in the agreement. Yet, the exchange of information through IMI occurs between persons at the Central Authorities (not employed at provincial or local level). This does not prevent the liaison authorities in the border regions from continuing to communicate with each other in the development of other cooperation activities (e.g. joint visits). However, the sending and replying to requests for information on posting for inspection purposes is managed at central level, normally after the necessary inspections have been carried out at regional level.

‘Business case’ for adopting the agreement from the standpoint of stakeholders

Workers:	The proper functioning of labour inspection guarantees better attention for workers. More proximity to raise problems. Better understanding of the problem by the authorities.
Companies:	The proper functioning of the labour inspection that effectively fights against fraud and against unfair competition is a guarantee for companies.
Unions:	The proper functioning of the inspection is a guarantee for organizations that represent workers.
Employers’ organisations:	The proper functioning of labour inspection that effectively fights against fraud, against unfair competition, is a guarantee for companies and for organizations that represent them.
Institutional actors:	Awareness of inspection staff.

Main features

- It is an administrative agreement.
- Focused on the exchange of information between the labour inspection authorities of Spain and Portugal.
- Based on the need for cooperation between both countries.

Process of adoption and role of the different stakeholders involved

The cooperation agreements were established from the point of view of the public administrations involved to meet the objectives and interests of the administrations concerned.

On the Spanish side, the agreement is followed by the State Agency for Labour Inspection and Social Security. General Sub-Directorate of Institutional Relations and Technical Assistance.

In the case of Portugal, the commission depends on ACT.

Agreement governance:

Inter-administrative monitoring commission:

- It meets annually
- It is chaired alternately by each country annually
- The commission has antennas in the border regions: Galicia, Castilla y León, Andalucía and Extremadura
- Methodologies and tools are established to expedite information exchanges.

Commission's functions:

- Resolve the incidents that may arise from the execution of the Agreement
- Keep the identification and location data of the contact persons at the regional and central level of both countries continuously updated
- Ensure the convening of the annual meeting, analysis and review of the Agreement, without prejudice to bilateral meetings of regional nature when deemed appropriate
- Exchange relevant information on the status of inspection systems and on outstanding inspection actions in the field of occupational safety and health, labour relations and undeclared work, monitoring of specific campaigns and implementation of new campaigns or initiatives of mutual interest
- Identify new areas of interest for both labour inspectorates

- Exchange information on new legislative measures that occur in both countries and that may affect the labour inspection action.

The Joint Follow-up Commission has been acting essentially through the annual meeting of the teams of the central Directorates of both Inspectorates (which traditionally includes not only the Sub-Directorates but also the Directors themselves).

The annual meeting of the commission has an agenda of specific topics agreed upon prior to the meeting and other topics that are recurrent such as: human trafficking, irregular work or letterbox companies¹, etc. The case of letterbox companies is a recurrent issue. Despite the measures implemented by the two countries and the pressure that is being exerted within the inspection teams, this remains one of the most common problems.

Collaboration of social partners

At the beginning of the establishment of the agreement and between 2008 and 2010, there were social partners at the information level.

The regional social partners participated in an “ad hoc meeting”, before or after the formal meeting of the Administrations.

At the present time and since 2010 the social partners have not been summoned again. Those responsible for this agreement understand that the social partners already have their participation bodies in the state inspection council. This is a consultative body that has social partners among its members.

¹ Lettebox companies can be defined as businesses that establish their domicile in one Member State, while conducting their activities in other Member States, usually with the aim of evading legal and social obligations.

EU level and national level legal aspects smoothing or hampering the agreement

The introduction of the Directive EC 2014/67/EU and the reform of the Posting of Workers Directive implemented in 2018 - Directive (EU) 2018/957 - go in the direction of harmonizing cooperation between administrative authorities of the different EU countries.

Actions implemented to address problems

N/A

Outcomes of the agreement

The agreement has enabled cooperation in all areas and mutual knowledge of the two countries.

On the political level, the holding of summits and periodical meetings has provided the commitment of coordination at the political and administrative level. On the legal level: the agreement has enabled the dissemination of the existing problem and, as a consequence, the establishment of criteria and action guidelines for joint actions. In the operational field such agreement has enabled coordinated interventions in both countries, speeding up the collection of information and improving the speed of open procedures. This process has also improved knowledge of regulatory and legislative changes in each country and so the continuity of cooperation over legislative and political change.

This cooperation agreement has made it possible to launch joint intervention campaigns on issues identified as of interest to the two countries, for example the campaign on “Use of agricultural machinery”. It has also made it possible to establish biannual action plans.

The cooperation agreement has been reinforced by the signature of a memorandum at the ministerial level, which strengthens the monitoring of bilateral cooperation carried out by the various bodies and units of the Ministry of Labour, including the labour inspectorate.

It should be noted, however, that there is no involvement of the social partners in the monitoring of the agreements. Since 2010 they have not been invited to participate in ad hoc meetings. There is no fluid information on these meetings, it is a bilateral issue of governments and there is, at present, no participation of the regional social partners in the follow-up of agreements.

Annex - Examples of joint action plans

In 2016, the start-up of an Iberian Work Accident Prevention Campaign was agreed. During the year 2016, the informative phase of the campaign was developed, having carried out both analysis and study of occupational accidents in both countries, as well as dissemination actions.

2017-2018 Action Plan

Issues related to the Public Employment Service, the National Institute of Occupational Health and Hygiene, Social Security or Occupational Health have been addressed.

2019-2020 Action Plan:

Issues related to the recruitment and training of new labour inspectors have been addressed. The initiatives implemented by the labour inspection training centres have been shared and their training systems have been revised.

The focus has also been placed on job insecurity. In this sense, the Portuguese authorities have paid attention to the measures put in place by the Spanish administration to reduce precariousness, for example the Spanish inspection plan “For decent work”. They focused their implementation and the results obtained by these measures. Equally interesting have been the studies and analysis of new forms of work: platform workers; bogus self-employed, etc.

ABOUT

The objectives of the ISA Project are to promote and reinforce transnational cooperation between authorities and stakeholders involved in the posting of workers in the construction sector, by promoting the establishment of information sharing agreements meant to monitor and ease the posting of workers.

The project will build on practices in place between sectoral funds in Italy, in Germany, Austria and France, where sectoral funds, backed by the governments, negotiated and successfully concluded agreements simplifying procedures necessary to post workers abroad, while making sure employers posting workers abroad are in compliance with the payment of due wage elements (like the holiday pay), and easily allowing to check relevant information in the sending country if the need arises.

www.isa-project.eu



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