

ISA

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Sharing Agreements.
Building Eu agreements
for the posting
of workers in the
construction sector
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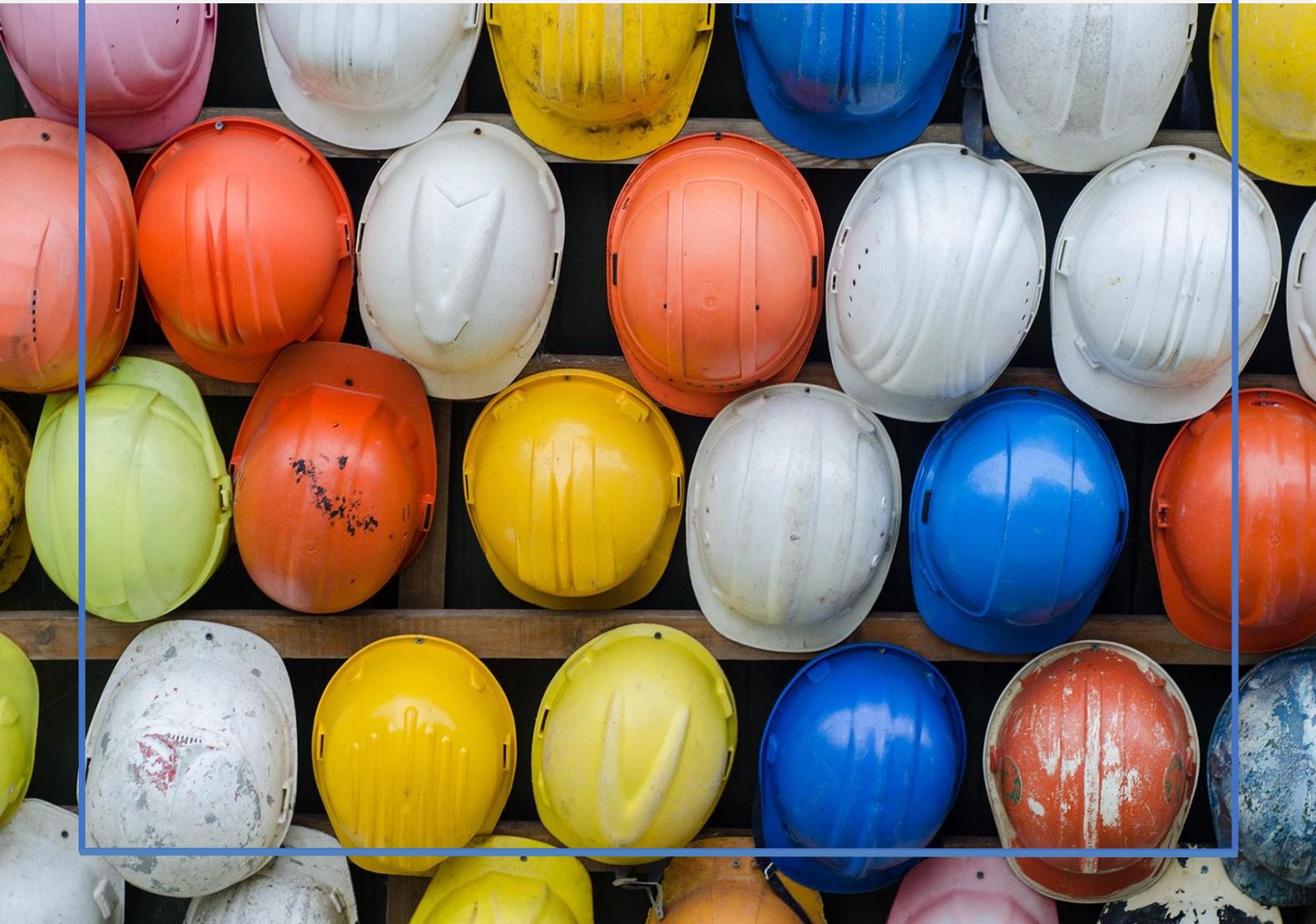
Guidelines

Cross-border cooperation agreement between the Labour inspectorates of Spain and France

Author: Notus asr

November 2020

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Risks or concerns addressed by the Agreement

The Bilateral Agreement between France and Spain on Cooperation for the transnational posting of workers and the prevention of undeclared work, was signed on 26 April 2019, replacing the previous Agreement signed on 22 September 2010. It includes a Common Statement between the Labour and Social Security Inspectorate under the Ministry of Labour, Migration and Social Security of the Kingdom of Spain and the Directorate General for Employment of the French Republic. It regards cooperation in the field of Transnational posting of workers and the prevention of undeclared work.

The main risks and concerns addressed are:

- The need to ensure an efficient protection of employment, health, safety, hygiene and working conditions for posted workers so they can carry out their work in French or Spanish territory, as well as to reduce the risk factors that lead to occupational accidents or disease
- The need to ensure the protection of the workers' rights in cases of undeclared work
- The need to ensure the compliance with the Posting of Workers Directive (Directive 96/71/EC)
- The compliance with Regulation EU 1024/2012 on administrative cooperation through the Internal Market Information System (Regulation IMI).

Objectives

The objectives established in the Common Statement, included in the Cooperation Agreement, are as follows:

- 1) Improving the collaboration, coordination and the exchange of information with the purpose of providing a more efficient response, especially in the case of occupational accidents suffered by posted workers in Spain or in France
- 2) Improving the reciprocal knowledge of the Spanish and French National Authorities, including the way they work and of the legal framework applicable in each country
- 3) Improving the detection mechanisms and action procedures of the Labour Inspectorates against the phenomenon of "Letterbox companies" that operate in both countries, as well as the situation of fraud regarding the posting of workers or undeclared work
- 4) Improving the monitoring procedures for the Internal Market Information System (IMI) with the aim of processing information requests in a faster and more efficient manner
- 5) Increasing the Exchange of information regarding the impact and the results of the activity of the inspections on Spanish or French businesses, according to the obligations of Directive 96/71/EC (Law 6451/1996), as modified by Directive 2018/957/EU ,and the Enforcement Directive 2014/67/EU
- 6) Reinforcing employees and employers' knowledge of the legal regulations applicable to their specific situation
- 7) Promoting the exchange of information on areas of common interest with the purpose of achieving a better European coordination.

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

Workers:	Better knowledge of both Labour inspectorates, thanks to the exchange of information between the two bodies, improving information on the posted workers in both countries.
Companies	Better knowledge of both Labour inspectorates, thanks to the exchange of information between the two bodies, improving the information of the companies that post workers in both countries.
Unions	Ensuring the rights of posted workers is a success for trade unions.
Employers’ organisations:	For Employer’s organizations, ensuring the compliance of legislation for posted workers is an asset to prevent unfair competition.
Institutional actors:	Awareness of inspection staff.

Main features

It is an Agreement, mainly of an administrative nature, to reinforce the bilateral relations between both National Labour Inspectorates and to create a framework for the sustainable development of joint activities.

Process of adoption and role of the different stakeholders involved

The signature of the Agreement stems from the update of the agreement signed on 22 September 2010, and the need to adapt to the new EU provisions on posting.

First of all, a National Dialogue Committee was created to reinforce bilateral relations between France and Spain.

Furthermore, the designation of Proximity Correspondents, identified within the territorial services and in the liaison offices that correspond in every country to the Inspection Services was created.

The competent authorities designated by France are:

- The Directorate General for Labour, as a national liaison office for all the non-border regions within the Kingdom of Spain and for the border regions when the decentralised offices do not correspond at both sides of the border

- The Regional Department of Enterprise, Competition, Consumer affairs, Labour and Employment of the Occitania Region, for the border area that covers:
 - in France, the territory of the Occitania Region;
 - in Spain, the territory of the Autonomous Communities of Aragon and Catalonia.
- The Regional Department of Enterprise, Competition, Consumer affairs, Labour and Employment of the Nouvelle-Aquitaine Region, for the border area that covers:
 - in France, the territory of the Nouvelle-Aquitaine Region;
 - in Spain, The territory of the Autonomous Communities of the Basque Country and Navarre.

The competent authorities designated by Spain are:

- The National Directorate of The Labour and Social Security Inspectorate as the central authority in labour inspection and social security, as a national liaison office for all the non-border regions with the Kingdom of Spain and for the border regions when the decentralised offices do not correspond at both sides of the border
- The Regional Directorate of The Labour and Social Security Inspectorate from the Autonomous Community of Aragon, for the border area that covers:
 - in Spain, the territory of the Autonomous Community of Aragon;
 - in France, the territory of the Occitania Region.
- The Regional Directorate of The Labour and Social Security Inspectorate from the Autonomous Community of Catalonia, for the border area that covers:
 - in Spain, the territory of the Autonomous Community of Catalonia;
 - in France, the territory of the Occitania Region.
- The Regional Directorate of The Labour and Social Security Inspectorate from the Autonomous Community of the Basque Country, for the border area that covers:
 - in Spain, the territory of the Autonomous Community of the Basque Country;
 - in France, the territory of the Nouvelle-Aquitaine Region.
- The Regional Directorate of The Labour and Social Security Inspectorate from the Autonomous Community of Navarre, for the border area that covers:
 - in Spain, the territory of the Autonomous Community of Navarre;
 - in France, the territory of the Nouvelle-Aquitaine Region.

Functions:

The functions of these correspondents are to prepare and contribute to the implementation of the programme of activities defined by the National Dialogue Committee.

The Immediate operative cooperation actions are:

- 1) The creation of a yearly programme of activities among the parties
- 2) The organization of briefings and the exchange of information materials regarding the French and Spanish legislations, aimed at employees and employers, employers' organizations and trade unions, in the field of posted workers and undeclared work
- 3) The exchange of methodological materials, targeting labour inspectorates and their institutional partners, with the purpose of facilitating mutual knowledge and the understanding of their respective operational frameworks and the legal developments in each country
- 4) Organising the participation of control agents from the Labour Inspectorates from France and of inspectors and deputy inspectors of the National Labour and Social Security Inspectorate from Spain, as observers, in coordinated controls in France or in Spain

The planning of the activities to be carried out and a clear schedule to be completed on a yearly basis.

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

None.

Actions implemented to address hampers

N/A

Outcomes of the Agreement

This is one of the youngest cooperation agreements, since it was signed on 26 April 2019. Nonetheless, on 18 September 2019, Madrid held the first bilateral meeting between the two authorities regarding cooperation in the field of the posting of workers and the prevention of undeclared work, dealing, among other issues, with the creation of the National Dialogue Committee and the planning of joint activities to be developed in 2019-2020.

Given the Covid-19 crisis, it has not been possible to develop the action plans as foreseen. However, amidst the pandemic, meetings and videoconferences were held to share the measures and actions implemented in each country.

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.isaproject.eu



The project is carried out with the financial support of the European Commission.

The opinions hereby expressed reflect only the authors' view.

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