



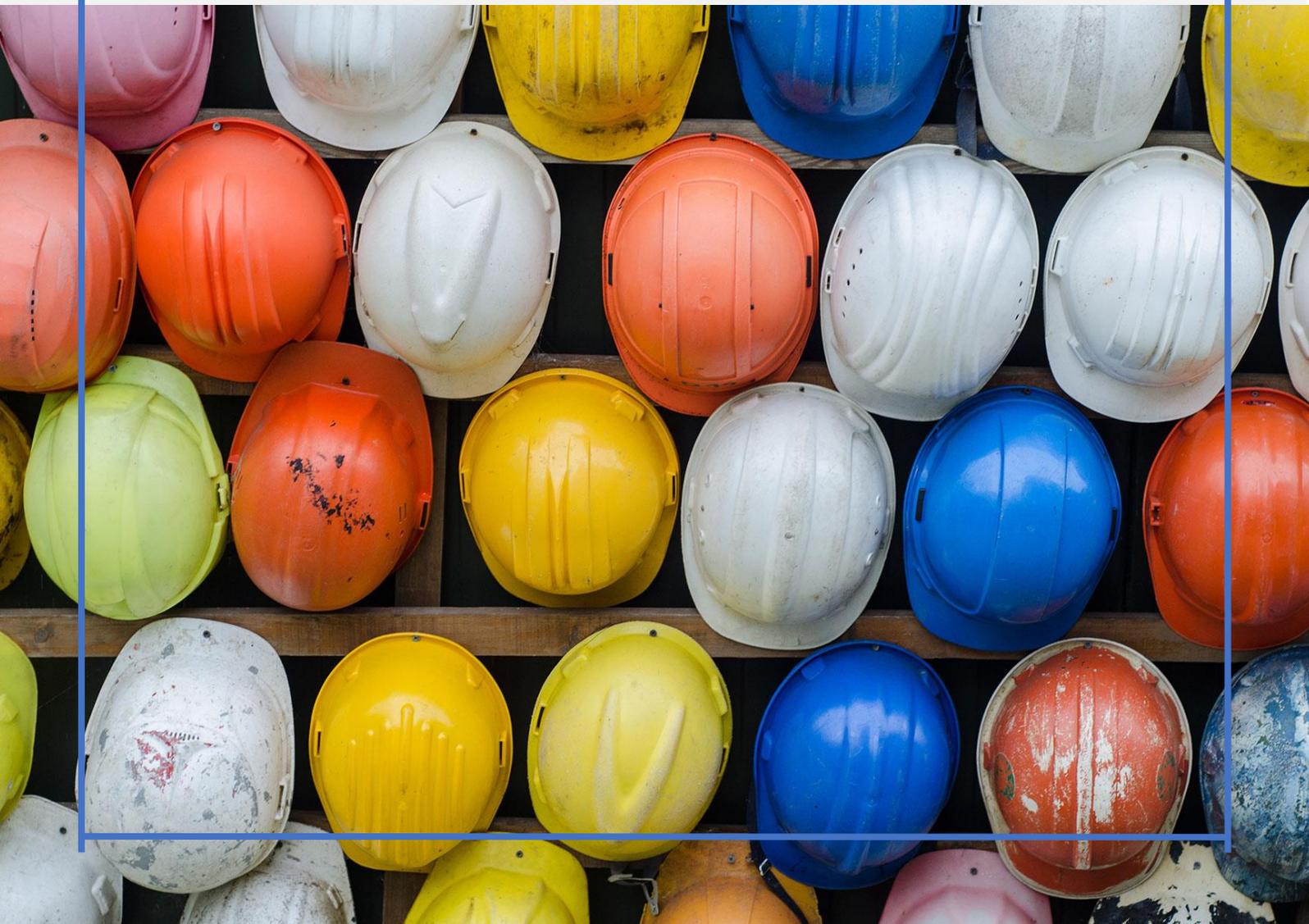
Guidelines

Bilateral Agreement: Portugal-Belgium

“Bilateral Agreement between the Authority for Working Conditions of Portugal and the Service for Control of Social Laws and the Service for Control of Well Being at Work, both from the Federal Public Service Employment, Social Work and Consultation of the Kingdom of Belgium”

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Risks or concerns addressed by the agreement

The Bilateral Agreement was signed in 2009. The main risks and concerns addressed, as mentioned on the agreement preamble, relate to the need to ensure the effective protection in employment, safety and hygiene, and working conditions of workers posted from the territory of one of the countries to the territory of the other, as well as eliminating hazards that cause accidents and occupational diseases.

The historical concern of the two parties regarding working conditions in both countries can be seen in the Agreement signed between the Portuguese and Belgian Government on Living and Working Conditions, Vocational Training and Social Promotion and Culture of Portuguese Workers and Their Resident Families in the Belgium, signed in Brussels on 29 November 1978, confirmed by Decree 22/79.

The Bilateral agreement “Portugal-Belgium” of 2009 increased the scope of labour relations between the two countries. The main guidelines of the 2009 bilateral agreement are aimed at ensuring job protection, health and safety, and proper working conditions for workers posted in the territories of the two countries. In addition, it follows Directive 96/71/EC, which aims to eliminate the dangers that cause accidents at work and occupational diseases related to workers posted in the provision of services in both countries.

Objectives

The bilateral agreement signed between Portugal and Belgium has the following aims:

- strengthen bilateral cooperation between the Minister of Employment and the Federal Service for Employment, Labour and Social Dialogue of Belgium, the Ministry of Labour, Solidarity and Social Security of Portugal, and the Portuguese Authority for Working Conditions (ACT) with regard to the posting of workers and contracted out services;
- enhance information exchange on posted workers, particularly as regards; conditions of employment; maximum work periods and minimum rest; minimum wage (including payment for overtime); the conditions of placement of workers, in particular by temporary agencies; security, health and hygiene of workers; and other irregularities in employment and working conditions.
- Protecting posted workers' rights and working conditions in the territories of the Parties.

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

All stakeholders benefit from the agreement, particularly considering the importance of sharing information.

Workers:	Protection of the rights and working conditions of posted workers. The central objective of the agreement is to ensure that there is no risk of violating rights nor fraudulent practices. Workers have access to information with promotion actions.
Companies:	The agreement mentions that it is a matter of regulating posted workers, which leaves doubts about the rules for workers with an uncertain term contract in the country of origin. However, it is worth noting that the parties undertake to exchange information of a legal nature and the activities that companies practice in the host country. The agreement entails the promotion of actions for the dissemination of information, notably addressing companies' need for information on the counterpart's legislation concerning posting and undeclared work, and the agreement contributes to this information exchange.
Unions:	The focus of the agreement on protecting workers' rights is in line with unions' objectives. Unions need information on the counterpart's legislation concerning posting and undeclared work, and the agreement contributes to this information exchange. Unions share the information provided by ACT on their websites.
Employers' organisations:	Employers require information on the counterpart's legislation concerning posting and working legislation, and the agreement contributes to gathering and disseminating this information exchange, assisting in the work of Employers' organizations with their members.
Sectoral funds:	N.A.
Institutional actors:	National authorities need methodological support and training, which the agreement supports.

Note: All the above mentioned actors – workers, companies, unions and employers' organisations need methodological support and training.

Main features

Both parts agree to establish the following operational cooperation actions:

- 1) exchange information on workers posted within the framework of the provision of services in their respective territories, especially with regard to working conditions;
- 2) exchange information of legal nature and the type of activities carried out by employers of posted workers;
- 3) accomplish cooperation regarding information exchange on posting through the competent authorities registered at the Internal Market Information System (IMI)
- 4) organize annual sessions to discuss and evaluate the agreement signed between the parties.

In addition, both parts should meet annually to define joint cooperation actions at the operational level and evaluate ongoing actions. The annual meetings take place alternately in Belgium and Portugal.

The implementation process has included campaigns oriented to the promotion of declaring posted work (although it lacks financial resources), exchange of information between the inspection authorities of both countries and some joint inspections in companies identified as having undeclared posted workers. Besides undeclared work, there is also a concern with retributions, working time organization, temporary workers' situations, and the compliance with all the legal obligations, in particular concerning posting inside business groups.

There is a pilot project to promote joint inspection activities and campaigns to promote the end of undeclared work that includes Portugal, Belgium and Lithuania. This project includes the creation of a platform against undeclared posting work, that has stopped due to the current situation of COVID-19.

There is also a clearer articulation between the Inspectorates and the Social Security Institutes; both entities are now working together more closely. ACT promotes training for employees of Social Security Institutes on posting.

Process of adoption and role of different involved stakeholders

The agreement results from a process of negotiation between the national bodies of the Labour Inspectorates.

The authorities responsible for establishing and implementing the agreement are:

- in Portugal, the Authority for Working Conditions (ACT);
- In Belgium, the Service for the Control of Social Laws and the Service for Control of Well Being at Work, both from the Federal Public Employment Service, Work and Social Consultation.

The adoption and implementation of the agreement did not involve other stakeholders.

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

The Agreement endorses:

- the European Social Charter, considering both part's reservations;
- the Charter of Fundamental Rights of the European Union (specifically Article 15 on professional freedom and the right to engage in work in the territory of EU member-States; and Article 31 on fair and just working conditions);
- the Directive 96/71/EC concerning the posting of workers in the framework of the provision of services;
- the Directive 2014/67/EU on the enforcement of Directive 96/71/EC;
- the Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data;
- The International Labour Organisation Convention no. 181 on Private Employment Agencies (1997) (particularly Article 8 on the protection of migrant workers).

The main issues raised are the difficulty in homogenising the legal frameworks (e.g. on vacation periods). The difficulty also arises from the different legal concepts applied in each country (e.g.: workers do not understand their pay slip, so they cannot evaluate if it is correct). It is important to discuss it at the European level, in order to, if possible, homogenize procedures, languages, etc.

Actions implemented to address hampers

No information available.

Outcomes of the agreement

The main outcomes of the agreement include:

- joint inspections in companies identified;
- joint activities at a multilateral level, e.g. under the European Labour Authority (ELA) and the European Platform tackling undeclared work;
- bilateral meetings to discuss and evaluate the Agreement, translated in the dissemination of the information, the preparation of joint inspections and, generally speaking, the possibility of having a joint platform to intensify cooperation;
- information, dissemination and training activities, namely concerning the IMI platform, which resulted in a higher efficiency in the compliance of the legal obligations, namely the retributions due in the host country;
- participation of the Portuguese Social Security Institute in cooperation activities.

In addition, in 2017, the Secretary of State for the Fight Against Social Fraud, Privacy and the North Sea, attached to the Minister of Social Affairs and Public Health of Belgium and The Minister of Labour, Solidarity and Social Security of Portugal made a joint statement on the development of cooperation in the fight against cross-border social fraud with regard to the enforcement of the rules on social policy, in the case of cross-border employment, and with regard to the enforcement of social security legislation.

Sources

- Information gathered by conversation with ACT.
- Fernandes, S. F. G. (2017) *A tributação dos trabalhadores transfronteiriços*. Tese de Mestrado em Fiscalidade Internacional. Escola Superior de Gestão, Hotelaria e Turismo - Universidade do Algarve. 163pp.

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



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The opinions hereby expressed reflect only the authors' view.

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