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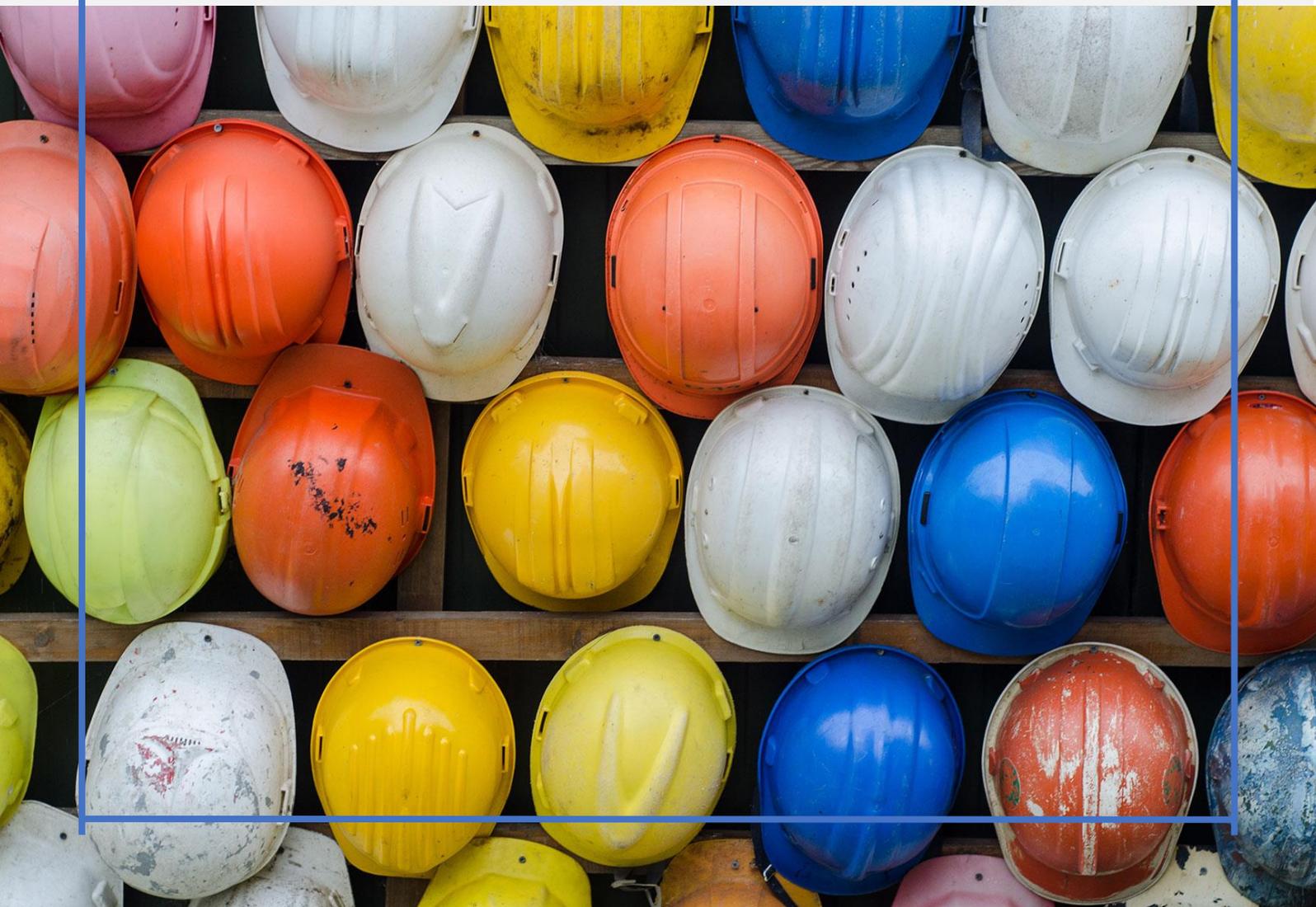
Guidelines

Bilateral Agreement: Portugal-France

“Administrative Cooperation Agreement between the Ministry of Labour from the French Republic and the Ministry of Labour, Solidarity and Social Security from the Portuguese Republic on the posting of workers and prevention of undeclared work”

Authors: Luísa Veloso, Joana Marques, Catarina Sales Oliveira (ISCTE-IUL)

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Risks or concerns addressed by the Agreement

The Administrative Cooperation Agreement between the Ministry of Labour from the French Republic and the Ministry of Labour, Solidarity and Social Security from the Portuguese Republic on the posting of workers and prevention of undeclared work was signed in 2017. On the Portuguese side, it involves the Authority for Working Conditions (ACT) and the national Social Security Institute.

The main risks and concerns addressed by the agreement are the following:

- Need to ensure the effective protection of employment, health and safety, and working conditions of posted workers in performing their tasks in the counterpart's territory;
- Need to eliminate the risks of accidents at work and occupational diseases;
- Need to guarantee the protection of workers' rights in situations of undeclared work.

Objectives

The main objectives of the agreement are:

- strengthening bilateral cooperation between the Ministry of Labour from the French Republic and the Ministry of Labour, Solidarity and Social Security from the Portuguese Republic with regards to the posting of workers and undeclared work;
- protecting posted workers' rights and working conditions in the territories of the Parties (including in the situation of undeclared work).

'Business case' for adopting the agreement from the standpoint of stakeholders

The agreement addresses the following needs:

Workers:	Protection of posted workers' rights and working conditions, including in the case of undeclared work.
Companies:	Need for information on the counterpart's legislation concerning posting and undeclared work.
Unions:	Need for information on the counterpart's legislation concerning posting and undeclared work.
Employers' organisations:	Need for information on the counterpart's legislation concerning posting and undeclared work.
Sectoral funds:	N.A.
Institutional actors:	Need for methodological support and training.

All relevant information is available on line. ACT promotes various actions to disseminate information close to workers, companies, unions and employers' organisations.

Main features

Both parts agreed and implemented the following operational cooperation actions:

- 1) organization of information sessions on French and Portuguese legislation concerning the posting of workers and undeclared work for companies in both States;
- 2) drafting information documents on French and Portuguese legislation for companies, workers, professional organisations and trade unions;
- 3) developing methodological supports for labour inspectorates and their institutional partners;
- 4) organization of joint inspection interventions in France or Portugal, in which invited labour inspectors participate as observers;
- 5) organization of joint training sessions.

In addition, both parts commit to organise an annual meeting to define joint cooperation actions at operational level. The meetings shall be organised alternately in France and Portugal. They shall also be a moment to evaluate ongoing joint activities.

Process of adoption and role of different involved stakeholders

The agreement results from a process of negotiation between the two governments, at the level of the Ministries of Labour.

The governance of the agreement entails the following procedures:

- 1) annual meeting with the participation of the inspection authorities, the ministries of labour and the social security institutions of both countries to define joint cooperation actions at the operational level and evaluate ongoing actions. The annual meetings take place alternately in France and Portugal;
- 2) a steering committee with members from the Inspectorate authorities of each country that have an annual meeting and discuss the activities already developed and the activities to be developed, namely joint inspections and dissemination of information (the last one took place in March 2020);
- 3) in January 2020 a public [Seminar](#) took place to discuss posting and mobility. The seminar involved public authorities, as well as stakeholders. Inspection Authorities of Luxembourg and Belgium also participated;
- 4) a [document](#) was created to disseminate information related with the legal framework to be disseminated among French companies that want to post workers in Portugal; as well a [brochure](#), created by DGT/France related with the legal framework to be disseminated among Portuguese companies that want to post workers in France. The documents are in both languages (Portuguese and French);
- 5) the development of joint inspections. The aim is to enlarge the joint inspections, but this requires financial support.

The authorities responsible for establishing and implementing the agreement are:

- in France, the General-Directorate of Labour, through the Labour Inspectorate;
- in Portugal, ACT - Authority for Working Conditions, the competent authority for improving working conditions, and the Social Security Institute, each according to its competences.

The cooperation regarding information exchange on posting between the Labour Inspectorates is accomplished through the competent authorities registered at the Internal Market Information System (IMI).

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

The Agreement endorses:

- the European Social Charter, considering both parts' reservations;

- the Charter of Fundamental Rights of the European Union (specifically Article 15 on professional freedom and the right to 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).

No aspects were identified that aids or hinders the agreement.

Actions implemented to address hampers

Nothing in particular.

Outcomes of the Agreement

The main outcomes of the agreement are:

- a) the sharing and discussion of information;
- b) the development of joint inspection activities;
- c) the dissemination of relevant information.

More in detail, the main results achieved so far are:

- establishment of a steering committee (SC) that met for the first time in 2018 and meets annually to evaluate and monitor the Agreement;
- creation of a group of agents of proximity in both countries responsible for setting up the agreements, as defined on 11-12 December 2019;
- publication of the e-document “Temporary posting in France: what are your rights and obligations regarding Labour legislation?”, in order to disseminate the information among the Portuguese companies posting workers in France;
- Exchange programme for labour inspectors.

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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