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POSTING OF WORKERS IN EASTERN EUROPE

EEPOW Peer Review Key messages

Bilateral and multilateral cross-border practices: the Italian approach to preventing social dumping and enhancing access to the European labour market

Trieste, Italy, 26th June 2019

Executive Summary

The EEPOW Peer Review in Trieste focused on *cross-border cooperation practices* that have been recognized to prevent social dumping and enhance access to the European labour market. These practices have taken various forms such as: cross-border agreements, protocols, projects and other information exchange tools among public authorities, enforcement agencies and social partners.

The Peer Review provided the opportunity to analyse the current situation on posting of workers in Italy and gain practical insights into how existing challenges, in particular in the construction sector, can be overcome via enhanced cooperation between relevant organisations. The event provided the opportunity to analyse and reflect on if and how bilateral cross-border cooperation practices have influenced the implementation of the Directive and eventually contributed to increasing transparency and accountability of enterprises. The discussions during the event highlighted that a wide range of aspects must be taken into consideration when acting across borders since many differences across countries and actors exist. The Peer Review also resulted in recommendations drawn for the future addressed at public authorities and social partners.

The event was organised by Ciofs-FP and hosted by the Region Friuli Venezia Giulia. It took place in the city of Trieste, a particularly significant area in this context due to its geographical location and economic situation. Trieste and its neighbouring areas are historically characterised by a dynamic labour market and economy, especially in terms of labour migration, immigration and mobility. The event brought together policymakers, labour inspectorates, representatives of social partners, civil society and the research community from the host country, Italy, and the six peer countries Italy, Slovenia, Serbia, Albania, Montenegro and North Macedonia.

Key messages from the Peer Review

The Peer Review showed that many cross-border cooperation practices (mechanisms and tools), especially in the construction sector, have been effective in avoiding social dumping. To be successful they, however, need several pre-conditions including comparable social security systems (contractual provisions, social security charges, career progression mechanisms), the will of cooperation among organisations and an adequate set of capacities and skills at disposal.

Social partners in Italy and across Europe have promoted various initiatives that have been proven to be effective at the transnational level. Social partners play a crucial role in improving working conditions of posted workers, enhancing worker's mobility and protecting social rights.

Research, data collection and information sharing are crucial for success, in EU Member States and in the candidate countries, both for policy action and for the implementation level. Investment in this area should be increased and more efforts taken.

Participants stressed that a lack of clear frameworks often leads to the development of new mechanisms of cooperation. In this perspective, the most recent revisions of the Posting of Workers Directive appear not to be sufficient. Details on how to deal with key issues such as social charges and disparities among different EU Member States, for instance, are missing.

Social partners are not only acting as promoters of initiatives, they are also lobbying at the political level to improve the legal framework and strengthen cross-border cooperation in order to protect workers' rights and promote social corporate responsibility of businesses in the area of posting and labour mobility in general.



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On bilateral and multilateral cross-border mechanisms as promising “models of action”

- Cooperation mechanisms like the bilateral conventions signed by social partners and intermediary bodies in the construction sector in Italy, Austria, Germany and France (CNCE, BUAK, SOKA-BAU and UCF respectively) are reported to be effective in avoiding social dumping. These agreements allow their affiliated companies to be exempted from the registration in the National Welfare Funds in order to post their employees, keeping their registration and protection in the country of origin. The immediate advantage for workers is that their career progression and social protection are perfectly in line with their contractual frameworks during the posting periods. This is achieved by ensuring uniform wage and applying an equal set of rules for all workers at the same construction site. They are also an effective way to enhance the capacities of companies. Generally, these cooperation practices assist in exchanging information on local contractual conditions between the workers' and employer's organisations. Furthermore, they help reducing irregular work and monitoring the proper application of contractual and social security charges and obligations. By implementing these mechanisms workers' and employer's organisations often aim at simplifying procedures and preventing illegality.
- To be successful these mechanisms require a set of pre-conditions to be implemented: first of all, these practices work best between actors of countries uniform salary schemes, similar social security systems and charges, career progression mechanisms and sector agreements. Second, a sound system of information sharing, like the one currently practiced by the CNCE and BUAK needs to be established. Finally, a certain level of capacity of the social partners is required to handle additional administrative burdens – both financially and in terms of know-how. This limits the participation of some countries and in particular some EU candidate countries. Finally, models of this kind are sector-specific (construction sector, transport sector, etc.) and should be implemented in a similar environments – not only in terms of territories, but also in terms of enterprise sizes (differences are reported when applying the model in territories dominated by SMEs or large enterprises).
- Bilateral and multi-lateral cooperation mechanisms contribute to more fair labour markets and would not be needed in a harmonised internal market, especially in terms of collective labour agreements at the European level: though the equal treatment of workers is regulated by law, the economic situations and employment conditions vary largely within the EU, resulting in huge inequalities between countries.
- The lack of clear frameworks leads to the development of new mechanisms of cooperation. Therefore, the most recent revisions of the Posting of Workers Directive appear not to be sufficient. Details on how to deal with key issues such as social charges and disparities among different EU Member States, for instance, are missing. Participants agreed that instead of establishing additional legislation, efforts should be taken to elaborate on more specific provisions within the current legal framework.

On the crucial role of social partners

- Social partners play a crucial role in improving working conditions of posted workers, enhancing worker's mobility and protecting social rights. Their contribution varies depending on the social partners' capacities (including their networks) and the country's overall economic situation. The will and capacity of cooperation at the transnational level is a key factor for success. Actors thereby build on experiences in establishing cooperation at the national and regional levels (cooperation between other parties, namely public authorities responsible for posting of workers at all levels).
- A wide range of promising practices is available regarding the cooperation among social partners. The practices can bring various benefits – on the short, mid and long term: they improve the working conditions of posted workers and enable for fair companies operating successfully in the market. Significant experiences have been presented at the event such as the REDER network in the construction sector. Within this project unionists and labour inspectors were trained, around 40.000 workers were informed about their rights and around 100 cases of protection of posted workers across 9 EU countries were directly solved. Another project presented at the Peer review was the EU Post Lab, which has shown how to better combine data with information gathered from field inspections to enforce terms and conditions of employment of posted workers and identify clear markers and indicators of possible frauds in posting.
- Limitations of such experiences include: i) the limited time-frame of project initiatives; ii) the difficulty of guaranteeing sustainability of successful practices and of the benefits gained through them; iii) the limited scope of projects; and iv) the voluntary basis of the cooperation mechanisms established.
- The role of social partners, and in particular of Trade Unions, goes far beyond project work: national and European federations are very active in lobbying at the policy level to improve legal frameworks, establish cooperation among public and private



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actors, develop tools and practices to monitor the posting phenomena, prevent frauds and protect workers. As an example, the European Federation of Building and Woodworkers campaigns, advocates and acts for an effective policy framework to assure decent work across the EU and for a shift from the primarily competition enhancement towards drawing attentions to social rights of workers.

Recommendations

- Many cross-border cooperation practices appear to be effective and necessary in preventing social dumping and enhancing access to the European labour market, in particular when cross-border collaboration of administrations and social partners are established. Their importance should be recognized and funding made available in order to guarantee their sustainability. Practices of this kind should become a policy priority so that these practices can be institutionalised at the European and the national levels.
- It is recommended to increase efforts for establishing bilateral agreements and advocacy among social partners, and to reinforce social partners' networks and capacities. These agreements can lead to more fair labour markets (consistent contractual protections amongst regions, legislative norms, social protection of workers, etc.) and as such would be a qualitative leap forward in the relationships among the involved actors. This implies that continuous efforts in capacity building and networking amongst relevant actors must be taken. It is suggested to work towards regional clusters for bilateral and multi-lateral agreements based on comparable regions and countries in Europe, which pilot enhanced cooperation mechanisms.
- There is a strong need for studies and comparative analysis among different territories to build an evidence base at all levels: in the EU Member States and the EU candidate countries as well as at the sectoral and at regional levels. Moreover, a comprehensive mapping exercise on the status quo regarding cross-country cooperation practices and bilateral schemes of posting is needed.
- The provision of and access to information on posting in both the country of origin and the host country has been recognised as being of great importance for the protection of workers' rights, as well as establishing preventive measures (rather than enforcement and punishment of frauds only) and introducing referents that assist workers in difficulties. Last but not least, it is recommended to guarantee anonymity for workers reporting frauds (workers should be encouraged rather than discouraged to announce exploitation).
- At the company level, corporate social responsibility and companies' reputation should proactively be addressed. This can include different actions which range from "blacklists" of unfair employers (who mostly are known by social partners in their territories) to developing guidelines and criteria for public authorities to award public contracts (i.e. supporting those enterprises following adequate labour standards and laws in the country of origin and in the host country).
- Finally, a shift towards prioritising workers' rights in European policy is recommended: the harmonisation of labour legislation including social protection systems must become a common objective since competition and internal market regulations often fail to protect mobile and especially posted workers. EU-wide systems of monitoring, control, prevention and exchange of information should be developed that ground on experiences gained from successful cross-country practices. These systems must be made practicable and operational so as to include real-life experiences and details on how to deal with key issues - such as social charges and disparities among different EU Member States - into the articulation of the Posting of Workers' Directive.