



EMECs EU Report

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Introduction

This report was produced as part of the ‘European market environment in the construction sector - Enhancing the free movement of posted workers in EU’ project (EMECs), co-funded by the European Commission, and addressing the impact of the COVID-19 pandemic on mobility, working conditions and social protection of posted workers in the construction sector.

By means of a set of research and mutual learning activities, the project aims at delivering proposals to better support posted workers in case of future pandemics.

As to provide background information for the rollout of the project, a set of country reports has been prepared by means of desk research and interviews to stakeholders addressing: Germany, Italy, Spain, Poland, Portugal, and Romania. The reports are available in the EMECs project’s web-site, as listed in the Annex.

Following a common questionnaire, the country reports depart from contextual information, addressing measures restricting free movement of workers and production, to detail: the actual impact of the pandemic on posting as per available figures and evidences; problems encountered by companies involved in posting (e.g. in arranging mobility of workers or in providing adequate accommodation); problems encountered by posted workers (e.g. remaining blocked in the host country or facing difficulties in accessing social benefits and aids); and evidences of COVID-19 outbreaks in construction sites, including related information on geographical areas affected and involvement of posted workers.

This EU Report maintains the same structure, comparing results from country reports, and framing them with a paragraph on relevant EU-level measures. Conclusion sums up the main evidences to identify core aspects to be further dealt as part of the next project’s activities.

Whenever not explicitly mentioned, evidences from studies and interviews are taken from the country reports. Complementary sources include: additional Eurostat and administrative data, full text of acts and documents cited in the country reports or otherwise indicated by project’s partners as relevant, and interviews conducted by partners as part of other project related activities (referred to as ‘evaluation interviews’).

Contextual information

Ahead of the first wave of the pandemic, most countries adopted **state of emergency declarations** enabling governments to act swiftly and outside the standard prerogatives in a view to tackle the pandemic.

Italy was the first country to enter the state of emergency (31 January 2020), and terminated it only on 31 March 2022.

Poland introduced the state of epidemic threat on 14 March 2020, upgraded to the state of epidemic on 20 March 2020. This status was overcome only as of 16 May 2022, when Poland entered again the state of epidemic threat.

Instead, Spain introduced the State of Alert on 14 March 2020, to exit it already after the first wave of the pandemic, on 21 June 2020.

In Romania, the state of emergency lasted between 16 March 2020 and 14 May 2020, to be followed by the state of alert until 8 March 2022.

In Portugal, the State of emergency was introduced on 18 March 2020, to end on 30 April 2021.

Finally, Germany entered the ‘Epidemic situation of national scope’ on 25 March 2020. About to be ceased as of 25 November 2021, it was eventually prolonged until 30 September 2022.

STATE OF EMERGENCY
DECLARATIONS AND RESTRICTIONS
TO INTERNATIONAL MOVEMENTS
WERE ADOPTED ACROSS ALL
COVERED COUNTRIES

Restrictions to international movements were introduced across all covered countries, with slightly

different approaches.

In Germany, a ban to entry the country was introduced as of 16 March 2020, targeting neighbouring countries. The ban was extended the very next day, and entrances were allowed only for valid reasons, including, for example, commuting or the cross-border movement of goods. Starting from 10 April 2020, a 14 day-long period of quarantine was to be observed by persons returning to Germany, net of some exceptions, like commuters or truck drivers.

Starting from 15 May 2020, controls at the border were differentiated depending on the country of provenience, whilst rules on quarantine upon entry were also adjusted according to the country.

In Italy, starting from 9 March 2020, entry was made conditional upon a 14-day long period of isolation and health surveillance, with flights being cancelled. At the same time, the country was the only one in the sample not to reintroduce border controls.

Entry for work reasons, limited to 72 hours, possibly extended by additional 48 hours, was among the exceptions from the isolation requirement.

Starting from 18 May 2020 restrictions on international movements were gradually lifted, being replaced by a duty of notification and by a period of isolation and health surveillance depending on the level of risk of the country/-ies recently visited by the person.

Starting from April 2021, the notification duty was accompanied by a COVID-19 certificate, in line with EU rules. Additional restrictions (i.e., a testing obligation even for vaccinated persons) were reintroduced in December 2021, causing tension between the national government and the EU Commission.

Poland restricted border traffic, limiting as well the possibility for posted workers to move between the host and the sending country. At the beginning of the pandemic, with the introduction of a sanitary fence, only Polish citizens were allowed to enter the country, a condition which was soon relaxed, enabling posted workers, among others, entrance in Poland. Quarantine was introduced during the first waves, lasting 14 days. Albeit, following EU-wide rules, entrance was generally subject to a COVID-19 certificate, quarantine for people crossing the border was reintroduced even in 2022, for a shorter period (10 days, later reduced to 7).

Portugal was one of a kind. Whereas restrictions to international movements included cancellation of flights, reintroduction of controls at the borders with Spain, some being closed, and a general prohibition to enter the country (with some exceptions, including for work-related entrances); borders remained open for people coming from countries with large Portuguese communities, such as the United Kingdom, the United States of America, Venezuela, Canada, and South Africa. Among others, the goal was to ease returning back home for people having lost their job due to the pandemic.

Initially targeting Italy (March 2020), suspension of flights was adopted especially during the third wave (January-April 2021), targeting United Kingdom, Brazil, and South Africa. Between 31 January and 14 February 2021, all flights from and to Portugal were banned. Essential flights only were allowed, provided passengers underwent a COVID-19 test with a negative result within 72 hours from the shipping.

Starting from May 2021, restrictions were significantly lifted, with circulation being linked with proof of negative test and, later, with the possession of the EU COVID-19 certificate and a duty of notification.

Romania coupled the suspension of flights from countries at risk with an isolation of 14 days upon entry in the country. Initial restrictions included the suspension of road and rail transport from and to Italy, with similar measures soon addressing other countries at risk, complemented by closure of borders and reintroduction of border controls. However, legislation did stipulate that the persons who do not have the means to quarantine/ isolate in their own houses or other chosen location, could opt for institutionalised quarantine in facilities provided by the local public authorities¹.

With effect from 17 March 2020, Spain limited entrance in the country to residents, cross-border workers, and to duly justified cases of force majeure.

Controls at internal borders were reintroduced, while the State introduced provisions to ease the accommodation of workers involved in activities of general interest. Between 15 May 2020 and 21

¹ See Annex 2, article 1, paragraph 5 to the government's Decision no. 476 of 16 June 2020, available here: <https://legislatie.just.ro/Public/DetaliuDocumentAfis/226826> .

CONSTRUCTION ACTIVITIES WERE MARGINALLY AFFECTED BY 'LOCK-DOWNS', WITH SHORT CLOSURES IN ITALY AND SPAIN

June 2020, a 14-day long quarantine applied to persons coming from other countries. Movements were possible for basic needs and provided a mask was worn. Italy and Spain were the only covered countries to introduce **restrictions on the operation of construction activities**. Italy

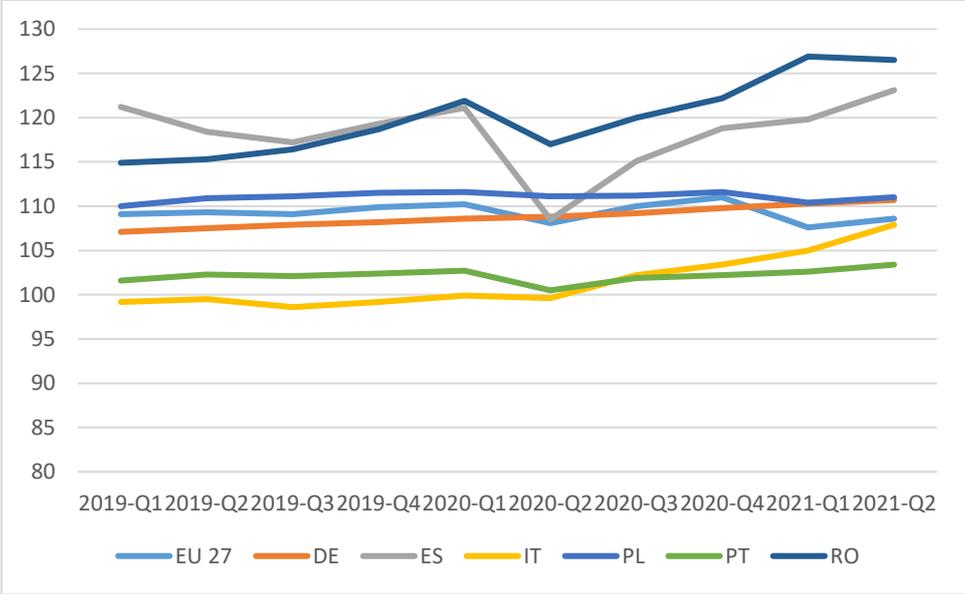
stopped them between 23 March 2020 and 3 May 2020, whereas in Spain the stoppage took place between 30 March 2020 and 12 April 2020. On the same day, an Order of the Spanish Ministry of Health suspended intervention works in existing buildings, with further exceptions being introduced following pressure by social partners, and lasting until 25 May 2020.

In both countries **civil engineering works were exempted from the ban**, albeit the exception was more limited in Spain to works of water supply, purification, conduction and sanitisation. Spain also allowed other construction works, such as tasks essential for the maintenance and safety of buildings and the adequate provision of public services by companies contracted public works.

Social partners successfully pressed the government to allow for activities necessary not to disproportionately harm the resumption of construction activities to be performed on 30 March 2020, despite the ban being already applicable, and to allow for more than one passenger in vehicles, provided a mask was wore, and a 1.5-meter safety distance was observed.

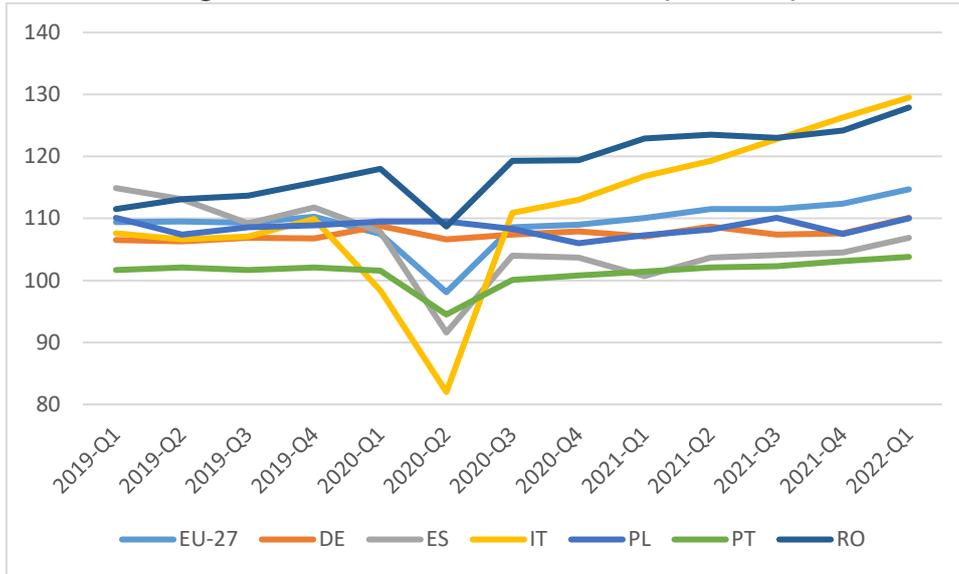
Whereas Eurostat data confirm **production and employment in construction** was worst hit in these two countries within the sample, Italy performed an exceptional recovery over the following months, backed also by generous incentives for renovation works and a freeze in layoffs, whereas the recovery appears milder in Spain, with indicators on worked hours and on production featuring still below the pre-pandemic level.

Figure 1. Number of persons employed in construction (2015=100)



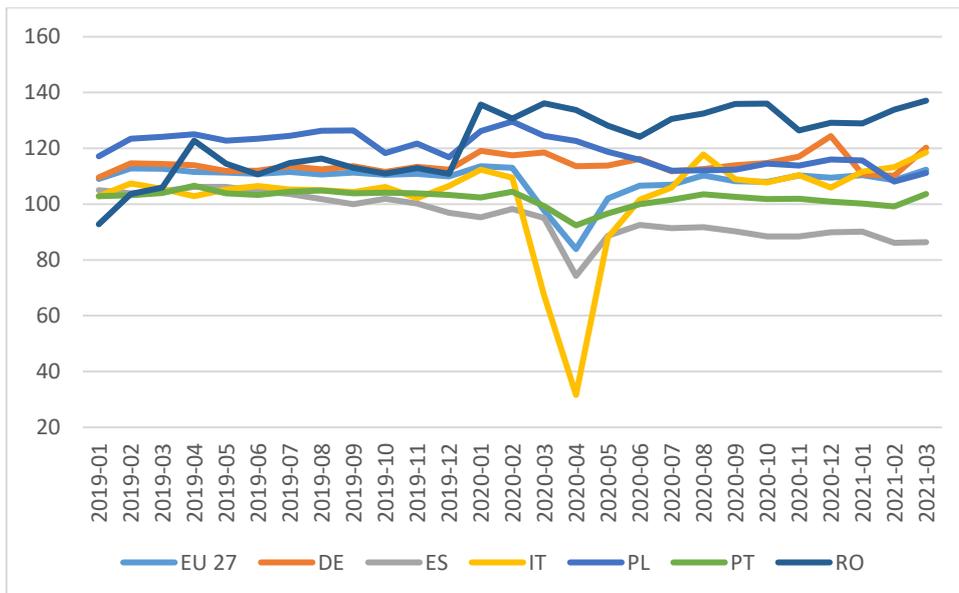
Source: Eurostat, Short-term business statistics

Figure 2. Worked hours in construction (2015=100)



Source: Eurostat, Short-term business statistics

Figure 3. Production in construction (2015=100)



Source: Eurostat, Short-term business statistics

As said, Germany, Poland, Portugal and Romania did not stop construction activities. Nevertheless, **fear of the disease** figures among the reasons explaining the slowdown of activities in Portugal and in Romania during the first wave of the pandemic. In April 2020, the Romanian Minister for European Funds and the Minister for Transports, Infrastructure and Communications even pleaded companies to maintain infrastructure projects running via a public letter.

The German country report adduces difficulties to find employees and a reduction in the demand for renovations of buildings among causes for the mild slow down observed in coincidence with the first wave of the pandemic, together with problems concerning the delivery of building materials and entrance of 'urgently needed' posted workers in the country. In Poland, instead, restrictions on international movements resulted in a shortage of construction workers, many migrating or being posted under national schemes from Ukraine and Belarus, whilst the demand of renovation works has

even been increasing already as of the second half of 2020. Many posted Ukrainian workers remained in Poland, applying for a simplified visa enabling them to stay longer and under a direct contract with a Polish employer (the so-called 'employment on the basis of the employer's declaration of the intention to entrust work to a foreigner'). However, the situation changed radically following the aggression of Russia to Ukraine in February 2022, with a massive outflow of Ukrainians construction workers, returning to their country to join the army.

Free movement of workers in the time of pandemic and EU-wide guidance

EU guidance to coordinate travel restrictions was provided already as of March 2020.

On 30 March 2020, the EU Commission issued a Communication² aimed at **coordinating responses** by EU Member States to COVID-19 pandemic in the context of **free movement of workers**.

In particular, the Commission called Member States to:

- establish specific burden-free and fast procedures for workers in critical occupations, also if frontier or posted workers. This was integrated by a list of occupations, including, among others, occupations linked with construction such as: 'Engineering professionals such as energy technicians, engineers and electrical engineering technicians', 'Persons working on critical or otherwise essential infrastructure', and 'Science and engineering associate professionals (including water plant technicians)'. Other critical occupations targeted: healthcare, pharmaceutical, Information and Communications Technologies, food production and transport activities;
- carry out health screening for frontier and posted workers on the same ground of nationals and in coordination between Member States to avoid double screening;
- allow entrance of frontier or posted workers if work in the sector concerned is still allowed, and adjust the duration of lawful affiliation to the sending country if necessary via ad hoc agreement between authorities of the involved country as per existing rules (i.e., article 16 of Regulation EC 883/2004);
- apply the same provisions targeting critical occupations for seasonal workers, particularly in agriculture, and communicate the employers the necessity to provide for adequate health and safety protection.

By means of Council Recommendation (EU) 2020/912 of 30 June 2020³, and its later amendments, a framework for coordinating entrances from third countries was also adopted and updated in parallel with provisions targeting EU citizens. The recommendation, following a EU-wide ban on non-essential travel from third countries to EU and Schengen associated States adopted in March 2020 following inputs from the Commission⁴, supported the lifting of restrictions for: (i) travel of third country residents from a periodically updated list of countries matching certain criteria concerning the epidemiological situation and containment measures; and (ii) in case of 'essential travels'. This category included, among others, travels by workers in critical occupations, albeit with a narrower scope than Communication 30 March 2020, and excluding the abovementioned construction related occupations. A safeguard clause was included to exclude from restrictions residents of Andorra, Monaco, San Marino and the Vatican/Holy See.

On 13 October 2020, the Council adopted Recommendation (EU) 2020/1475⁵ on a coordinated approach to the restriction of free movement in response to the COVID-19 pandemic.

The recommendation focused on testing strategies, adopting an approach based on risk areas. While supporting the lifting of restrictions as soon as the epidemiological situation allows so, it called for travel restrictions to follow the risk of COVID-19 transmission. To this aim, the Recommendation introduced a system for labelling areas with different colour codes on the basis of agreed

² [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020XC0330\(03\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020XC0330(03)) .

³ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32020H0912> .

⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020DC0115> .

⁵ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32020H1475> .

epidemiological indicators, while paying ‘particular attention to the specificities of cross-border regions, outermost regions, exclaves and geographically isolated areas’. The task of creating and updating the map was assigned to the European Centre for Disease Prevention and Control.

The recommendation called Member States to limit possible restrictions on entry from areas at risk by enabling entrance with a 14-day long quarantine or a negative COVID-19 test (possibly upon arrival). While recalling Communication of 30 March 2020, it specified workers performing critical occupations should not be subject to quarantine, nor other categories, like passengers in transit, or persons travelling for imperative family or business reasons. Another exception was introduced in February 2021 to rule out or lessen testing or quarantine requirements for persons living in border regions and travelling across the border on a daily or frequent basis⁶.

Member states were called to publish information on restrictions 24 hours before the measures come into effect, and to share it, among others, via the portal ‘Re-open EU’, created in June 2020, and meant as a gateway for information on travel restrictions across EU.

In June 2021, with the approval of Regulation EU 2021/953⁷, a framework for the issuance, verification and acceptance of the **EU Digital Covid certificate** for EU citizens and their family members entered into force. The new rules were extended to third country national staying or residing in Member States by means of Regulation EU 2021/954.

The regulation set common rules and standards for the adoption of a common certificate across EU, meant to smooth cross-border movement of persons, and to tackle risks of forgery or fraud.

The regulation also imposed Member States not to go beyond requiring a proof of: (i) vaccination, (ii) negative testing, or (iii) recovery by not more than 180 days as requisite to entry the country, except in case necessary for safeguarding public health. Possible additional restrictions had to be necessary and proportionate and be communicated to the Commission and to other Member States if possible 48 hours in advance.

Article 12 conferred on the Commission the power to adopt delegated acts for a period of 12 months from 1 July 2021 in order to adjust the contents of the certificate, as well as the time after the positive test necessary for a certificate of recovery to be issued upon a second negative test (initially set at 11 days).

The Regulation was approved in parallel with the Council Recommendation (EU) 2021/961⁸, amending the Council Recommendation (EU) 2020/1475 in order to buttress the adoption of the certificate whilst proposing the exemption from testing and quarantine/self-isolation requirements for persons being fully vaccinated⁹, or having recovered from COVID-19 by less than 180 days. The recommendation also proposed to deem as valid certificates for negatives tests issued 48 or 72 hours before arrival in case of rapid antigen test or nucleic acid amplification test respectively. Among other changes, the act buttressed the use of the common ‘Digital Passenger Locator Form’, developed by the EU Healthy Gateways, as a tool to monitor cross-border movements as part of their contact tracing strategies.

Ahead of the take-up of certificates and the boost in vaccination rates, starting from 1 February 2022, Recommendation (EU) 2022/107¹⁰, replacing Recommendation (EU) 2020/1475, upholstered an **approach on travel restrictions based on the individual’s situation**, while keeping the possible introduction of restrictions from areas at high risk as a residual option. The Recommendation also called Member States not to require the COVID-19 certificate for persons living in border regions and travelling across the border on a daily or frequent basis. At the same time, an ‘emergency brake’ was

⁶ Article 19b, introduced by Council Recommendation (EU) 2021/119 of 1 February 2021.

⁷ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32021R0953> .

⁸ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32021H0961> .

⁹ A legal EU limit to the validity of certificates issued for vaccination was later introduced via Commission delegated Regulation (EU) 2021/2288 of 21 December 2021, which, on the ground of the newly available scientific evidences, and in order ‘to avoid diverging and disruptive measures’ set a duration of 270 days from the primary vaccination series.

¹⁰ <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32022H0107> .

introduced for: (i) Member States to introduce travel restrictions, including testing for transport workers, in response to the emergence of a new SARS-CoV-2 variant of concern or interest; (ii) the Commission to propose a discussion within the Council in order to coordinate the approach to tackle a new SARS-CoV-2 variant or a deterioration of the epidemiological situation in a Member State or region.

The impact of restrictions on the posting of workers

Information on the impact of restrictions on posting in the construction sector is **scattered** and **partially contradictory**.

The main sources of information useful to this aim are the administrative data from the issuance of A1 forms, necessary for social security purposes to certify the correct affiliation of the posted workers to the social security institution of a foreign country, and the administrative data from the national declarations on posting introduced pursuant to the Enforcement Directive (Directive 2014/67/EU).

Nevertheless, on the top of differences between the scope of posting under the social security domain and the labour law domain, it is worthy to recall whereas the second declaration is compulsory, the A1 form can also be required once posting is in place, for instance to buttress the correct affiliation in case of inspections¹¹.

At the same time, analysis comparing data under the two sources suggests the obligation to declare posting be not yet well known/complied with in some countries, where figures from this source remain still below those reported for the issued A1 forms.

To complete the picture, not all covered countries disclosed data from national declarations, neither sectoral disaggregation is always available under the two considered sources.

Within the project's sample, Germany features as the country holding the most complete information on incoming of posted workers. Thanks to a structured process of information sharing between the Customs Authorities and Soka Bau, the latter data on workers registered at the construction sector funds can be considered as a reliable estimate of actual flows.

A REDUCTION IN POSTING IN THE CONSTRUCTION SECTOR WAS OBSERVED FOR 2020, DRIVEN ALSO BY TRAVEL RESTRICTIONS

When comparing flows from the five largest sending countries, the number of workers posted between March and September does not differ significantly between 2018 (67,305), 2019 (70,529) and 2020 (67,580).

Data becoming available after the publication of the German country report show a decrease by 4.3% in posted employees in 2020 (82,351, down from 86,014 in 2019), followed by a recovery in 2021 (83,112).

On the contrary, the Spanish country report highlights a drop by nearly 40% in A1 forms released by Spanish authorities under article 12 of Regulation EC 883/2004 between 2019 and 2020, and by 54% in A1 forms released for postings to Spain. Nevertheless, the drop in workers sent abroad seems milder when considering the share of workers sent in construction activities has increased between 2019 and 2020 (the share has remained rather stable, instead, for workers posted to Spain).

Italy seems to perform a similar trend, with workers posted in the construction sector to the country dropping from 4,413 of 2019 to 825 in 2020 (to resume to 1,458 in the first half of 2021). Yet, the overall figures from national declarations are far away from those of A1 forms, suggesting a wide underreporting. Unfortunately, sectoral disaggregation is not available for data on postings from Italy.

¹¹ For further details over the differences between the two sources, see: De Wispelaere, F., De Smedt, L., and Pacolet, J. (2021), Posting of workers. Collection of data from the prior notification tools. Reference year 2019, Publications Office of the European Union, Luxembourg, pp. 34-35.

Although limited, these results seem reasonable when considering the impact of the first peaks of pandemic on Italy and Spain, and the abovementioned restrictions, including those imposed by other EU countries specifically to limit entrances from countries at high risk. As long as Germany is concerned, the country report explains that a significant order backlog at the beginning of the year was among the reasons pushing the construction sector to grow more than others across 2020 (about +5% of turnover), a performance which may have influenced posting trends as well.

As to Portugal, considering administrative data on declarations of posting to the national Authority for Working Conditions (ACT), posting in construction seems to have decreased sharply, both in terms of incoming and outgoing flows. Only 6,294 workers were posted from Portugal in 2020, against the 22,357 of 2019. Yet, these figures do not match with the trends emerging from A1 data, indicating, instead, an increase from 32,917 workers sent from Portugal in 2019 to 35,497 sent in 2020. Unfortunately, data are too limited for Romania, making it hard to assess the actual impact of the pandemic on posting trends.

Closure of borders was deemed to have affected posting in Germany, Poland, and Portugal. This was confirmed in the case of Germany by interviewees, reporting especially difficulties at the border with Poland. The Portuguese country report points to logistical issues as a relevant obstacle, affecting also the possibility for workers to come back to Portugal or in the host country due to the **lack of viable transport options**. Difficulties in arranging the sending and return of posted workers and in providing them accommodation for the time waiting to come back home are mentioned in the Polish country report. However, the report maintains that these problems lasted for a short time, especially for posting to countries adapting the entrance procedures quickly, like Belgium and Germany.

Long queues were reported also at the borders of Romania, particularly with Hungary and during the first wave of the pandemic, with Romanians citizens living or working abroad returning home following the introduction of the first restrictions in Italy and in other Western and Central European countries. Finally, the Polish country report predicts a long-term impact of the pandemic on flows of posting from Poland. More specifically, albeit the sector has been mildly affected so far, local governments had to reallocate resources to tackle the pandemic while suffering from a reduction in tax revenues due to the suspension of activities in some sectors. As a result, investments in construction by local authorities are already shrinking, a remarkable change pushing companies to seek for opportunities abroad.

Problems encountered by companies involved in posting

On the top of posting specific problems, the country reports provide more general considerations on **organisational aspects** to be addressed in order to resume or prosecute activities safely (generally having to do with provision of masks and gloves, reorganisation of teams and activities, introduction of shift work, testing in some cases), at times hampered also by difficulties to obtain construction materials. Among these problems, **difficulties** were reported to **accommodate and move workers safely**. In the case of Poland, the report mentions discrimination by private landlords, refusing to host foreign workers in properties lent to construction companies.

In Italy, the problem did not arise at first but rather during the summer season, with Italian tourists staying in the country for holiday and structures becoming hard to find to accommodate workers safely. A similar problem was reported for the Algarve region, in Portugal, with workers competing with tourists to get an accommodation ahead of the rental of private houses via platforms like AirBNB. As to transport, safety requirements imposed or recommended usually entailed the need to ensure safe distance in vehicles. In the case of Spain, the initial obligation to move alone in vehicles, was integrated by the possibility to have more passengers, provided masks were used and safety distance complied with. In Romania, employers had to ensure there were no more than 3 workers moving in the same car between construction sites. Restrictions are mentioned also in the Polish and in the Portuguese country reports.

For what concerns specifically **posting**, prolongation of works, changes in COVID-19 related measures, and problems with quarantine and testing requirements were recurrently reported problems.

Prolongation of works followed stoppages imposed by the legislator or, anyway, delays consequent to: shortage of materials or price surges, necessity to reorganise activities or absence of workers/lower productivity due to fear of contracting the virus or to quarantine measures (possibly targeting a whole team), if not suspension of the construction site. **Problems in retaining workers** were reported especially in Portugal, Poland, and in Romania, where the sector did not stop. The Polish country report refers specifically to absences of workers due to sickness, quarantine or to care leaves as the most relevant negative effect of the pandemic for construction companies according to a national survey, as well as to shortages due to the closure of borders with Ukraine in the first half of 2020, limiting both posting and migration from the neighbour country.

As to posted workers, this meant they might have to stay in the country longer than expected, despite the validity of their A1 form or the maximum duration entailed for social security purposes (24 months).

To take these problems into account, In Italy, between 31 January 2020 and 31 July 2020, A1 forms of workers posted to the country were considered as valid even if expiring.

Anyhow, the reports stress that problems were felt especially for workers posted from third countries, where national legislation may entail stricter requirements than these applicable to workers posted from EU.

A sending undertaking interviewed from Bosnia Herzegovina stressed the workers posted to Germany were sent back home due to postponement of works. Being not covered by the German social security system, the workers were not eligible for the short time work schemes used to tackle the pandemic related crisis. Another Bosnian company actually complained they could not send workers to Germany being the German embassy closed in Sarajevo due to COVID-19, and being therefore unable to get the necessary visa.

The Italian Friuli Venezia Giulia region, bordering with Austria and Slovenia, extraordinarily allowed for workers posted from third countries to stay longer than initially expected (in case of prolongation of works), or even for works other than those initially declared, in case the involved companies were unable to send other workers to take up the new jobs.

PROLONGATION OF WORKS, AND COMPLIANCE WITH RAPIDLY CHANGING TESTING AND QUARANTINE REQUIREMENTS FEATURE AMONG THE MAIN PROBLEMS EXPERIENCED BY CONSTRUCTION COMPANIES INVOLVED IN POSTING

Companies contacted in Italy and in Portugal stressed **difficulties in keeping pace with frequent changes in COVID-19 related provisions** or to find reliable information and contacts on provisions applicable in the host country.

Quarantine obligations for workers going abroad have generally been labelled as challenging for companies, with the Romanian country report stressing they constituted a deterrent to post workers abroad for many companies active at

cross-border level, and the Polish one highlighting the National Labour Inspectorate (PIP) received many queries on quarantine obligations for posted workers.

In terms of **testing**, the requisite to have workers tested just before the entry (usually within 48 or 72 hours before) was at times hard to comply with, considering the limited availability of flights and the length of road transport. A company from Bosnia Herzegovina stressed this was challenging, considering the trip to Germany took 15 hours, whereas another company mentioned in the German country report, from Romania, recalled the test costed around € 100. The report highlighted also that some companies managed to have these costs covered by the State. Positive remarks over the

availability of COVID-19 tests for companies are mentioned in the Spanish and Portuguese reports, suggesting an overall mixed picture on actual availability, and accessibility of COVID-19 tests across EU.

Among other measures meant to support companies, the German Federal Ministry of the Interior, for Construction and Home Affairs (BMI) published **guidance** not only to **prosecute the tendering** and planning of federal construction projects, but also to have clauses allowing **extension of deadlines**¹². In Spain, the Chambers of Commerce made a **model of sworn statement** available to companies to prove the restrictions and limitations suffered as a result of the COVID-19 pandemic, and the impact on their activities in a way to help them avoid lawsuits and sanctions for difficulties in fulfilling contracts awarded abroad. The model was associated with a certification by the Chambers on the impact of the pandemic on the sector. The document could be released for the same price of other certificates (€ 42,5)¹³.

Problems encountered by posted workers

Among problems reported by posted workers, accommodation and testing also figure as prominent issues, albeit from different standpoints than these emerging for companies. For what concerns **accommodation**, several evidences are collected in the German country report.

The interviewee from Arbeit und Leben, a union linked institution dealing with political adult education, pinpointed cases of foreign workers lodged in containers, without the possibility for keeping distance and with no disinfection supplies. The interviewee also reported about workers undergoing COVID-19 tests before to sign the contract, so that the employer could take no responsibility for searching and paying accommodation facilities in case of positive outcome.

An interviewed advisor for the European Migrant Workers Association and for the PECO Institute described the main results of a survey on housing conditions in Frankfurt-Griesheim, implemented on behalf of the two Non-Governmental Organisations (NGOs), and covering mainly workers from Eastern Europe. Among others, the advisor reported that:

‘The majority of rooms were about 20-25 square meters in size and mostly housed three people, more rarely four. There are four rooms in one corridor in most bodies of the building, where their occupants share kitchen and bathroom. However, there are also wings with much larger corridors and correspondingly larger sanitary facilities, which are also shared’.

Whereas information from the Arbeit und Leben seems to target more migrants than posted workers, the survey implemented in Frankfurt-Griesheim covered also few posted workers, generally staying for short periods, and problems with accommodation were implicitly reported also by the two

POOR ACCOMMODATION AND UNSAFE TRANSPORT ARE AMONG THE MAIN PROBLEMS EXPERIENCED BY POSTED WORKERS. GAPS EMERGE ALSO ON ACCESS TO INFORMATION AND COMPLIANCE WITH SAFETY MEASURES

¹² The document is available here:

<https://www.bmi.bund.de/SharedDocs/downloads/DE/veroeffentlichungen/2020/corona/erlass-bauwesen-corona-20200323.html> .

¹³ See, for instance, the document made available by the Chamber of Commerce of Gijón, available here:

<https://camaragijon.acblnk.com/envio/ver/976523/SBaCTzWPjN85pxWsGyrYrvsGi8pUPzP9nyzIT1Km uFy4BcYgQ/422f34f0667a3fb8b746d517ddedaf40/>.

interviewed companies sending workers to Germany from Bosnia Herzegovina and Romania. The former declared that 20 workers lived in a house with three floors (18 thereof getting infected), and the latter stated the 60 employees sent abroad shared spaces for kitchen and sanitary containers.

Companies contacted for the Romanian country report also reported about 'good living conditions' among posted workers, yet meaning 2-3 persons living in the same room and air conditioning in some cases, circumstances which do not tally with exigencies triggered by the pandemic. The study also refers about media inquiries in Bucharest covering Indian construction workers living in barracks in poor sanitary conditions, and often socialising in large numbers near the construction site.

Considerations on poor accommodation arise as well in the Portuguese country report, denoting, among others, problematic living conditions of foreign workers based in Lisbon, particularly concerning risks of transmission of the virus for the accommodation in guest houses and hostels eventually leading the public authorities to intervene. The Polish country report highlights infections among construction workers seem to have occurred more in collective accommodation than in construction sites. A Romanian trade unionist involved in the evaluation interviews reported that in several cases foreign workers lived in unsanitary conditions in barracks on the site during the pandemic, in many cases even facing rodents.

Instead, standing from visits in construction sites, a member of an Occupational Safety and Health (OSH) paritarian committee interviewed in Italy complained about **insufficient availability of changing rooms and restrooms** to avoid spreading the contagion.

He also reported the experience of a large civil engineering site near Bologna, where the lead contractor revised its strategy from the initial arrangement of ad-hoc camps to host workers not living in loco, to the replacement of subcontractors with local firms, in a view to reduce the need for accommodation facilities.

As stated in the previous section, overall problems in finding suitable accommodation for workers moving from abroad or from other areas of the country, were identified in Portugal and in Italy due to peak of demands by tourists, whereas the fear of the virus seems to have reduced availability of accommodation facilities in Poland during the first wave of the pandemic.

Limits in transport solutions are flagged in the country reports addressing Germany, Italy, and Portugal, as well as by the Romanian unionist involved in the evaluation interviews.

An OSH expert from Italy complained about business as usual in moving workers with vans, except for an initial attention to their frequent disinfection.

Similar concerns have been expressed by German interviewees from the IG BAU union and from NGOs, complaining use of vans in full capacity, and in breach of obligations of using masks.

Instead, evaluation interviews implemented with companies posting workers to Germany emphasised cases of transport by cars (with reduced occupancy), and, however, the general absence in many German federal states of the obligation of wearing masks in vehicles.

Transport modalities, including use of public transport to reach the construction site, were labelled by several Portuguese interviewees as a serious gap in protecting construction workers from COVID-19.

According to evaluation interviews with employers' representatives as well as to a survey conducted by the Polish Ministry of Development in employers' organizations, trade unions and large companies, in the first phase of the 2020 pandemic Poland featured an adequate reorganisation of transport modalities in large companies, taking charge also of costs for moving safely workers posted from abroad, and a more limited support in small companies, generally providing only personal protective equipment to tackle COVID-19, like masks.

Some interviewed companies from Romania, cited in the German and in the Romanian country reports, highlighted **psychological problems** for workers, due to the long periods of quarantine (initially set at 14 days). Quarantine meant also difficulty to return home during holidays or on a regular basis in cases of longer periods of posting. The Romanian report stresses that albeit corridors for workers were organised, most stakeholders interviewed for the project were not aware of them.

Country-wide limits in testing are denounced in the Spanish report, meaning contacts at risk were

often unidentified or identified too late, a condition more common for posted workers, due to language obstacles. Insufficient testing was denoted also by inspectors interviewed in Romania; a circumstance denied by the companies contacted for the study.

Information problems concerning testing were reported in Germany (workers being unaware of who had to bear the related costs), and, on more general aspects, in Portugal, Poland, and Spain, whereas the Romanian report stresses that information materials on COVID-19 were available only in Romanian, with foreign workers being instructed in English on construction sites. Similar considerations were reported in the evaluation interviews conducted with the Labour Inspectorate and the Order of Engineers for Portugal.

The Polish country report praises initiatives undertaken in 2021 by the public authorities, in particular by PIP, making available recommendations on COVID-19 safety measures in Polish, English, Russian, and Ukrainian languages, and the use of posters to spread information on line and in construction sites. However, progresses to make information available to foreign workers are not deemed sufficient.

The Italian report underlines as well the wide diffusion in construction sites of posters using visual images to inform workers on measures to adopt to prevent the diffusion of the virus, developed by sectoral funds and whose use was upholstered by protocols on health and safety.

Yet, problems were reported by mobile workers to get COVID-19 certificate. In Italy, the COVID-19 certificate became necessary even to work as of 15 October 2021. In addition, starting from 6 December 2021, testing was no longer a possibility for workers aged over 50, required to show proof of vaccination or recovery (so-called Super Green pass). As a consequence, problems arose for the non-recognition of the Sputnik vaccine. Whereas workers vaccinated in San Marino were granted an exemption, other workers vaccinated in countries having authorized this vaccine were not released the certificate.

In November 2021, the situation was addressed by granting them the possibility to obtain the certificate by having a booster dose in Italy with an authorized vaccine. Instead, in February 2022, they were granted also the possibility to obtain the Super Green pass with a negative COVID-19 tests.

Finally, concerning the adoption of **occupational safety and health measures** prescribed to tackle COVID-19, evidences differ depending on the country.

German unionists stressed that the provision of hygienizer dispensers was an exception, whereas the study implemented in the city of Frankfurt-Griesheim found almost no use of masks among surveyed workers.

Problems in use of masks figure also in the Spanish country report, denouncing as well the poor implementation of collective protection measures. The Italian country report provides some evidences on the behaviour of companies by means of a national survey launched by the national paritarian OSH committee for the construction sector. The survey suggests information measures, control of the temperature at the entry of the construction site, and the provision of masks and sanitizing gel were widespread, as opposite to contact tracing, shifting of entry/exit times, ensuring distancing in transport places, and frequent sanification of tools and rooms.

Whereas there is a wide consensus that construction activities are often implemented open air or enable working at distance more than other sectors, this is not always the case, with country reports stating safety distance could not observed for certain works. As put by a Portuguese unionist:

'the construction activity itself is carried out with proximity and mutual assistance and with mutual help among the workers. When workers handle a piece, a piece of wood, anything heavy, obviously 2 or 3 are going to grab it and, therefore, saying that in these cases they must keep distance is complicated'.

Evidences of COVID-19 outbreaks in construction sites

Information on COVID-19 outbreaks in construction sites was collected mostly by relying on media

news and direct experience of stakeholders. Findings often refer to inadequate living conditions or transport modalities, as well as to mobility patterns, and to insufficient protection at work or in the private sphere.

The German statutory accident insurance organisation for the construction industry, BG BAU, tasked also with inspection duties, found **isolated outbreaks** on large construction sites, for example in Stuttgart and Brandenburg, yet notified and treated relatively quickly.

A company posting workers from Bosnia-Herzegovina, interviewed for the German country report, explained that they had to stop works following a COVID-19 outbreak in Heilbronn, with one person dead.

Many outbreaks hit the news in Romania. In August 2020, an outbreak in Bucharest led to 32 workers of Indian nationality getting the virus and other 78 construction workers isolated. As reported in the

previous section, **workers lived in poor accommodation facilities**. The municipality of Bucharest intervened by relocating workers in adequate facilities, whilst the construction site was temporarily closed for disinfection. The following inquiry by the Labour inspectorates confirmed the workers were legally employed in Romania, yet the firm was fined for not respecting hygienic requirements to tackle Covid-19, including for the overcrowding of sleeping spaces, poor preventive measures, and the lack of training on measures to prevent the spread of the virus.

INADEQUATE ACCOMMODATION AND TRANSPORT ARE FREQUENTLY MENTIONED AS ROOT CAUSES OF COVID-19 OUTBREAKS IN CONSTRUCTION SITES, TOGETHER WITH FAULTS IN PROTECTIVE MEASURES IN AND OUTSIDE WORK

Other relevant cases included: two construction

sites in Popesti-Leordenic (near Bucharest), with 35 people tested positive, 19 thereof being hospitalized; and a construction site in Ploiesti (Prahova county).

According to stakeholders interviewed in Portugal, outbreaks occurred especially in the cities of Lisbon, and Porto, as well as in the region of Algarve. If interviewees from an employers' organisation and the Order of engineers reported about some outbreaks in construction yards, a union's representative pointed at **works of urban rehabilitation, often carried out informally and under the direction of 'bosses'** paying little attention to OSH measures.

Reasons for the outbreaks included **lack of adequate spacing in vans** used to move the workforce, some problems of accommodation, also due to difficulties in finding suitable lodgings, and mobility of workers of subcontractors across different sites.

Whereas specific COVID-19 outbreaks in construction sites are not been mentioned in the Polish, Italian and Spanish country reports, Italian unionists interviewed reported about more frequent infections among workers engaged in maintenance work (also due to the frequent movement via shared means of transport), and in small construction sites, where the observance of precautionary measures seemed lower. The Polish report flags infections occurring in collective accommodation, as well as among restorers and installers having direct contact with house inhabitants, at a time the demand for restoration of apartments and private accommodation is on the rise, matching with an increase of the activities of small and micro companies. Among other reasons for infections, the Italian and the Spanish country reports point to **family gatherings** during holidays, the virus being then 'imported' from different areas once workers returned to the construction site, and to **late screening**, possibly due to fear of losing the job. Indeed, the latter cause was reported also in a study comparing the spread of the disease among Italian and non-Italian nationals, the latter featuring a delay in the peaks of the cases as per official tests¹⁴.

Data from publicly available information on inspection activities confirm cases of inobservance of

¹⁴ Fabiani, M. et al. (2021), Epidemiological characteristics of COVID-19 cases in non-Italian nationals notified to the Italian surveillance system, The European Journal of Public Health, vol. 31, no. 1, pp. 37-44.

Covid-19 rules in construction activities, found especially in areas of Central Italy where significant reconstruction works are in place following recent earthquakes.

Conclusion

COVID-19 has been a stress test for the free movement of workers, in particular via posting.

Together with the adoption of travel restrictions, some exceptions were granted across covered countries, yet concerning specific critical occupations only or movements between neighbour regions. The European authorities tried to coordinate restrictions, though their limited competences, and the swift and uneven evolution of the virus required a certain flexibility, with country level measures remaining subject to quick changes as well as to approaches reflecting different equilibria between the protection of public health and other fundamental rights.

As expected, posting trends in construction seem to have been negatively affected, with some evidences suggesting a slowdown in 2020.

Overall, construction companies had to deal also with shortages of materials, and the reorganisation of activities pursuant to new rules introduced to prevent and tackle COVID-19, at a time labour shortage was worsened by COVID-19 itself.

Qualitative information throughout the country reports suggests posted workers faced difficulties to come back home or stayed abroad longer than expected due to difficulty to travel, prolongation of construction works, and to quarantine requirements, making hard to return home for short periods. The closure of borders by some countries, and the consequent queues, contributed to these effects.

Despite cross-border movement was later smoothed by a gradual lift in restrictions, in pair with the development of tests and the rollout of the vaccination campaigns, other problems remained.

Some companies complained about difficulties to obtain information on emergency health measures or to comply with short time limits for testing requirements, albeit positive experiences are also reported in terms of availability of tests and provision of information to companies and workers.

With the recovery in construction activities, workers' safety became of crucial concern.

Whereas construction activities feature less risk of contagion than other sectors, cases of overcrowded facilities or unsafe transport were denounced across the covered countries. At the same time, in some areas it was even difficult for companies to find enough suitable facilities.

Cases of COVID-19 outbreaks in construction sites tally with these evidences, providing some examples of outbreaks linked with shared accommodation or facilities. Late screening, possibly due also to the fear of losing the job, may aggravate the actual consequences of outbreaks.

As an indication for the EMEcs project, the abovementioned issues shall be critically analysed in a view to identify viable options, and propose possible strategies and approaches in case of future pandemics.

Annex 1 – List of EMEcs country reports used for the study

CNCE, FGB srl SB (2022), EMEcs Country report Italy, available at: https://emecs-project.eu/wp-content/uploads/2022/10/EMEcS_Italy.pdf .

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