



Final Report



FINAL REPORT

The following authors collaborated to the production of this report:

Aleksandra Kaydzhyska, Giuseppe Perretti (AEIP); Barbara De Micheli, Sofia Gualandi (FGB Srl Sb); Catarina Sales Oliveira, Joana Marques, Susana Villas-Boas, Luisa Veloso (CIES - ISCTE); Bianca Maria Baron, Giovanni Carapella, Gazmend Llanaj, Feliciano Iudicone (CNCE); Marta Hevia Fano (FLC Asturias); Lisa Dornberger, Dana Schäfer (Soka Bau); Jakub Kus (ZZ Budowlani).

The report was edited by: Feliciano Iudicone (CNCE - Italy)

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Find out more on the EMECs project at: emecs-project.eu



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Introduction

This Report was produced in the framework 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 research and mutual learning activities, the project aims at delivering proposals and recommendations to better support posted workers in case of future pandemics.

In particular, the project first examined contextual information by means of six country reports, addressing the countries covered by the action, namely Germany, Italy, Poland, Portugal, Romania, and Spain.

Following a common questionnaire, the **country reports** describe measures restricting free movement of workers and production, the actual impact of the pandemic on posting as per available figures and evidences; problems encountered by companies involved in posting and by posted workers; evidences of COVID-19 outbreaks in construction sites.

Results were summarised and compared in the **EU Report**, including as well a paragraph on relevant EU-level measures to coordinate travel restrictions.

Instead, the **EU Handbook** explores responses to the pandemic adopted in the field of health and safety in the construction sector, dissemination of information, social protection for posted workers, as well as pandemic-related changes affecting vocational training in the construction sector across the covered countries. The text combines general information with examples and issues of major interest for posted workers, in turn capable of informing recommendations.

Furthermore, a specific phase was devoted to analyse how monitoring and enforcement activities can benefit from new tools, especially ahead of situations, like those experienced during the COVID-19 pandemic, where checks shall be timely, irregularities shall be prevented as much as possible, and physical inspections get more difficult to implement.

To this aim, the EMECs project: (i) assessed a set of digital tools capable of improving the monitoring of working conditions by public authorities or by companies themselves, and (ii) screened the contents of a sample of job advertisements, to test potential approaches to prevent irregularities in the framework of recruitment processes. Partners were also supposed to experiment direct contact with sending undertakings leveraging on Article 9(1)(f) of the Enforcement Directive 2014/67/EU, entailing the possible indication of a contact person for social partners in the preliminary declaration of posting.

Unfortunately, despite cooperation with unions in and outside the project's partnership, this sub-task could not be implemented. Unions confirmed not to have data, either because the provisions had not been implemented in the country, or because they were not granted access by public authorities on information available in the declarations.

The reports and interim project's results have been built by combining desk with field research activities, including two focus groups (the first one taking place in Verona on 12 November 2021; the second one taking place online on 12 May 2022) and several public events (three online workshops held between October and December 2022, two mutual learning seminars in Wiesbaden on 21 July 2022 and in Bologna on 21 October 2022, and an online final conference held on 16 December 2022). The project also availed of 51 interviews targeting public authorities, social partners, companies and other stakeholders across covered countries. Three interviews have been devoted to aspects of EU-wide relevance concerning mobility of posted workers, limits in social protection thereof, and upcoming digital developments in the framework of coordination of social security systems. The organisations involved were the European Trade Union Confederation (ETUC), the Labour Mobility Initiative network (gathering experts and stakeholders on the topic of cross-border workers' mobility), and the Italian National Social Security Institute (INPS), currently running the pilot project of the European Social Security Pass.

Finally, the project's **EU Toolkit** summed up knowledge from previous project's reports and activities to deliver a list of policy recommendations across the different covered subjects, and a draft Occupational Safety and Health (OSH) protocol to be used as a basis in case of future similar emergencies.

This **Final report** recaps on project's findings showing the path made from the beginning of the action to the elaboration of recommendations.

The availability of this document in all project's languages is meant as well to spread a summary of findings across a large audience in all the countries covered by the partnership.

The Annex provides the full list of the project's reports referred to along the text, where readers can find detailed information and full description of measures and tools therein mentioned.

The consortium

The EMEcs project was implemented by a consortium composed by seven organisations from Belgium, Germany, Italy, Poland, Portugal and Spain, with the voluntary support of an associate organisation from Romania. The successful roll out of the project was possible also thanks to the research services supplied by Eastern Marketing Insights (EMI), that implemented country level activities targeting Romania as a subcontractor.

A short description of consortium members is provided below.

Commissione Nazionale Paritetica per le Casse Edili (CNCE) (Italy) – Coordinator

The paritarian National committee for construction workers' sectoral Funds (CNCE) is an organisation established and jointly managed by the Italian trade unions and the employers' organisations of the construction sector.

Pursuant to the sectoral collective agreements, CNCE is entrusted the coordination and monitoring of the 113 building workers' welfare funds (*Casse Edili*) active throughout Italy at local level, as well as the activities of institutional cooperation at national and international level.

The main activity of *Casse Edili* is to intermediate a share of construction workers' wage, receiving contributions by employers meant to pay the payment of holidays, of the thirteenth month pay and of other indemnities.

European Association of Paritarian Institutions (AEIP) (Belgium) – Partner

The European Association of Paritarian Institutions (AEIP) is a Brussels-based advocacy organization representing institutions guaranteeing income and social protection of workers which are established and managed by employers' organisations and trade unions on a joint basis within the framework of collective agreements, across 11 EU Member States. In particular, AEIP deals – through dedicated working groups – with retirement schemes coordinated within EU, pension funds, complementary healthcare insurance, unemployment benefits funds, paid holiday funds, and health and safety at work.

SOKA BAU (Germany) – Partner

SOKA BAU is a paritarian institution established by the social partners of the German construction industry *Zentralverband Deutsches Baugewerbe* and *Hauptverband der Deutschen Bauindustrie* (employers' organisations) and *IG Bauen-Agrar-Umwelt* (trade union). SOKA BAU unites two institutions under one roof: *Urlaubs- und Lohnausgleichskasse der Bauwirtschaft* (Paid Leave Scheme and Vocational Training Scheme of the German construction industry, ULAK) and *Zusatzversorgungskasse der Bauwirtschaft* (Pension Fund of the German construction industry, ZVK). Together, these institutions guarantee the leave entitlements for domestic and posted blue-collar workers, manage the pension fund and co-fund the vocational training for workers and companies in the construction industry.

Fondazione Giacomo Brodolini (FGB) (Italy) – Partner

Fondazione Giacomo Brodolini srl SB (FGB) is a private research centre developing, applying, and disseminating evidence-based policy design, delivery and evaluation at all governance levels. Working conditions, industrial relations, gender equality, fundamental rights and social innovation are among its main fields of activity.

Związek Zawodowy Budowlani (Poland) – Partner

The Budowlani Trade Union unites over 10,000 workers throughout Poland, representing construction and building material workers, housing cooperative members, foresters, environment protection workers, woodworkers, furniture industry workers and others. Budowlani, founded over 125 years ago, is a legal successor to many unions once operating within the sectors covered by its activity. Its members are active in over 260 basic organizations at company or territorial level in 14 Districts.

Instituto Universitario de Lisboa (ISCTE – IUL) (Portugal) – Partner

The University Institute of Lisbon (ISCTE-IUL), founded in 1972 is one of first modern universities in Portugal, with the main aim of studying labour and social dynamics in the changing world of work. The University is actively engaged in collaborative projects, networks, and partnerships around the world, including a range of educational, training and research programs supported by the European Union. ISCTE-IUL take parks in the project through its Center for Research and Studies in Sociology (CIES-ISCTE).

Fundación Laboral de la Construcción del Principado de Asturias (FLC Asturias) (Spain) – Partner

The Labour Foundation of the Construction sector of the Principality of Asturias (FLC Asturias) is a paritarian institution established in 1988 by the social partners of the Asturian construction industry. Nowadays, it is managed by *Confederación Asturiana de la Construcción - ASPROCON*, from the employers' side, and the trade unions *CC.OO. Construcción y Servicios de Asturias* and *Federación de Industria, Construcción y Agro de la UGT (UGT FICA) de Asturias*. Its main goal is the provision of services of general interest for the Asturian construction sector such as the up-skilling of their professionals via vocational training, the promotion of health and safety at work, the support to employment growth via labour market intermediation services, and the provision of several social protection benefits and aids for workers and companies.

Casa Socială a Constructorilor (CASOC) (Romania) – Associate organisation

The Social House of Builders (CASOC) is established under the Romanian Law no. 215/1997. It is a paritarian institution, managed jointly by the social partners of the construction industry that are representative at sectoral level. CASOC is supporting income stability for workers of the construction and material manufacturing sector by means of allowances and benefits funded by contribution of sectoral employers and employees and of beneficiaries of construction works.

The pandemic and posting of workers: emergency provisions and main obstacles

The new normal in the pandemic: health protection and restrictions to mobility

The pandemic has turned upside down ideas and beliefs given for granted, gradually pushing governments across most of the EU Member States to restrict travels and gatherings as an antidote to reduce the magnitude of infection at a time protective equipment like masks ran quickly short, knowledge on the virus was limited, and health services were unprepared to face the surge in intensive therapy units, especially whenever weakened by decades of austerity policies.

As described in the project's country reports and in the EU Report, starting from March 2020, **state of emergency declarations** were adopted across the covered countries enabling governments to act swiftly and outside the standard prerogatives in a view to tackle the pandemic.

Restrictions to international movements were among the first emergency measures, although with slightly different approaches.

For instance, whereas governments significantly limited air traffic and, in some cases, reintroduced border controls, Portugal sided similar restrictions with exceptions targeting cross-border workers and people from countries with large Portuguese communities, such as the United Kingdom, the United States of America, Venezuela, Canada, and South Africa. Among other, the goal was to ease returning back home for people having lost their job due to the pandemic.

Generally speaking, restrictions were followed by a 14-day long period of **quarantine upon entrance**, net of some exceptions. For instance, Italy excluded cross-border workers and workers entering for short periods from the duty, Poland exempted workers posting or moving from bordering countries, Germany safeguarded 'commuters' and truck-drivers.

Specificities of posted workers were targeted by the European Commission's Communication of 30 March 2020 aimed at coordinating restrictions on the exercise of the free movement of workers during COVID-19 outbreak¹, but found little space

¹ [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)).

in national level policy making, probably due to the difficulties of matching possible exceptions with an undefined set of countries. The Communication called for the establishment of specific burden-free and fast procedures for cross-border movement of workers in critical occupations, also if frontier or posted workers, and for seasonal workers, especially in agriculture. This was integrated by a list of occupations considered as critical, including, among others, some 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)'.

Lock-downs and the construction sector

Unlike other sectors, construction activities did not stop.

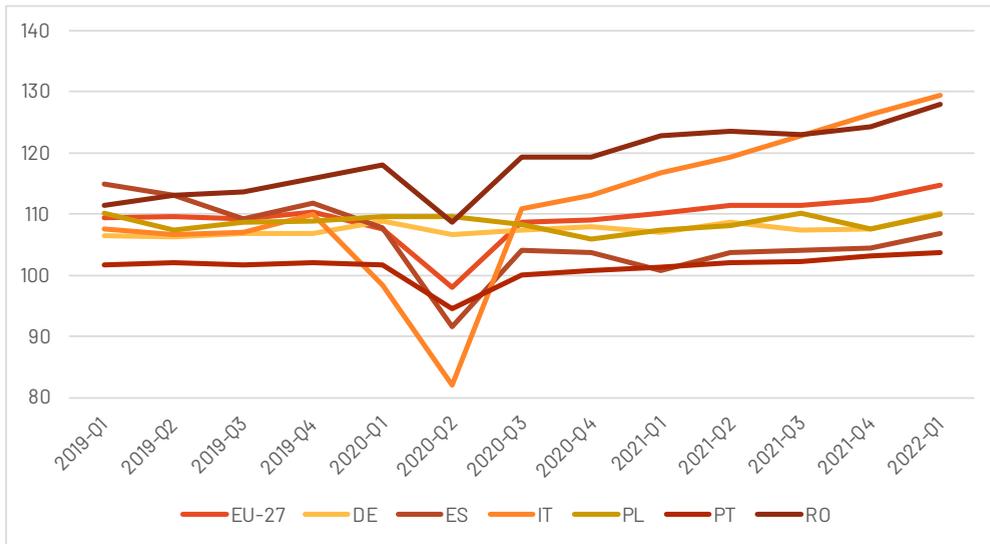
In Germany, in March 2020, The Federal Ministry of the Interior, for Construction and Home Affairs (BMI) published a guidance on contracting during the COVID-19 crisis. Following consultations with the industry's leading associations, the guidance encouraged tendering and planning of federal construction project, while calling for clauses allowing deadline extensions in case of disruptions caused by COVID-19.

In Romania, the Minister for European Funds and the Minister for Transports, Infrastructure and Communications underwrote an open letter addressed to infrastructure projects, beneficiaries and constructors involved in these projects. In this letter, the government reinforced the support for the infrastructure projects through European funding and pleaded for the prosecuting activities.

Italy and Spain represented an exception among covered countries. Italy imposed the stop of construction between 23 March 2020 and 3 May 2020, whereas in Spain the work stoppage took place between 30 March 2020 and 12 April 2020. Afterwards, the Spanish government blocked only certain activities related to existing buildings 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.

Yet, according to Eurostat data, the pandemic appeared to have impacted worked hours in all covered countries, possibly also for fear of the virus, shortage of materials, and restrictions to the entrance of posted and migrant workers, as highlighted in the German and in the Polish country reports.

Figure 1. Worked hours in construction (2015=100)



Source: Eurostat, Short-term business statistics

The pandemic and EU-wide guidance on restrictions to cross-border movement

Ahead of the evolution of data and knowledge of the pandemic, EU institutions coordinated restrictions by shifting to an **approach based on risk areas**. By means of the Recommendation (EU) 2020/1475², adopted on 13 October 2020, different colour codes were introduced to label areas on the basis of agreed epidemiological indicators, while paying 'particular attention to the specificities of cross-border regions, outermost regions, exclaves and geographically isolated areas'.

The EU Council 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. Exceptions from quarantine were to be maintained for workers performing critical occupations, alongside 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 basis³. Finally, following the take-up of vaccines, and the adoption of common rules for issuing an EU Digital Covid Certificate certifying negative COVID-19 test, vaccination,

² <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32020H1475>.

³ Article 19b, introduced by Council Recommendation (EU) 2021/119 of 1 February 2021.

or recovery from the virus, Recommendation (EU) 2022/107⁴ upholstered an **approach on travel restrictions based on the individual's situation** starting from 1 February 2022. Member States could still introduce restrictions from areas at high risk, upon a notification to be submitted possibly in advance to the European Commission and other Member States, and justifying restrictions on the basis of criteria of necessity and proportionality. 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.

The impact of restrictions on posting of workers: a deep yet short lasting reduction in cross-border flows

The assessment of the impact of restrictions on mobility of posted workers proved challenging due to gaps and inconsistencies between the two possible sources, i.e., data from the **A1 forms** issued pursuant to Regulation EC 883/2004 and Regulation EC 987/2009, and those from the **preliminary declarations** introduced following the Enforcement Directive 2014/67/EU. As to the main inconsistencies stemming from the features of the sources, it shall be recalled the A1 forms certify the applicable legislation for the purposes of social security coordination, enabling companies to confirm workers are correctly insured in the sending country, possibly covering more postings of the same worker or being required once posting has already started, whereas the preliminary declarations shall be submitted before each posting to inform authorities of the host country⁵. Furthermore, and on the top of differences in the notion of posting behind the two sources, the available statistics are not always available at the same level of details, for instance featuring several gaps in disaggregation by sector.

Finally, the still recent introduction of preliminary declarations, gaps in awareness of the duty, and difficulties in enforcing it suggest a still limited take-up of the tool, at least in some countries.

An example is available in the Italian Country Report, summing up available data to reconstruct flows of workers posted to the country. As per the table below, whilst data from the A1 forms were not available at sectoral level, the overall number of postings appeared as halved under the preliminary declaration of posting when compared with the number from the A1 forms, suggesting wide non-compliance.

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

5 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.

Table 1. Number of postings and of posted workers to Italy – comparison of data

	PD A1 forms (employees only)	National declarations		
Period	No. of postings	No. of postings	No. of posted workers	No. of posted workers (construction sector only)
2019	166,078	81,020	31,023	4,413
2020	87,923	34,260	7,694	825
2021(Q1)	N.a.	20,077	13,480	1,458

EMecs Project elaboration from data on A1 forms and national declarations. See: CNCE, FGB srl SB (2022), EMecs Country Report Italy, available at: https://emecs-project.eu/wp-content/uploads/2022/10/EMecs_Italy.pdf.

In addition, during the focus group held in Verona on 12 November 2021, some directors of the *Casse Edili* stressed that the number of postings in the construction sector available from preliminary declarations are much above the number of workers declared to the funds, warning against widespread non-compliance with the obligation to register and contribute to the Italian *Casse Edili*.

Among the most reliable and complete figures, construction workers posted to the German construction sector as per national declarations decreased by 4.3% in 2020 (82,351, down from 86,014 in 2019), followed by a recovery in 2021 (83,112).

The Spanish Country Report highlights a drop by nearly 40% in A1 forms released by Spanish authorities for posted employees, as per 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 from 45% to 60% (the share has remained rather stable, instead, for workers posted to Spain).

In line with these figures, the perception of most interviewed stakeholders is that **closure of borders affected posting**. This was confirmed by interviewees in the German case, who reported 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 with 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 in case of 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.

Definition and adjustment of emergency measures: an important field for social partners

In the covered EU Member States, governments' consultation with social partners helped to narrow down possible doubts and to adjust emergency provisions. For instance, in Spain social partners lobbied to revise rules on occupancy of vehicles, obtaining that occupancy of more than one person was allowed, provided a safety distance of 1.5 meters was ensured and the mask wore.

In this respect, also considering the prosecution of construction activities, social dialogue was key for the roll out of emergency measures addressing implementation of construction works, detailed in sector-specific **OSH guidelines or protocols**. In Italy and Spain, construction sector social partners took part in the elaboration of sectoral guidelines; in Portugal they informed the draft thereof by public authorities; in Poland it was an employers' association to propose non-binding recommendations adapting COVID-19 health measures to the construction sector.

Instead, the interviewed ETUC advisor complained about the lack of involvement and engagement of social partners from the European Commission's side, and on the little attention paid on protecting working conditions when compared with the aim of keeping mobility and activities running in EU legislation enacted to coordinate restrictions on mobility.

Availability of information for companies and workers: problems and good practices

In terms of main problems faced by companies and workers, access to information on applicable provisions was labelled as a critical aspect, especially in terms of awareness on restrictions applicable abroad, and on changes thereof, due to language obstacles, little support by authorities of the sending country, difficulty to identify relevant contacts abroad, and frequent change of rules.

During the Verona focus group, it emerged some Italian companies reported **difficulties in accessing information on restrictions** applicable abroad, as little support was provided by Italian authorities in this respect.

Interviews by SOKA BAU with companies and stakeholders show differences in the interpretation of rules by health departments. For example, personnel at the border with Austria were officially required to quarantine also when regulations stated the contrary. In most cases, disputes had been successful only when the quarantine was already over. Uncertainties upon entry in the country, instead, concerned basically the presence of different COVID-19 regulations depending on the German states, due to the country's federal system.

Nevertheless, research carried out for the EU Handbook spotted many **good practices of dissemination** of information in different languages or making large use of **graphic language**, in a way to ensure an understanding as wide as possible. For instance, the Italian paritarian bodies of the construction sector made available a video easily explaining the contents of the protocol adopted to tackle the COVID-19 risk in construction sites, and developed posters in several languages to the same aim. In Spain, the vocational training fund FLC provided **online training for free** on different subjects, including on protection from COVID-19 in the construction sector; in Germany, the *Arbeit und Leben* Institute organised webinars in different languages to inform workers not only on health-related aspects, but also on their rights at work and in terms of social protection during the pandemic. Romania was reported to have developed official informative web-sites in Romanian only. Yet, as noted by CASOC, The National Institute for Public Health, which has been providing information on measures to tackle COVID-19, recently developed a new website⁶, whose English version shall be operational soon.

The project spotted as well an initiative of **institutional cooperation** meant to fill similar information gaps. In Germany, a cross-border Task force bringing together the states of North-Rhine Westphalia and of Lower Saxony with the German Embassies was created in the bordering countries of Netherlands and Belgium. The aim was to improve the mutual sharing of information, to synchronize activities, and to clarify issues of common interest for crisis management.

More in general, public authorities, social partners or NGOs made available leaflets, posters or informative materials in English or in languages of the largest communities of migrants, albeit this was rarely systematic. Poland was the unique experience where informative web-sites were made available in languages of migrant workers, as per the box below.

⁶ See: <https://insp.gov.ro/>.

Box 1: Poland – Translation of key information and hotlines for foreign workers

Information on the conditions for travelling and other COVID-19 measures was available in different languages on the government's website⁷, i.e., in Polish, English, Russian and Ukrainian.

Specific information concerning conditions of stay and work in Poland of posted and migrant workers during the pandemic was available in Polish, English, and Russian on the COVID-19 section of the Office for Foreigners⁸, with infographics making it easier to understand provisions applicable under different statutes; and in Polish, English, and partly in Ukrainian on the website of the State Labour Inspectorate⁹.

The National Labour Inspectorate (PIP) launched telephone lines providing free legal counselling in Polish, English and Russian, which could be used by migrant and posted workers.

Information in languages other than those indicated above was provided by the website and the hotline operating under the AKTYWATORWLKP project implemented in the *Wielkopolska* region¹⁰.

In Spain, as well as in Poland, individual support via a hotline was also made available, tackling this way the need for personalised support that workers and companies experienced in times of extraordinary rules and procedures.

Box 2: Spain – Posters, hotlines and guides to promote take-up of measures to tackle COVID-19

On the Spanish Ministry of Health website, in the Information to citizens section¹¹, posters were available in several languages (English, French, Arabic, Romanian, Chinese, Russian, Bulgarian, German and Urdu). Posters aimed at helping foreign citizens to prevent COVID-19 contagion by separately addressing, with the help of icons and pictures, different topics, like what to do in case of having symptoms, what to do in case of being diagnosed with COVID-19, recommendations for a correct quarantine, etc.

On 8 June 2020, the Spanish Ministry of Foreign Affairs, European Union and Cooperation launched a telephone service called '**CONECTA International Mobility**'¹² to facilitate the international mobility of entrepreneurs, workers, technicians or other professionals who needed to travel abroad despite the restrictions derived from COVID-19. Through a telephone platform and with a simple phone call or email, users could make specific enquiries about the entry conditions and requirements of the different countries, the health measures established and what channels could be adopted to make them more flexible in the event of the need to take these trips. Queries regarding the requirements and procedures necessary to enter Spain for business or professional reasons were also dealt with. The Ministry channelled in a uniform manner all the queries that reached the different departments through different channels and provided homogeneous and precise responses from public administrations. During the first week, nearly 800 telephone calls had been answered and more than a hundred e-mails had been responded¹³.

7 See: <https://www.gov.pl/web/koronawirus>.

8 See: <http://archiwalna.udsc.gov.pl/cudzniemcy/epidemia-koronawirusa/>.

9 See: <https://www.pip.gov.pl/pl/informacje-dla-obcokrajowcow/covid-19-informacje-dla-cudzoziemcow>.

10 See: <https://www.migrant.info.pl/>.

11 See: <https://www.sanidad.gob.es/profesionales/saludPublica/ccayes/alertasActual/nCov/ciudadania.htm>.

12 See: LaMoncloa(2020), Exteriores lanza CONECTA Movilidad Internacional, un servicio de información para facilitar los desplazamientos internacionales de empresarios y trabajadores, Press release, 05 June, available at: <https://www.lamoncloa.gob.es/serviciosdeprensa/notasprensa/exteriores/Paginas/2020/050620-conecta.aspx>.

13 See: La Moncloa (2020), Exteriores atiende 800 consultas sobre viajes laborales al extranjero durante la primera semana de 'Conecta Movilidad Internacional', Press release, 14 June, available at: <https://www>.

Roll out of restrictions and emergency measures: limits and measures targeting posted workers

Among actual mobility problems experienced on the ground, the ETUC advisor reported that in some cases workers were labelled as essential in one country and not in another, a troublesome aspect at the time this constituted a valid reason to travel. For instance, healthcare workers were generally considered as essential, but posted workers can sometimes be sent to repair a machine necessary for the operation of hospitals' activities. Yet, in some cases workers were to be posted to this aim but were not considered as essential in the host country and therefore could not travel. Similar short circuits as a result of lack of mutual recognition were reported by many interviewees for vaccines, as in some EU countries it was possible to get vaccinated with Sputnik or Sinovac, yet they were not recognised in others, meaning they would require a negative COVID-19 test when this was an alternative to proof of vaccination to enter a country, or, as required in Italy, in order to work.

As anticipated, the pandemic also meant the prolongation of works, with the abovementioned Communication of 30 March 2020 of the European Commission suggesting using the option granted by Article 16 of Regulation 883/2004 to extend the duration of A1 forms. Italy considered A1 forms expiring between 31 January 2020 and 31 July 2020 valid until 31 July 2020, as decided with Communication no. 1633 of 15 April 2020 by INPS.

Interviewed on the subject, the president of INPS disclosed that, on the basis of a preliminary feedback by regional branches, ad hoc prorogations of A1 forms were not required.

Interruption of works, and consequent termination of posting, instead, could be particularly troublesome for workers posted from third countries or from third country nationals posted from another EU country.

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.

The ETUC advisor recalled the particular vulnerability and risks of irregularity faced by third-country national workers posted from one EU country to another, sometimes through false posting arrangements whereby the sending Member State cannot be considered to be their habitual place of work:

lamoncloa.gob.es/serviciosdeprensa/notasprensa/exteriores/Paginas/2020/140620viajes-extranjero.aspx.

'Since their work permits may nevertheless have been issued on the basis of their formal employment status in the sending Member State, their residence status may be jeopardised in case of interruption of works and of the posting mission abroad. The possible cascade of consequences includes the loss of employment, income, and accommodation – which is often arranged by the employer – ending up in an irregular situation.

Depending on the kind of visa and on its validity, third-country national posted workers are thereby faced with the risk of being detained and deported from the host or even from the sending Member State'.

Quarantine obligations for workers going abroad have generally been labelled as challenging for companies, with the Romanian Country Report stressing they constituted a disincentive 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. An interviewed company from Bosnia Herzegovina stressed this was particularly challenging, considering the trip to Germany took 15 hours, whereas a Romanian company mentioned in the German Country Report recalled the test costed around € 100. This Report highlighted also that some companies managed to have these costs covered by the State, but that sometimes it was not clear who had to bear the cost, with costs ending up being covered by the worker, as confirmed by the ETUC adviser. Positive remarks over the availability of COVID-19 tests for companies are mentioned for Spain and Portugal in the EU Handbook, suggesting an overall mixed picture on actual availability, and accessibility of COVID-19 tests across EU.

On this aspect, the interviewee from the Labour Mobility Initiative stressed it was difficult for Polish companies to retrieve a sufficient number of COVID tests on the market and to provide posted workers with those tests within the 72 hours entailed for entrance in Germany, also due to a time lag in the availability of results. This also resulted in breach of the rules, with cases of companies pushing posted workers across the German border without providing them with COVID-19 tests beforehand, often via car trips, at a time when there were no border controls by the German police.

Posting during the pandemic: between old and new problems

Among problems experienced by posted workers, on the top of gaps in access to information and limits in the features and roll out of restrictions to cross-border mobility, **accommodation** remained a point for concern. Evidences on inadequate conditions were mentioned in cases covered by Romanian medias mentioned in the Romanian Country Report, and in country reports covering Germany, Poland, and Portugal. Among others, 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 NGOs, and covering mainly workers from Eastern Europe:

'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.'

Limits in transport solutions are flagged in the country reports from Germany, Italy, and Portugal, as well as by a Romanian unionist interviewed by EMI for the project. 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.

According to 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 Romanian interviewed companies, 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, as well as difficulties to get back home during holidays or on a regular basis in cases of longer periods of posting. The Romanian Country Report stresses that, albeit corridors for workers were organised, most

stakeholders interviewed for the project were not aware of them. The organisation of work itself could entail strict division between groups of workers. During the Verona focus group, the Cassa Edile from Udine mentioned the experience of some companies creating 'bubbles', i.e., restricting contacts between their workers abroad and the outer persons to prevent disease, and this way keep working safely. A company also arranged charter flights to move large construction teams at a time some countries closed the borders (El Salvador in the case at hand), with commercial flights being cancelled, and the use of a smartphone application, authorized by the Italian Labour Inspectorate, to track workers and check the compliance with safety distance.

Whereas division of workers into separate groups was actually encouraged by sectoral protocols meant to ensure prosecution of activities while safeguarding workers from COVID-19, concerns over companies misinterpreting them have been also raised. A German unionist from IG BAU, involved in the 1st Mutual Learning Seminar of Wiesbaden, denounced that many posted workers were forced to stay in Germany by the employer. The unionist also complained about the custom of adopting 'group quarantines':

'if a case was detected, the full team had to keep working and was separate from others, so workers had to accept the risk of getting the virus, and politicians supported that. Finally, a law was introduced to tackle these practices, following outbreaks in the meat industry where similar circumstances were reported'.

The Spanish Country Report stressed that visits by paritarian OSH committees in construction sites prosecuted during the pandemic, making sure measures to counteract the pandemic were understood and applied. Instead, the ETUC legal advisor underlined that inspectors had difficulties in carrying out checks, meaning they could not conduct them or did them via phone/video-call, a situation not so effective to ensure health and safety, and that sometimes unions were not allowed to talk with workers on the basis of general COVID-19 restrictions. During the 1st Mutual Learning Seminar, the German organisation running the compulsory insurance scheme against accidents at work in the construction sector, BG BAU, remarked that at the beginning of the pandemic accidents increased also because architects were banned to go on site by their employers, so workers lacked necessary inputs and coordination.

Social protection of posted workers: cross-country features and limits

The social security of posted workers has always been a subject of peculiar interest, for the exception granted under article 12 of the Regulation EC 883/2004, enabling them to remain insured in the home country while working abroad. On the one side this simplifies their cross-border movement, actually integrating the principle of free movement of workers enshrined in the Treaties, whereas, on the other side, the still

significant differences in social security schemes and in the functioning of social protection may constitute a damage for their actual degree of protection, if not a reason for fraud by companies seeking savings. The pandemic seems to have further exposed these contradictions.

An example was mentioned by the interviewee from the Labour Mobility Initiative:

'The procedure to repatriate Polish posted workers getting sick via an ambulance, with costs covered by the State, was not always possible, also since the health system was strained, meaning workers could be repatriated with private ambulances or had to stay in the host country.

In a specific case, 15 construction workers posted to Germany were sent to formal quarantine centers for at least five days in Germany. Even if they did get paid for their period of inactivity, it was unclear if they were to be compensated under German or Polish rules.'

The same concerns were shared by the ETUC advisor, recalling that it is not clear from the reading and, especially, from the interpretation of the Posting of Workers Directive (Directive 96/71/EC, as revised by Directive EU 2018/957) if sick pay constitutes part of remuneration to be aligned with provisions in place in the host country. In the lack of clarity, workers could be simply afraid of calling themselves sick.

The review implemented for the project on conditions for **short time work benefits** and **sickness benefits** pointed to the extension or introduction of the former schemes to take the pandemic situation into account, as well as the general consideration of periods spent in quarantine as sickness. Yet, considerable differences emerged in the amount as parameters reflect the wide differences in wages across the European Union, as well as in the combination of entitlements towards the employer and towards social security institutions.

Whereas the emergency provisions generally entailed the intervention of the State to cover periods of sickness usually covered by the employer, this was not the case for Italy, whereby sickness and quarantine remained paid by INPS from the 4th day onwards (with coverage for previous days and top-ups by the employer defined in collective agreements), and for Germany, whereby sickness remained largely covered directly by the employer, possibly indemnified by the State.

The mix between elements of social security and remuneration was even more marked for short time work schemes, both situations highlighting limits in the revision of the Directive 96/71/EC insofar there were uncertainties on the alignment of related pay entitlements with host country legislation, if not clear exclusion thereof as in Germany.

In addition, as far as Italy is concerned, whereas the sickness benefit for workers getting COVID-19 while posted abroad was recognised on the same conditions of workers

remaining in Italy, the extension of the benefit for cases of quarantine was granted only upon decision of the Italian health authorities. This meant the exclusion from the benefit of workers insured in Italy yet quarantined abroad.

Instead, adopting an approach which seems more compliant with the Regulation 883/2004, the Portuguese authorities granted access for workers posted by the country upon submission of a declaration of isolation or equivalent official document issued by the Health Authority of the Member State where they work online, through the Social Security Direct platform¹⁴.

Interestingly, the EU Handbook explores **benefits provided by paritarian funds** during the pandemic, sometimes available to posted workers as part of the remuneration they are entitled to under the revised Posting of Workers Directive. If the bonus introduced in Germany did not cover posted workers, in the light of limitations in the wage elements still applicable to them, in Italy sectoral funds anticipated payments for the holiday pay and seniority pay by few months in 2020. In Romania, the paritarian fund CASOC introduced ad hoc benefits to tackle interruption of works, as specified in the box below.

Box 3 – Measures adopted by the sectoral fund CASOC ahead of the pandemic – Romania

The Romanian sectoral fund *Casa Socială a Constructorilor* granted allowances to employees of member companies whose construction sites were suspended as a result of the measures imposed for the COVID-19 pandemic.

In order to benefit from this measure, workers had to prove to work on the basis of an individual employment contract and to be employed by a member company that has contributed to the creation of the social protection fund managed by the fund. The social protection offered by the sectoral fund included:

- social protection benefits during the interruption of the activity: 75% of the average for the last 3 months of the gross basic salary during the emergency / alert period established at national level. Along with the payment of the allowances, the sectoral fund covered as well income and social security contributions due by the employee / employer on the amount of the granted allowances;
- keeping the job during the interruption of the activity;
- entitlements deriving from the status of construction employee: seniority at work, social insurance rights, tax rebates, etc.

Access to benefits was available for workers posted from Romania and to the country, provided his/her company registered at the fund and contributions had been paid for at least one month. In line with applicable legislation, the fund transferred allowances back to the employer, who confirmed receipt by the employees via a sworn statement.

¹⁴ <https://www.seg-social.pt/>.

Vaccination and aids in times of emergency: few legal or administrative limits in the spotlight

In terms of access to COVID-19 **vaccination campaigns**, information retrieved from thematic reports of the European Social Policy Network (ESPN)¹⁵ and from the analysis implemented by the Fundamental Rights Agency (FRA)¹⁶, and reviewed in the light of the assessment made by the Platform for International Cooperation on Undocumented Migrants (PICUM) network¹⁷ suggests that despite being formally universal in their coverage, vaccination campaigns featured limits in some countries because of the procedures of registration. Albeit the sources focus especially on undocumented migrants or on asylum-seekers and refugees, information therein contained suggests posted workers may have been de facto excluded in some cases.

In **Germany**, it was required either to provide for a registered address or to demonstrate to live in Germany ‘under normal circumstances’.

In **Italy**, some good practices have been spotted, like the possibility to get a vaccine at the seats of some Casse Edili or paritarian vocational training centers for the construction sector (*Scuole Edili*), or the ‘open days’ to open up vaccinations without particular requirements, usually with the key support of volunteers/NGOs. Yet, in order to book a vaccine, most regions required the Italian ID number for health assistance and fiscal purposes (*Codice Fiscale*), which is assigned upon residence in the country. A similar situation occurred in **Spain**, where most regions restricted access to people registered in their health databases. There again, in many cases cooperation was sought with NGOs to identify people not covered in the database and contact them in order to administer the Johnson & Johnson vaccine.

Among other covered countries, it shall be noted vaccination could be made with any kind of document identifying the person in **Portugal**, seemingly a more effective way to guarantee universal access.

To tackle the social effects of the pandemic and of related restrictions, public authorities and NGOs provided for **food aids** as per practices detected in Italy and in Portugal. Whereas the role of NGOs certainly helped to reach out marginalised communities and, more in general, persons experiencing a situation of shortage, yet not matching formal criteria (for instance for being undocumented), some Italian municipalities actually issued decisions meant to formally **exclude people non residing in the country**.

15 See: https://ec.europa.eu/social/main.jsp?advSearchKey=%20ESPN_covid2021&mode=advancedSubmit&catId=22&policyArea=0&policyAreaSub=0&country=0&year=0.

16 See: <https://fra.europa.eu/en/publication/2021/covid19-rights-impact-june-1#country-related>.

17 See: <https://picum.org/covid-19-undocumented-migrants-europe/>.

The decisions were ruled as unconstitutional by Italian tribunals, recognising that similar aids fall within the set of fundamental rights that cannot be restricted on the basis of rules determining the stay of people in a country for them addressing basic human needs, and imposed access to the benefit on the basis of domicile rather than residence status and of the presence of a situation of economic difficulty.

The pandemic and use of digital tools to improve monitoring and enforcement activities: EMECs findings

Contact persons for social partners: still an unused token

An ambitious project's task was to reach contact persons in sending undertakings to test if and whether social partners would manage to get an answer, and their approach towards providing information for possible collective bargaining. The idea stemmed from Article 9 (point f) of the Enforcement Directive 2014/67/EU, entailing as part of the obligations that Member States may impose to sending companies:

'an obligation to designate a contact person, if necessary, acting as a representative through whom the relevant social partners may seek to engage the service provider to enter into collective bargaining within the host Member State, in accordance with national law and/or practice, during the period in which the services are provided. That person may be different from the person referred to under point (e) and does not have to be present in the host Member State, but has to be available on a reasonable and justified request'.

As this information shall be included in the preliminary declaration on posting, Member States are supposed to know the contact person for social partners of each and every company posting workers to their country. However, the Directive does not regulate access to this information by social partners, nor if and how national authorities are to make details of the contact persons available. This obstacle has proved hard to overcome, with contacted unionists reporting not to have access to data, or not to have been positively answered their requests, data being apparently accessible only in case of reasoned request, for instance following detection of a sending undertaking in a specific construction site. Yet, persisting gaps in accessibility of information on

presence and location of posted workers, the new token remains in some cases not even entailed by national legislation and, however, substantially unused.

The EMEcs analysis of job advertisements: insights for a fair mobility of workers in the construction sector

Departing from the idea of experimenting an attempt of analysing labour market trends before they realise, the project explored the facets of a sample of job advertisements to understand **trends in international mobility of workers** in construction sector and to provide **hints for monitoring and enforcement activities**.

First, partners selected a set of 10 web-sites across covered countries, and according to different types, namely: public portals, 'informal' web-sites (i.e., operated by private operators apparently not registered as labour market intermediaries), Facebook groups. Initially, websites of registered temporary work agencies were also to be included, yet the preliminary screening showed that many of them make job advertisements available only for clients, remaining hard to access.

The partnership collected the full text, the link, and a set of standard information on all job advertisements published in the selected web-sites between 1 and 30 September 2022. To be eligible, advertisements had to target 'construction activities' (both in blue-collar and white-collar occupations), and be performed 'abroad' compared with the reference country of the web-site (this condition did not apply to the web-site from 'EU', for its target being generally mobile workers).

Overall, the sample was composed by 203 advertisements, mostly concerning blue-collar workers, and targeting mostly works to be implemented in: Germany (18%), the Netherlands (18%), Switzerland (12%), Belgium (9%), and France (9%). Posting was mentioned only in 2% of cases, a circumstance which is reassuring, as posted workers shall be already employed in the sending country for posting to be genuine. Results from descriptive statistics and inferential analysis suggest the following:

- clear **breaches of law are hard to detect**, since advertisements rarely appear to propose provisions not in line with national or EU level labour legislation, remaining rather vague whenever the proposal appears as troublesome;
- the **identity of the employer is often hidden** (1 out of 5 advertisements in our sample), a circumstance detected in private web-sites and, especially, in Facebook groups, and which is associated with absence of information on many aspects concerning the relationship, from the location and duration of works, to the proposed pay and working time;
- the **working time offered** at time seems **not (fully) in line with European standards**, with significant overtimes required or presented as an opportunity to get extra

income. Whether these proposals are in line or not with applicable legislation, an aspect difficult to ascertain in the light of the flexibility on working time embedded in the EU and in some national legislations, they certainly suggest enforcement bodies to keep an eye open on this aspect, and possibly use job advertisements themselves as hints;

- **information on pay is hard to decode.** In some doubtful cases, advertisements refer to both a minimum and a maximum offered amount, differing substantially, or the proposed pay seems pretty high compared with applicable minimum wages or even with average wages;
- **information seems more complete and clearer in public portals than in private web-sites**, and, especially, when compared with Facebook groups. In this respect, it shall be mentioned the identity of the employer was known in all advertisements hosted by public portals;
- the analysis comparing results by type of company does not show significant differences between advertisements posted by temporary work agencies and other companies;
- linked with the above, **temporary work agencies seem not to guarantee better clarity** on offered terms of employment than companies do when they seek to recruit workers directly, neither they appear to play a role in matching high qualified profiles.

The EMEcs digital tools: ideas and opportunities from a case study analysis

A third strand of analysis addressed a sample of nine digital tools, meant to help understanding how monitoring and enforcement activities can benefit from new tools in times of emergency and beyond. This activity stemmed from the consideration of the boost in online activities triggered by the pandemic as an opportunity in a time of contemporary limitations for labour inspections. The selection covered:

- three data analysis/matching tool used by labour inspectorates and building on administrative declarations: the German Minimum wage Registration Portal, used to identify postings occurring in the construction sector and to inform the competent sectoral fund (SOKA BAU); the Portuguese SINAI database, including inspection records and matched as well with declarations of posting; the REVISAL platform, based on the Romanian register of employees, used to answer queries on workers posted from the country;
- four tools used to monitor employment relationships along the supply chain, as introduced by public authorities, sectoral funds or contractors (CHECK and SICO in Italy; the Register of Accredited Companies in Spain), or available on the market for private companies (GESTPLANO in Portugal);

- one tool used by social partners in the construction sector of the Principality of Asturias (Spain) for the control and monitoring of health and safety conditions and contracting of works, in coordination with the social security and the labour inspectorate (COPREVAS platform);
- one information portal about the construction sector in Poland, *Wielkie Budowanie*, including a search engine for job offers, and information on market wages, and on prices of products and services.

For what concerns databases in use by labour inspectorates, the attempts made in covered tools is to track information on posting and integrate them in a wider framework, targeting information on employment relationships and accidents at work, or with databases having fiscal and social security purposes, albeit this matching is not always straightforward or is too recent for a proper assessment of its achievements and limits. Similarly, the analysed tools on construction works COPREVAS (Spain) and SICO (Italy) show how **matching data** on type, location, and size of works with other information available on the headcount and employment relationships in place **can help identifying and tackling irregularities**, preventing accidents as well.

In the German case, data sharing, albeit not fully automatized and requiring some extra human efforts, does enable the sectoral fund SOKA BAU and the bodies in charge of receiving notification of preliminary declarations of posting (Customs Authorities) to keep companies providing services in Germany informed about their duties when operating in construction, supported by a web-site providing relevant information in nine languages.

Other screened tools mainly concerned software thought to increase transparency in construction sites. In the light of the size of subcontracting chains, these tools seemed to answer concerns over quality of service providers, also in the light of prevention of accidents, information on works to be implemented and on their schedule, presences of personnel on site. Depending on their aims, ultimate clients and producers, the features of these tools differ and might even be tailor-made, like in GESTPLANO. Yet, they flag the **need of companies**, especially lead contractors, to avail of tools enabling them to **manage properly works distributed along the subcontracting chain**, suggesting this can be a viaticum for a **higher attention on regularity and safety at work**, in particular when software is promoted by social partners/paritarian funds and joint liability clauses back cautiousness in subcontracting practices.

The same need for transparency inspires the Polish portal *Wielkie Budowanie*, providing information not targeting the construction site as such, but market trends in terms of pay and prices capable of informing both workers and companies in a context where the majority of firms are not covered by collective agreements and negotiation on pay and benefits occurs largely at firm and individual level.

Digital opportunities: further insights from the EMECs activities

The analysis of digital opportunities for the post-pandemic construction sector as well as to be exploited in case of future emergencies has benefitted also of online meetings and events, among which the second international Mutual Learning seminar, held in Bologna on 21 October 2022, and an online focus group addressing some Italian local experiences; as well as of the interview with INPS.

The seminar of Bologna gathered a **wide consensus over the need to improve use of data to ensure regularity in the employment of posted workers**, including on the side of Italian social partners and public institutions involved.

The event was useful to discuss some further experiences not covered in the EMECs digital tools, like the 'Congruity indexes', recently introduced by Italian legislation, and managed by CNCE. Thought as a tool to counteract undeclared work, the indexes measure whether the labour input registered in a specific construction site is 'congruous' in the light of the overall amount and types of works to be implemented. To this aim, a table assigns a share of the expected size of labour input for each category of works (e.g., the minimum share of labour input on the value of works shall be 22% in case of restructuring of civil buildings, and 13,77% in case of road or bridge building).

The focus group recalled how **paritarian funds can actually promote tools to be used directly by companies**. Having usually no sanctioning and inspection powers, they can still promote tools targeting lead contractors, which, in presence of joint liability clauses, have interest in accessing information on employment relationships along the supply chain to prevent irregularities.

Finally, the interview with INPS recalled the pilot project currently running for the introduction of a European social security pass, which entails, in its initial phase the certification of digital A1 forms, and the possibility to verify paper versions via a QR code.

'We entail to make our data at disposal of foreign social security institutes, using advanced technologies, like the blockchain, and guaranteeing access in real time to important data regarding posting, as well as other aspects, like on benefits, in a view to avoid fraud.

Of course, the actual features of the tool shall depend on how our proposal will be evaluated by other Member States'.

A vision for the post-pandemic: the EMEcs EU Toolkit

As a final task, partners departed from project findings to elaborate a toolkit, including a set of policy recommendations, and a draft OSH protocol to use as a basis in cases of future similar emergencies.

First, this activity identified a preliminary set of issues as challenging or promising to then collect written inputs on additional aspects deserving attention or on possible policy measures to be suggested. An online meeting discussing prompted the comparison and revision of proposals, before a final editing refining them to take into account the different viewpoints, contexts and expertise reflected in the consortium. The recommendations have been split under four different main domains, reflecting the different topics treated alongside the project. A summary of recommendations, explaining as well the rationale and practices behind them, is provided in the following paragraphs, according to the different domains referred in the recommendations themselves.

Emergency related restrictions and access to information

The first strand of recommendations addresses access to information on emergency related restrictions from different angles. The six proposals therein contained depart from **information sharing** between public authorities and social partners on restrictions, both mentioning the role the latter played in adapting OSH measures to the context of the construction sector and the ability they have in reaching out companies and workers, supporting the adequate implementation of safety measures. This also concerns the **implementation of site visits** by OSH paritarian committees, which shall prosecute in safe conditions as far as possible, as well as inspections, being tools to inform companies and workers, and to disincentivise non-compliance. In turn, **access to legal advice** for workers shall be promoted. For instance, in Germany, the Fair Mobility network receives financial support for its information and legal advice activities targeting posted workers through centers dislocated across the country.

Proposals concern also accompanying **easy to access, and structured information for the population at large with individualised support**, for instance by means of hotlines.

Finally, in the light of difficulties reported on accessing information on restrictions available abroad, the setup of **cross-border working groups** among public authorities is suggested to promote quick transfer of information or common action.

Mobility of posted workers

The second strand of recommendations targets three aspects raised across the project by companies and/or workers involved in posting. First of all, as proposed by the European Commission, and realised, for instance, in Italy by INPS, **A1 forms could be considered as valid even if elapsed** under circumstances whereby limitations clearly slow down production activities.

Secondly, **quarantine requirements** could be **relaxed for posted workers**, while considering they may be subject to 'double quarantine' whereby they wish to return home for short periods.

Finally, considering some unclarities of faults in the application of OSH rules emerging among project's results, it is suggested to clearly **indicate that the employer is responsible for covering pandemic related OSH costs**, from the possibly diverse necessities in terms of transport to reach and leave the construction site, to the necessary Personal Protective Equipment and tests. In the light of the possible magnitude of related cost, the State shall provide full reimbursement or access to equipment at subsidised prices.

Social protection of posted workers

In terms of social protection of posted workers, recommendations address: (i) treatment in case of quarantine; (ii) access to vaccines; (iii) access to emergency aids; (iv) access to social and mental health services; (v) adequacy of short time work schemes. Under all these areas, problems have been identified in terms of access gaps or inadequacy of benefits. For instance, as previously mentioned, Italian authorities did not recognise the benefit introduced in case of quarantine to workers isolated by foreign authorities. Instead, legislation and interpretation thereof shall follow rules included in Regulation EC 883/2004, entailing **coverage of social security benefits for posted workers in the sending country**.

In some countries, procedures to access vaccines also prevented access by workers not registered with the National health services, possibly including posted workers. Instead, **the European Health Insurance Card could be used to guarantee coverage in**

vaccination campaigns of posted workers and of other citizens temporarily staying abroad.

In terms of **access to food aids** and other emergency aids, the **cooperation between public authorities and NGOs** detected in Italy and Portugal looks as **promising** to reach also persons not informed or not tracked by public authorities for various reasons, including for them being posted from abroad. This shall be promoted while **banning restrictions based on residency status in times of emergency**.

Finally, in the light of psychological problems faced due to prolonged isolation, **mental health services shall be adequately financed and supported** by public institutions, taking into considerations possible needs of people with different language and cultural backgrounds.

Indeed, the EU Report showed how posted workers could suffer from psychological strain at the time they were unable to come back home and visit their beloved during breaks and holidays, staying blocked alone, instead, in the host country.

A last recommendation looks at the post pandemic starting from the gaps experienced during the last years. In this respect, and considering limits in the protection of posted workers in case of reduction or interruption of construction works, European authorities are encouraged to work on **legislation setting minimum standards for short time work schemes**. Together with the objectives of convergences promoted, among others, with the Directive on adequate minimum wages, this shall help prevent inequalities in the labour market, especially but not limited to, in case of emergencies.

Opportunities from digitalisation

In terms of lessons to learn from the pandemic on the use of digital tools, recommendations call for **adequate data sharing between public authorities**, for instance by matching data on A1 forms with those of preliminary declarations, or departing from opportunities granted by the infrastructure of the ESSPASS tool. Considering the role of sectoral funds in the construction sector, as it happens in Germany, they shall be able to access relevant data to inform sending undertakings and make sure they register in the host country whenever due.

The role of **social partners** is also to be empowered. Departing from the possible introduction in national declarations of posting of a **contact person** through whom social partners may seek to engage into collective bargaining within the host country, the recommendations ask to make this contact and related summary information available to social partners. The failed attempts made during the project to access these data show that the provision remains largely ineffective.

As partially occurred during the pandemic, **digital tools could also be used to reduce administrative burden** on companies, for instance to register attendances paper-less.

Building on the analysis of online job advertisements, and the large share of advertisements posted by unknown employers or even temporary work agencies failing to mention their name, it is proposed to set **boundaries to the contents of job advertisements at EU level**, while in turn promoting public intermediation, and to reconsider conditions for the activity of temporary work agencies in a more restrictive way.

Finally, in the light of evidences from digital tools, the EU Toolkit buttresses tools able to **improve transparency along the supply chain**. The idea is to leverage, among others, on joint liability clauses to trigger action by lead contractors towards compliance with regularity of employment, as well as with other standards and rules capable of improving quality of employment and of works, starting from regular attendance of training courses, professional experience and owning of licences to run machineries.

Opportunities from innovation of vocational training

Departing from experiences analysed during the project, it is advised to **promote free, short-term online training (MOOCs) aimed at workers and companies in the construction sector** to help them analyse the sector-specific risk of virus exposure, to promote awareness on preventive measures to avoid contagion, and to provide more general learning opportunities. The availability of online courses can help to reach out posted workers, possibly with courses in foreign language, as done by the German *Arbeit und Leben* Institute during the pandemic.

Health measures in construction sites – a proposal of protocol

The last section of the EU Toolkit proposes a draft protocol realised by analysing the structure and the contents of OSH protocols introduced to prevent the COVID-19 spread in construction sites in Germany, Italy, Poland, Portugal, and Spain¹⁸. The exercise was meant to identify similarities and divergencies, showing the main concerns and different approaches to tackle the same risk, and supplying this way a tool to be adapted and integrated in case of similar emergencies, especially in reason of the country context and of information from health authorities. The protocol is structured along different topics, including aims and possible means to achieve them.

¹⁸ No sector-specific protocol was adopted in the other country covered by the project, Romania.

More in detail, instructions have been provided across a set of aspects arising as key in the screened protocols, namely:

- adjustment of work organisation and measures concerning external providers, as to reduce and track contacts;
- assurance of safe distance between workers and work stations;
- adoption of measures to ensure safe transport and accommodation;
- compliance with cleaning and general hygiene requirements;
- provision by the employer of personal protective against the virus;
- adequate dissemination among workers of information on the risks;
- measures to manage cases of infections, including isolation and immediate contact with health authorities;
- development of COVID-19 plans and cooperation with workers' representatives.

A closing section supplies additional guidance for vocational training centres, on the basis of recommendations set by FLC Asturias for vocational training centres active in the Principality of Asturias¹⁹.

¹⁹ The protocol is available at this link: https://emecs-project.eu/wp-content/uploads/2022/12/COVID-PROTOCOL-TRAINING-CENTER_ES.pdf.

Conclusion

The EMEcs project has been an opportunity to reflect and assess measures introduced to tackle the manifold effects of the pandemic on workers and companies in the construction sector.

Thought at the time the first pandemic wave was over and bearing in mind the possibility to reflect on past events, the prosecution of the pandemic over time and the evolution of knowledge and strategies to tackle it actually accompanied most of the project's life span, bringing the consortium to reflect on problems emerging at different steps, and, eventually, to discuss over the possibly legacy of the pandemic for a **construction sector becoming more secure**, in terms of regularity of employment, income, workers' qualification, and protection from health and safety risks.

Most recommendations, as well as the draft OSH protocol, do provide guidance on how to better address similar health emergencies in the future, from flexible rules on restrictions to mobility and duration of A1 forms, passing through the banning of restrictions over access to social benefits, vaccinations and social aids for posted workers, the availability of information on measures to tackle the pandemic on a single portal and in different languages and, finally, suggesting a set of draft OSH measures.

Whereas proposals need further adjustments or integrations in the light of the actual features of possible similar health emergencies, as well as on the related health knowledge and on the country context, the main 'if' for the future lies in the **ability of policy makers and of the society at large to learn lessons from the pandemic experienced in order to shape a better new normal**.

First, as explored in the previous sections, most limits of the existing legislative framework protecting posted workers emerged during the first phases of the pandemic, whereby posted workers might have been either barred from entering a country, or stuck there at the time works were temporarily interrupted, or during quarantine.

Whereas, unlike cross-border workers, they could not generally return home for short times, application, interpretation or misapplication of existing rules on social security coordination and of the entitlement to the host country's remuneration meant lower protection for those posted to countries with higher wages and living standards,

recalling the more general limits triggered by existing differences in income and social protection standards across EU Member States.

Sectoral funds have phased in emergency measures to tackle the fall of income in some countries, representing an answer to be further empowered for its ability to align significant benefits for posted workers with the actual cost of living in host Member States. Nevertheless, **EU policies strengthening social and economic convergence** are necessary to reduce more in general inequalities in income and protection among EU workers, often at the roots of fraudulent posting.

In terms of digitalisation, the population at large testified and experienced the quick setup and rollout of schemes easing the safe mobility of citizens while enabling to easily check their status, with the EU Digital Covid Certificate and with the Digital Passenger Locator Form, the former seeming to inspire also the current ESSPASS project.

In the light of persisting problems in the enforcement of posted workers' rights, similar afflatus shall inspire the **setup of rules and technical specifications to share data necessary to ensure cross-border regularity of employment**, in the construction sector and beyond. A first step could be matching data on employment relationships and social security payments with those from national preliminary declarations of posting.

The project highlighted as well some promising practices, like data sharing between the German Customs Authorities and the sectoral fund for construction workers SOKA BAU, suggesting ways to improve as well as to replicate them.

The stoppage of works and restrictions on gatherings also paved the way for a **rise in the offer of online informative events and trainings**, meant to inform workers about their rights or to exploit the situation to improve knowledge and skills. The development and dissemination of similar online resources, targeting also workers outside the usual circuits, constitute another takeaway from the pandemic which shall inspire policies, not only by public authorities but also by social partners, especially whenever they are in charge of steering vocational training through paritarian institutions.

Finally, the pandemic recalled the attention of policy makers on health, as much as to limit fundamental rights, like the freedom of movement, as an *extrema ratio* to safeguard public health at a time health systems were not prepared to face a largely unknown virus.

Among the project recommendations, the need to **adequately fund mental health support services** is mentioned, as posted workers suffered from a double isolation in times of pandemic. This stemmed from generally applicable restrictions on gatherings, and from the inability or difficulty to reach their beloved ones in presence of cross-border quarantine requirements making impossible to travel back home during short breaks. Even if not directly touched upon the project, a renewed attention on health personnel and public health services as well as on accessibility of cures is granted as a widely shared political goal in the light of the experience of the pandemic and of the

pivotal role public health systems have been called to play.

Considering the construction sector, the attempt to keep activities running while safeguarding workers, in the light of the lighter risk compared with other activities, led to the introduction of specific **OSH protocols** adapting general health measures to the framework of construction sites. There is hope this practice will bring about a **new attitude to health and safety**, paying higher attention in the future not only to the need to adequately protect the respiratory system from harmful biological and chemical agents, but also on other precautions necessary to work safely, reducing the incidence of occupational disease and of accidents at work in a sector still featuring among the most dangerous. Positive experience and signals have been spotted during the project, from the improved use of masks in situations of danger, to the campaigns of information on COVID-19 risks promoted by social partners and paritarian institutions. These experiences surely represent part of the legacy of the pandemic which shall inspire future policy actions.

Annex 1 – Links to the EMEcs project’s reports

EMEcs Country Report - Germany

<https://emecs-project.eu/wp-content/uploads/2022/08/EMEcs-Germany.pdf>.

EMEcs Country Report - Italy

https://emecs-project.eu/wp-content/uploads/2022/10/EMEcs_Italy.pdf.

EMEcs Country Report - Poland

https://emecs-project.eu/wp-content/uploads/2022/10/EMEcs_Poland.pdf.

EMEcs Country Report - Portugal

https://emecs-project.eu/wp-content/uploads/2022/09/EMEcs_Portugal.pdf.

EMECS Country Report - Romania

https://emecs-project.eu/wp-content/uploads/2022/08/EMEcs_-Romania.pdf.

EMEcs Country Report - Spain

https://emecs-project.eu/wp-content/uploads/2022/10/EMEcs_Spain.pdf.

EMEcs EU report

<https://emecs-project.eu/wp-content/uploads/2022/11/EMEcs-EU-Report.pdf> .

EMEcs EU Handbook - Protecting posted workers in the construction sector during COVID-19: limits and promising practices

<https://emecs-project.eu/wp-content/uploads/2022/11/EU-Handbook.pdf> .

EMEcs Discussion paper - New tools for monitoring and enforcing working conditions

https://emecs-project.eu/wp-content/uploads/2023/02/Discussion_Paper.pdf

EMEcs EU Toolkit

https://emecs-project.eu/wp-content/uploads/2023/02/EU_Toolkit_EN.pdf

