



Understanding Society

Providing fertile soil, with sharing practices and joint analysis

More than a decade of EURODETACHEMENT-projects

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Introduction

In 2010, representatives of national enforcement agencies who had made some first experiences with transnational meetings and talks decided to apply for EU funding for a project dedicated to the handling of cases with posted workers involved. The aim was to enhance their capacity to cooperate and to jointly act more effectively in the field of posting of workers in Europe. This was the start of a series of 7 projects, coordinated by the French institution INTEFP and assisted by experts from ASTREES. At the very beginning, Belgium, Spain, France, Luxembourg, Poland and Portugal embarked on a shared training scheme for their officers. An informal transnational network was created and first contacts with the European social partners of the most concerned sectors were established. Soon after, I joined the steering group of the initiative and served as external expert.

Over the years, a variety of activities has been initiated in the projects. The project's website speaks about sensitising, informing, monitoring, controlling, anticipating, preventing and acting at transnational level. The project team has reported about all these initiatives in detail. Therefore, this short paper will not touch upon this variety. My contribution is also not meant to serve as an exhaustive assessment. The paper looks at the impact of a project that was developed in a, sometimes, turbulent field of socio-economic developments, with intensified mobility on the EU labour market, with a focus on the contribution to the necessary policy to detect and tackle breaches and indecent practices. In my view, the practical exchange and informal character of the initiatives have contributed to an important shift of paradigm in the thinking about mobility, free movement and free provisions of services with posted workers. Through this informal network, the partners had the opportunity not only to organise fruitful exchanges, but they could also identify pro-active and sometimes even agenda-setting ideas for a policy oriented towards fairness in labour mobility and free movement of workers.

The early years

One of the main drivers behind the project was the (mutual) acknowledgement that transnational recruitment arrangements are very difficult to control. Some Member States had started to formulate bilateral agreements for the necessary cooperation and the first experiences with this cooperation served as a relevant starting point for the planned joint work in the project. In the daily practice, enforcing workers' rights came out to be complicated as soon a transnational dimension enters into the labour relationship. In the area of posting, the use of posted workers in labour-intensive segments of the labour market did not necessarily lead to a deterioration of working conditions. But posting situations could have a significant impact on working and employment conditions and created an opening for new forms of recruitment not intended by the legislators. National authorities were confronted with increased mobility on their labour markets and the investigation of arrangements with foreign legal entities that served as intermediates in the provision of services turned out to be cumbersome. The at that time existing juridical frame for enforcement and effective tackling of breaches was partly untrodden land, partly seen as inconclusive. The time-consuming control and cooperation with authorities in the country of establishment, the different scope and differing competences of the involved authorities (the famous 'silos') hindered an effective operation.

Therefore, the priority at the very beginning was to learn more about the regulatory frame in both sending and receiving countries. The first project (2010-2011), called *Common training for labour inspectors and public officials of liaison office on Posting Involved in control and monitoring*, started with case studies, joint meetings and mutual exchange of information. These activities provided the partners with crucial knowledge. It also led to more understanding of the complexity of the situations that occur. One of the key findings was that governmental institutions and authorities could not act in an isolated way. In the most concerned sectors, like construction, food processing and agriculture, social partners also have a leading role to play. In some countries, they play an active workplace monitoring role, or they perform the essential task of informing, advising, and supporting both mobile workers (including workers on postings) and the companies that post workers. This led to the innovative step to involve the sectoral organisations of both sides of the industry directly, both an EU and at national level.

The second project, *Improvement of collaboration between public bodies and both sides of industry*, organised in the period July 2012 to the summer of 2013, led to enriched debates and to the confirmation of practical problems that were partly already identified in earlier meetings. The strength and the weakness of the flow of information was discussed (easy access, how to keep information reliable and updated, language problems and terminology). Partners signalled the necessity of enhanced cooperation between all stakeholders (public and competent bodies, social partners) during the whole process: before the cross-border provision of services starts with posted workers and in the period of the workers' stay in a host country (and in case of breaches, even after the service provision has ended). The project, in the meantime enlarged with Denmark, Estonia, Finland, Lithuania and Romania, led to the formulation of action fields in a series of activities with shared partnership and cooperation models.

The early activities generated important findings related to the provision of information, at sectoral, national and European level. Given the fact that reliable information must come from different relevant authorities and actors, more coordination in this area is necessary. At European level, for instance, the European social partners in construction had already gained positive experiences with online information. The project partners considered how to link these experiences with an initiative with other stakeholders (public and competent bodies at national level, the legislator). The activities in these years confirmed the problems with compliance, the lack of national and transnational cooperation, the difficulties to trace circumvention in cross-border situations and the weakness of existing sanctioning mechanisms. Enforcement institutions, and in fact all stakeholders, shared the difficulty to bring cases of breaches to a righteous end. One of the conclusions in these days was that poor implementation makes legislation a paper tiger and powerless legislation can be worse than no legislation.

Intensified cooperation

The partners in the project realised that it was necessary to strengthen the operational collaboration between all relevant stakeholders, and to increase the impact of their activities. This led to joint initiatives between administrations and sectoral stakeholders, on the one hand in concrete cases at operational level, on the other hand in exchange of experiences and analytical work dedicated to specific features that enforcement bodies were confronted with. These two tracks aimed to contribute at national and transnational level to a better recognition and understanding of posting situations and to the more effective monitoring and enforcement of questionable practices. The project implemented pilots of operational support

structures and methods designed with and for national and regional officers of enforcement institutions and social partners. Beyond this, the analytical part was clearly targeting discussions about the setting up of initiatives of a pro-active and preventative nature.

In the third project, *Learning by doing*, a better application of the 1996 Posting of Workers Directive by improving transnational administrative cooperation and collaboration between participants in concrete posting operations became the central objective. In order to improve this transnational cooperation, the project outline foresaw series of pilots comprising an intensified exchange of practical experiences in case-oriented partnerships, examples of successful matching national control and surveillance systems, and the promotion of transnational synergies between parties involved in operations in the construction and temporary work sectors. The focus was on the one hand on practical and operational training primarily based on joint field work of enforcement authorities in sending and receiving countries. The project introduced the notion of immersion, of studying and assimilating each other's practices, including, in particular, field verifications. In these activities, the partners continued with training programs dedicated to the three action areas defined in the previous projects (sensitise, inform and support; anticipate and prevent; verify and supervise). On the other hand, the partners experimented with the solving of issues in the cooperation process taking into account the organisational specificity of involved Member States. A third element was the organisation of a working seminar dedicated on investigated cases with a broader audience, going beyond the project partners and social partners from the involved sectors, inviting the authorities in charge of social protection and fiscal authorities to improve further constructive collaboration between parties concerned by these operations.

The notion, that in cases with serious breaches, there is often more at stake that interferes with other infringements in adjacent policy areas, led to the conclusion that it was necessary to work more towards interdisciplinary cooperation and unorthodox collaboration. It brought (again) to the forefront and confirmed that, in order to be effective, cooperation had to be more horizontal, linking up the different silos. Partners realised that certain findings that in the early days were sometimes called a 'bycatch' could come out to be very relevant for the successful tackling of notorious offenses.

The improvement of practical and operational collaboration through learning by doing stayed on the agenda of the projects (the 4th - *Improvement of the administrative cooperation by coordinated transnational actions*, and the 5th and 6th – both on *boosting the transnational cooperation* in the field of the posting of workers) that followed in later years. New sectors such as agriculture were included, and the partnership enlarged again to other Member States. Partners organised (sub-) regional practical casework and seminars, worked out their transnational cooperation and experimented with investigations in concrete cases. This was combined with working visits, including site inspections, with joint intelligence work and the start of assistance in judicial proceedings. Often, these activities resulted in the drawing up of cooperation plans consisting of three tracks: control and monitoring actions (exchanges of information, joint and concerted inspections, design of joint working documents) / information and awareness actions (seminars, brochures) / prevention actions (information for user companies, companies and workers). These plans promoted skills transferability and sustainability of the conducted actions and strengthened the professional networks. In this respect, the pragmatic actions and initiatives in the Eurodétachement process served as building blocks for the creation of the European Labour Authority. In these projects, the partners also had the opportunity to discuss the possible improvements brought forward by the enforcement Directive (Directive 2014/67/EU), for instance, the practical use of IMI.

Analysis and transversal themes

With seminars and theme-oriented activities that were always enriched with operational experiences, the project served as a transnational discussion forum for government authorities and social partners that examined business models and productive organisations behind the provision of services and their impact on the working and employment conditions of workers.

During the projects, however, it became clear that more analysis was needed. A second key strand, therefore, became the identification of more structural forms of circumvention of the regulatory frame, of fraudulent complex legal operations, of new developments on the labour market and of obstacles and opportunities in terms of control and monitoring.

This led to a variety of transnational meetings and workshops, dedicated to phenomena such as the range of posting practices (from completely genuine to 'fake' posting), the consequences of the introduction of subcontracting and outsourcing chains and the use of artificial legal arrangements in recruitment ('letterbox companies'), abuses in the area of company law (the frequent use of company transfers or of bankruptcies), the problematic tackling of complex transnational cases, special features of circumvention in the context of sectors or the appearance of third-country nationals in posting situations. Central objective was again not to analyse these items in theory. There was always an effort made to discuss specific, 'real-life' cases that contributed to the understanding of the logic and the mechanisms behind the encountered situations, and to identify useful points contributing to improved control and enforcement strategies. In several cases, this work was prepared through surveys among the partners, in order to verify the topicality of the issue and to materialise the operational functioning. As there has been a reporting in separate synthesis about this strand, this will not be treated in detail here.

An important conclusion of this work was that some of these recruitment practices and labour market developments not only led to infringements of workers' rights but also generated the loss of social contributions or tax revenue or, even worse, resulted in serious criminal offences (money laundering, human trafficking etc.). This of course, may compromise the legitimate objective of free movement of workers and the free provision of services by genuine economic actors. Another conclusion was that the sometime problematic link between a user undertaking and a posting company brings into the debate the very relevant issue of liability and topical themes like corporate social responsibility and vigilance.

The signalling of patterns of irregularities or the identification of high-risk situations could serve as alert mechanisms towards the authorities. A major step, which was made in this strand, was the search for input from institutions and organisations that could deliver qualitative input and other insights. Although the starting point was and is that several rights, enshrined in employment law and labour standards, can be derived for all workers, including workers that make use of rights-based labour mobility, the position of posted migrant labour of complete dependency in situations of serious breaches has consequences not only for their working life but also for their housing and living situation. In practice, it is often difficult to split up activities in work related issues and the housing or living conditions of the mobile workforce. Control and enforcement activities regularly combine different tasks and roles. The problems that the labour market institutions must tackle in such cases go beyond their powers and mandate. Enforcement authorities in the Member States therefore have set up partnerships with local and regional NGOs or the charity. In the analytical work, the input from these proximate organisations became a structural component over the years. This brought relevant added value to the reflections and debates in the project.

Will there be a heritage?

At the moment of writing, the 7th project is still running. Therefore, it is not possible to close the books completely. Wrapping up the results of more than a decade of project work is a challenging exercise. And it becomes even more complicated, given the fact that some of the crucial conditions, namely the organisation of informal contacts, exchanges and on-site visits, suddenly were interrupted for a period of almost three years by the COVID-pandemic. Over the years, the Eurodétachement-projects and seminars could count on broad European participation. This participation not only went beyond the circle of partners, with other authorities and stakeholders, such as the social partners and NGOs active in the area of support for migrant labour, but also beyond the EU Member States. At the end, 25 EU Member States participated in parts of the program, completed by Norway.

A direct result of the activities at the very beginning was the increased trust between the partners. Also, the awareness of the necessity to act with a more horizontal approach was one of the first outcomes of the projects. This went hand-in-hand with growing transnational expertise. The project as a whole served as a showcase for enhanced enforcement and the conditions that need to be fulfilled in order to make such enforcement a success. Taking stock of the deliverables, we can resume the following results.

- The action led to a better understanding of the applicable regulatory acquis and conventional frames and standards, both at national and EU-level, which must be respected and enforced.
- It paved the way for increased expertise and knowhow of the phenomenon of posting in a transnational context and how to deal with this phenomenon at operational level.
- It contributed to a better understanding of the diversity in competences and mandates of the colleagues in other Member States.
- The awareness of this diversity resulted in approaches that intended to overcome silo-thinking in the handling and tackling of breaches and offenses, for instance with interdisciplinary teams.
- It led not only to better understanding, but also to informal, personal contacts and mutual trust, two critical success factors in cross-border cooperation.
- The used mix of learning by doing and analysing concrete cases functioned as an important instrument for signalling mechanisms and developments.
- Based on this mixture, it was possible to contribute, in a practical, agenda-setting way, to debates about the necessary enforcement policy and the promotion of fair labour mobility.
- Experiences with joint field action and investigations elucidate the potential barriers and difficulties that actors/stakeholders can be confronted with in concrete operations.
- The actions initiated a revival of more structural forms of cooperation between sending and receiving countries and between countries with a long tradition of in- and outflow of labour.