



la **cg**t **FNSCBA**



European
Network
for a Fair and Responsible
Posting

Seminar - Montreuil - 23-11-2016



la cgt

**You are
Posted
Workers
in the BUILDING
sector
your RIGHTS
in France !**

Wage, Compensation, Housing, Health, Safety, ...

Fédération Nationale des Salariés de la Construction, du Bois et de l'Ameublement - CGT
263, rue de Paris, case 413 - 93514 - Montreuil Cedex - Tél. : 01 48 18 81 60 - Fax : 01 48 59 10 37

detaches@construction.cgt.fr

Contents



The project's origin : posting in the building sector : the issues	4
→ Serge PLECHOT - Secretary General FNSCBA CGT.	
Speech by the European Commission	8
→ Marianne GIEROW - Employment, Social Affairs and Inclusion, European Commission.	
The Fair and responsible posting project	12
→ Marina MESURE - Coordinator of the FNSCBA-CGT European project.	
Information brochures for sending countries and the first cases resolved by REDER : Polish letter-box companies	14
→ Tomasz NAGORKA - Budowlani Polish trade unionist.	
REDER and the case of the Dunkirk methane terminal	18
I) Resolving the case thanks to Franco-Italian cooperation via REDER,	
II) Discussion with two Rumanian posted workers who were defended by the REDER network,	
III) A case in Belgium: the Belgian inspectorate's methods while investigating a company operating in Belgium,	
IV) Exchange of views on the morning's topics.	
Assessing the project	29
I) Complementarity between the trade union organisations and the labour inspectorates in the fight against posting fraud, → Luc NORGA	
II) Taking action from one country to another: creation of a working group in the Portuguese labour inspectorate, → Manuel ROXO	
III) The need to work with migrant associations and other networks specialising in posting, → Wolfgang HERRMANN	
IV) Exchanges with the audience,	
V) The importance of legal training for activists – including Labour Institutes and universities in the network, → Fabienne MULLER	
The next stages : the action plan for 2017 and fortifying REDER	40
I) Identifying fraud,	
II) The general labour inspectorate in Rumania, → Bratu Dantes NICOLAE	
III) Presentation by the representatives of FGS Familia, Rumania, → Gheorghe BALACENU and Ramona VELEANU	
Conclusions and adjournment of the seminar	44
→ Eric AUBIN - CGT.	



Serge PLECHOT
Secretary General FNSCBA

The project's origin posting in the building sector

Dear comrades and partners from associated trade union organisations, contributing members and those from labour inspectorates in partner countries, European Commission representatives, Fabienne MULLER, Professor at Strasbourg University, and dear guests, ...

We have now reached the end of the first stage of the project we have carried out together in the REDER network, set up to pool our common experiences, our knowledge and provide a service for the benefit of posted workers, the new slaves of the neo-liberal financial structure.

I must mention **Gilles LETORT**, whom many of you know and without whom we would not have realised or measured the importance of this exercise. I must also mention **Marina MESURE**, who worked selflessly with a true vision. Lastly, I must mention all of the committed men and women who over these two years have devoted their time and energy to making this project come true and have it recognised and transposed to other sectors of activity.

I will not go over all the various stages of the REDER project. I use the word stages because it is unthinkable for me to use the word end. Several seminars were held in the project's various partner countries, a number of initiatives included worksite visits and contacts were established. All these hours of work, debates and exchanges enabled us to evolve and demonstrate the scourge of taking advantage of workers who are subject to the dictates of almighty money.

This work has paid off. The brochures written and translated into several languages, the case studies that we have prepared between the partners, inspectorates, trade unions and universities have been fruitful and beneficial to a large number of people. We could have stopped there, instead we have already launched debates in order to go even further. We want to bring in other countries, trade union organisations and partner associations, develop an accessible and pro-active computer application and set up joint training schemes upstream that are adapted and designed for both the activists and government inspectors. >>>





Our only regret is that the request sent in to the European institution in June did not allow us to go further and faster. One thing is certain: We will not give up. We will continue to work together in different ways, but always focused on enforcing the law and fighting organised social dumping, which coerces thousands of workers by discouraging them from talking to trade unions. These workers and their families live in fear and are under the sway of a mafia that deals in human trafficking. Their rights are trampled and their living and housing conditions are indecent. They are separated from their families and are ill treated by words and deeds from a bygone era perpetrated by people with no empathy and motivated only by the desire to blame them for their moral distress. I will not expound further on this topic that brings to mind the current thinking in Europe.

Sometimes the courts convict the rogue companies and bosses, but it is rare for the workers to

collect the unfairly withheld sums owed them. There is a real double standard in France. In the Flamanville case, the companies and their associates were subject to fines but what will the hundreds of wronged workers get? In the Dunkirk methane terminal case, on the other hand, the employees of SICES recovered their salary thanks to the action of the REDER network. It is now up to the courts to convict the fraudsters, but that will not prevent this company from pursuing its dealings in other countries: Italy, Switzerland, the Netherlands and elsewhere.

In conclusion, we want to act together more extensively, with courage, promoting our social justice values through equal pay for equal work in a united and border-free Europe, where freedom of expression and work for all is respected. I will now hand over to the speakers and I wish you fruitful discussions and much fraternity.

■ Serge PLECHOT





Marianne GIEROW

DG for Employment, Social Affairs
and Inclusion, European Commission

Speech by the European Commission

In 2016, the European Commission included in its work programme a review of the 1996 Posting of Workers Directive. The aim was to deal with the unfair practices and promote the idea of equal pay for equal work in the same place.

Europe has changed a great deal since 1996:

the enlargements since 2004, an increase in the salary gap among the member states, application of different rules for workers carrying out the same work, etc. The goal was to set up a fair framework.

1 - The Directive's draft revision

The European Commission proposed changes in the following four areas:

→ Long-term posted workers

The total duration of posted work must not exceed 24 months. Beyond that period, work is regulated by the laws of the host country. This rule is already in place for social security matters. In order to observe the proportionality rule, this rule shall apply to workers posted for periods of at least six months.

→ Remuneration

The rules on remuneration will apply to local and posted workers and are regulated by law or collective agreements. The new sub-paragraph proposed by the Commission requires the member states to publish the components of remuneration. The goal is to promote transparency.

→ Subcontracting

The third change concerns the subcontracting chains. The member states may apply to posted workers the remuneration rules followed by the employer in keeping with non-universally applicable collective agreements. The same obligations shall be imposed on all national employees.

→ Temporary work carried out for agencies

The principle of equal treatment of temporary workers shall also apply to posted workers. The member states shall henceforth have to apply national legislation to posted workers.

In conclusion, the Commission promotes a balanced approach to the provision of services, competitiveness based on quality and fairness and a non-discriminatory approach that upholds national tax and social security law in the member states as well as national remuneration systems.

This proposal was adopted by the Commission on 8 March 2016. On 10 May, the Parliament voted on subsidiarity after eight weeks of questions. On 20 July, the proposal was examined by the Commission. Talks then resumed with the Council, without reaching an agreement. It will therefore have to wait for the 2017 Presidency. The Parliament's rapporteur is expected to submit his opinion at the beginning of the year.

2 - Transposition of the Enforcement Directive

The Enforcement Directive provides for new instruments that have been strengthened to combat fraud and abuse, such as letter-box companies. It increases the member states' ability to enforce the rules.

The deadline for transposition was set at 18 June 2016. To date, 19 member states have issued a notification of their transposition measures, three of which are a partial notification. The Commission sent a formal notice to 15 member states that had not yet sent in their transposition measures in September. They had two months to respond to those letters. To date, we have received a few responses and we will be sending a second notice. In the absence of full transposition, a reasoned opinion >>>



will >>> be sent to the member states that will have two months from the reception of the opinion to respond (*January or February 2017*). If they fail to adhere to the reasoned opinion, they will be taken to the European Court of Justice, which will decide a lump-sum amount or a fine, based on the length of the delay in transposing the Directive.

The Commission draws attention to the problems that it has identified in letters, complaints, reports from independent experts and written questions from MEPs. It would therefore be good if you could inform us of any divergence and I would encourage you to contact us. The Commission strives to solve in a bilateral fashion the problems that have been identified. ■ **Marianne GIEROW**





Marina MESURE

Coordinator of the FNSCBA CGT European project



Reder

The Fair and responsible posting project

The REDER project, which calls for fair and responsible posting, got underway in January 2015, thanks to financing from the European Commission. At the start, it included seven countries: Portugal, Spain, Italy, Belgium, France, Bulgaria and Germany. Later, we quickly included Poland and more recently Rumania.

The goal of the REDER project is to inform, protect and act at national and EU levels to remedy problems involving posted workers by creating a forum for discussion, exchange and action in a strong transnational network that includes many participants.

Goal 1:

Create a forum for discussion and exchange

In order to set up a forum for discussion and exchange, we organised seven European seminars in 2015 and 2016, during which we took up legislative topics and conducted case studies.

From the legislative standpoint, we began by going over the European legal framework in order to bring all the participants up to speed. We then presented the views of the trade union organisations and the labour inspectorates from each member state in the network, and identified the needs of each one. Lastly, after hearing a progress report on the transposition of the Enforcement Directive in the member states, we took up the matter of the review of the Posting of Workers Directive.

During the seminars, we presented the experience of the liaison offices based on the example of cooperation at the Franco-Belgian border concerning posting problems. In the working groups, which brought together representatives from labour inspectorates and trade unions, we studied real cases of fraud in the sending and host countries. This work assessed the legal framework, possibilities and limits to trade union intervention and the inspectors' powers of investigation and our complementarities. In order to

promote equality of information on rights in each country and after looking at the current situation, we prepared original brochures meeting the needs of workers. Lastly, we organised the sharing of experiences and have expanded the network to include associations, a move for which we found inspiration in Faire Mobilité and INCA.

With this goal in mind, two joint worksite visits were organised: the first to the methane terminal at Dunkirk and the second to the Antwerp Locks. The purpose was to meet the employees, talk about their needs, hold a dialogue with the employers and understand the approach of the trade unions and the labour inspectorate. The large size of our delegation reduced the flexibility and freedom of our visits, but we nevertheless observed at Antwerp that all the posted workers were in a fraudulent situation.

Goal 2:

Create a network

The second goal of the REDER project is to create a European network for fair and responsible posting. The logo is neutral without specifying the building sector because in future the network may be expanded to other sectors.

A REDER platform was set up to exchange information and publish news translated into all the network's languages.

The first initiative taken by the REDER network was to inform the posted workers of their rights. To that end, brochures translated into 8 languages were prepared on their agreement rights. The brochures were passed out on the worksites through the trade unions and platforms such as ECMIN. We also set up a specific email address for posting that can receive emails in 8 languages. The Polish brochure informs the posted workers of their rights before their departure.



Tomasz NAGORKA
Budowlani Polish trade unionist

Information brochures for sending countries and the first cases resolved by REDER:

Polish letter-box companies

The matter of letter-box companies is important for our trade union, which represents workers in the building sector. Since Poland gained access to the European Union, the phenomenon of posting has increased. Exploitation of workers and fraud has increased as a result.

Our trade union has been working for years by legislative means on the protection of Polish workers abroad, in cooperation with the FTCTB trade union that is tasked with the protection of migrant workers. This type of large-scale initiative achieves only limited effectiveness at European level because the rights of posted workers are not a priority in the context of free trade.

Faced with increased fraud and exploitation of loopholes in EU legislation by companies, we decided to cooperate with the labour inspectorate and trade unions from other EU member states in order to protect people who have been harmed and to increase their knowledge of the situation.

The Polish workers' awareness of their rights and duties in the area of posting remains scanty. It must be increased in order to curb abuses, many of which could have been avoided if the worker had been informed of the warning signs that should be checked in the labour contract and the activity of the worker's employer.

For these reasons, we gladly accepted to join the project launched by the CGT with the Polish labour inspectorate. In that context, we drew up an information sheet for the Polish employees, copies of which are available in this room.

The brochure's goals

Selecting the most effective questions and information was not easy. While information for foreigners working in Poland is abundant, it is much less so for Polish workers posted in other countries. When information is available, the public institutions that

publish it focus on their own activity. Polish social security publishes brochures on insurance and social security abroad, the Finance ministry stresses taxation and the foreign affairs brochure emphasises administrative procedures. There is no overall view taking up the rights of employees leaving to work abroad and recourse in case of problems.

Content and distribution of the brochure

We wondered whether the brochure should be distributed to all persons leaving the country or only to outsourced employees. We believe the number of outsourced employees warrants a specific document because a general brochure would tend to marginalise this priority problem. We therefore decided to prepare one brochure for Polish workers posted abroad. The aim was to offer an appealing summary of these complex topics.

In this brochure, information is divided into two categories:

→ Steps to take before departure

We explain the context of posting, the duration and the social security and tax consequences. We explain the formalities before departure in Poland required of the employee and the documents to be filled in by him. We show the methods available to workers on how to check whether the employer is honest and observes legal provisions.

→ In the host country

The brochure indicates the links to information on labour law in the host country and the institutional recourse in cases of fraud or other problems.

We used the regional branch offices of our trade union, located throughout Poland, to distribute the brochure. Four thousand copies of it were printed in two stages. The documents are available in our regional offices and were sent to employment >>>



agencies and to the social security branch offices tasked with distributing European sickness insurance cards. We also intend to send the brochure to trade unions active in construction companies.

Perception of the brochure

It is difficult to estimate the number of people we have assisted in this way. Direct and email requests for assistance from persons intending to work abroad are on the increase. The brochure provided publicity for our trade union, which shows that it is finding an audience. We also receive requests from foreign workers and we try to find answers to all their questions by guiding them to the labour inspectorate or to competent bodies in the most complex cases.

The brochure was made possible thanks to the assistance of experts involved in the project. Contact with trade union representatives and labour inspectorates in other countries is important so that the handling of cases of abuse is not delayed. We help each other and benefit from a rapid information circuit.

Our trade union organisation is open to cooperation and to any assistance it can provide. For example, we have supported a worker employed by a company located in Poland who was posted to France. After verifying the company register in court and visiting the site, our trade union saw that a virtual company was involved that provided services to several companies in France. The company rented its office space for around one hundred euros per month and operated as a letter-box company. The person present on site confirmed he had never met any representative of the company. The address is not a valid one. The company was only registered with the commercial court. We were able to transmit this information to our colleague in France and on that basis take new steps.

In conclusion, trade union cooperation is useful for the labour inspectors in the various countries. It was therefore with regret that we learned of the European Union's position on the REDER project. Despite that, we intend to pursue the project.

■ Tomasz NAGORKA



ZAMIERZASZ PRACOWAĆ ZA GRANICĄ NA BUDOWIE JAKO PRACOWNIK ODDELEGOWANY? PRZECZYTAJ TĄ ULOTKĘ I DOWIEDZ SIĘ CO ZROBIĆ, BY BEZPIECZNIE PODJĄĆ PRACĘ ZA GRANICĄ

CO MUSISZ WIEDZIEĆ I CO POWINIENES ZROBIĆ ZANIM WYJEDZIESZ Z POLSKI?

Nigdy nie wyjeżdżaj w ciemno do pracy za granicą. Będąc jeszcze w Polsce starannie sprawdź kto oferuje Ci pracę i na jakich warunkach, sprawdź kim jest Twój pracodawca, czy działa legalnie i jest godny zaufania. Zawsze bądź bardzo ostrożny - z pozoru atrakcyjna oferta pracy może wiązać się niebezpieczeństwem oszustwa. Nigdy nie podejmuj pochopnej, nieprzemyślanej decyzji o wyjeździe.

Jeżeli masz zostać oddelegowany do pracy za granicę musisz wiedzieć czym jest oddelegowanie i jakie są prawa i obowiązki Twoje i Twojego pracodawcy związane z oddelegowaniem.

- DELEGOWANIE PRACOWNIKA
- PODATEK DOCHODOWY
- UBEZPIECZENIE ZDROWOTNE
- OKRES ZATRUDNIENIA
- OBOWIĄZKI PRACODAWCY
- FORMALNOŚCI ZATRUDNIENIA
- POMOC W MIEJSCU



REDER

and the case of the Dunkirk methane terminal



■ Marina MASURE

A case of letter-box companies was the first resolved by the network. It is very difficult for trade union organisations to get hold of information on companies in the sending countries. However, Franco-Italian cooperation in the REDER network has enabled us to obtain information that we submitted to French courts in order to make headway in the posted workers case.

Reporting by the Cash investigation relating to the Dunkirk methane terminal is mentioned in the introduction.

See <https://vimeo.com/182659761>

1 - Resolving the case thanks to Franco-Italian cooperation via REDER



■ Elena Manuela PARASCHIVOIU

FILLEA CGIL Italian trade unionist.

I work on dispute resolution for FILLEA CGIL and I have an advisory role to ensure compliance with the national collective agreement in the building sector. I would like to thank Marina

MASURE and the CGT for their assistance in this European project.

The REDER network helped us to contact the Italian company SICES, who hired the Rumanian workers

at the Dunkirk methane terminal worksite. All this work, including the Cash investigation, would not have been possible without the assistance of the network. It enabled us to discover and recover the workers' unpaid wages. Without REDER, the SICES case would have gone unpunished and we would not have been able to protect the workers. At global level, exchanges among the people involved in the various countries were useful and necessary.

In Europe, there are EU rules that defend workers. But some areas are still under national jurisdiction, while the big companies, especially in the building sector, are international. They can move workers around from one country to another to skirt national law and take advantage of the workers' ignorance of regulations.

Through cooperation, the CGT and the CGIL forced SICES to cooperate. If we had worked on our own, the company would have been able to dodge the is-

sue and refuse to negotiate. By joining forces, we limited their room for manoeuvre and forced them to sign an agreement. We showed them that we had the expertise in legal matters and contract regulations and could take joint legal action in France and Italy.

Given the crisis in Europe, it is reasonable to think that progress in social matters will be very difficult. That is why I am convinced that only initiatives and cooperation at EU level can work effectively. If social Europe does not advance, we must appeal to the European trade union organisations. Our work to protect the rights and human dignity of Rumanian workers at this worksite was a real battle that lasted more than six months.

This experience was characteristic of cooperation between trade unions and labour inspectorates in the sending and host countries. We have cooperated and stood alongside the workers who were the victims in this situation. They try to improve their living conditions but at the same time find themselves in awful working conditions (*threats of dismissal, blackmail, etc.*) and the company does everything it can to isolate and divide them.

Through the SICES case, I understood that it was vital for the trade union organisations to act on the worksite. International cooperation is essential and we must listen to the workers, support them, renew their confidence and enable them to work together. As a Rumanian, I was able to communicate with them. Because of the growing number of migrants, the language aspect is critical if we want to be seen as a team able to protect them.

Lastly, we must constantly update our knowledge of national and European rules.

The REDER network was very useful from that standpoint and helped us share experiences through case studies and enabled us to know each other.

There should be follow-up and the network should be consolidated.

2 - Discussion with two Rumanian posted workers who were defended by the REDER network

■ Elena Manuela PARASCHIVOIU

Could you introduce yourselves?

■ Cristian BAGIU

I am a car mechanic. On the Dunkirk worksite, I was a driver and I maintained the equipment.

Before that, I worked in Belgium for the same company under a three-month contract.



■ Cristian Sorin ILIE

I'm 39 and I am a pipe repairman.

Before Dunkirk, I worked in Belgium for an Italian company then in Italy and in France.



■ Elena Manuela PARASCHIVOIU

How were you recruited?

■ Cristian BAGIU

I was recruited by the Romanian company >>>



that works with SICES. The company told us we were going to work in France.

We received our contracts a month after our arrival at the Dunkirk worksite and we signed them, directly with SICES.

■ **Elena Manuela PARASCHIVOIU**

Do you speak Italian?

■ **Cristian BAGIU**

A little.

■ **Cristian Sorin ILIE**

No.

■ **Elena Manuela PARASCHIVOIU**

Did you know how long you would be living in a campsite?

■ **Cristian BAGIU**

No. We were told we'd be in a hotel, but we were put in mobile homes in the Los Palominos campsite, near Calais.

■ **Cristian Sorin ILIE**

I didn't know how I was going to be housed. I thought I would be in a hotel.

■ **Elena Manuela PARASCHIVOIU**

When did you arrive in France?

■ **Cristian BAGIU**

We didn't leave at the same time. The company lent

us a car with space for nine people. That's how we arrived at Dunkirk.

■ **Elena Manuela PARASCHIVOIU**

Did you have an account in an Italian bank?

■ **Cristian BAGIU**

No. I had an account at a Rumanian bank.

■ **Elena Manuela PARASCHIVOIU**

Did the company inform you about your rights in France?

■ **Cristian BAGIU**

No. They explained nothing.

■ **Elena Manuela PARASCHIVOIU**

Cristian BAGIU, please explain your work accident.

■ **Cristian BAGIU**

The employer took me to a hospital without telling me anything and left me on my own. It was only when I left that I discovered I had no insurance.

I returned to the worksite and asked the employer to pay for my hospitalisation.

At first he wanted to send me back to Rumania without treatment and suggested I return when I was well. It was not a minor accident.

I had a fracture at the ligament and was on crutches for three months.

I then got in touch with the CGT and the French labour inspectorate.

They helped me and paid for my hospitalisation.

■ **Elena Manuela PARASCHIVOIU**

How did the company react when you made these contacts?

■ **Cristian BAGIU**

The company panicked and told me to say the accident occurred outside of the workplace.

They even offered me money if I kept quiet. I recorded the telephone call and I then talked to the CGT. Then I had to file some statements and I was threatened with dismissal.

When my plaster cast was removed, the company bought me a plane ticket to send me back to Rumania, where I was hospitalised for three months, on my own and with no money.

I had to borrow money from friends to live and pay for my treatment.

■ **Elena Manuela PARASCHIVOIU**

We found some discrepancies in the payslips. The company deducted sums from your wages under the heading of costi vari. How did they explain that?

■ **Cristian BAGIU**

The company gave us no details and said the money went to the Italian government.

■ **Elena Manuela PARASCHIVOIU**

Your gross salary was 1,800 euros but 1,000 euros was deducted without you knowing why.

In the end, you were paid 700 euros net, in spite of overtime work.

■ **Cristian BAGIU**

That's correct.

■ **Elena Manuela PARASCHIVOIU**

The employer was required to give you decent housing and meals. Did he explain anything to you?

■ **Cristian BAGIU**

No.

■ **Elena Manuela PARASCHIVOIU**

During negotiations, the workers were threatened by a Rumanian company, telling them they would never again find work in France or Italy.

■ **Cristian BAGIU**

That's true. When I contacted the company who had sent me to France, they responded that I could no longer work for them.

Before the end of negotiations, they contacted me to say that I had to withdraw my statements if I wanted to find a job.

■ **Elena Manuela PARASCHIVOIU**

Before the lawsuit in France and Italy, the company did offer you work. But after your work accident statement, they changed their mind.

■ **Cristian BAGIU**

That's correct.

■ **Elena Manuela PARASCHIVOIU**

You had to return to Rumania. Did you find work there in your own country?

■ **Cristian BAGIU**

I tried but no employer wanted to run the risk >>>



of hiring a worker with an injured leg. I finally found a few companies willing to hire me, but at pay lower than the minimum wage.

■ Elena Manuela PARASCHIVOIU

Were you entitled to unemployment benefits?

■ Cristian Sorin ILIE

The contract was in Italian. I don't know if we were entitled to unemployment benefits. The trade union told us that we were entitled, since we had paid contributions. So we filed a complaint in order to receive compensation. Nowadays, I spend two weeks in Rumania and two weeks in Italy. I haven't yet been able to find another job.

■ Cristian BAGIU

I was not entitled to unemployment benefits and, since I had broken my leg, I couldn't work.

■ Elena Manuela PARASCHIVOIU

You were entitled to benefits but you had many other problems to deal with at the same time. When your contract ended your entitlements expired. I managed to secure payment of benefits for some workers. Before the trade union stepped in to help you, did you know them?

■ Cristian BAGIU

No. We were prohibited from talking to the trade union reps when they came to the worksite under threat of being sent back to Rumania. The day they came to the worksite, we stayed home and did not work. As soon as they left, the bus picked us up and took us back to the worksite.

■ Elena Manuela PARASCHIVOIU

How could the trade union reps do more to help the workers?

■ Cristian BAGIU

The best thing is to directly contact the workers and to go see them where they live. Many are afraid to talk and of losing their 1,000 euros, for which they work 60 to 70 hours a week.

■ Elena Manuela PARASCHIVOIU

Thank you for talking to me.

■ Cristian BAGIU

I'd like to thank the Italian and French trade unions and I hope that the REDER network will continue its work. I want all posted workers to receive a decent wage.

■ Marina MESURE

Thank you for coming. You are not alone. The trade union organisations and the labour inspectorates support you throughout Europe and we will continue to act and will find the means to help you. SICES is just one case among thousands. In the end, the company promised that they would stop this abuse. One month later, 40 Polish workers in Switzerland reported the same type of fraud. In Italy, an Italian worker without a contract contacted us after hearing about our activities. In the Netherlands, we were approached several months later by Rumanian posted workers faced with unjustified deductions from their salary. SICES was housing workers at campsites and made them work 60 hours a week without paying them.

We need to cooperate. Our work is crucial.

3 - A case in Belgium: the Belgian inspectorate's methods while investigating a company operating in Belgium



■ Philippe
VANDEN BROECK
Belgian labour
inspectorate

The aim of the labour inspectorate is to oversee the proper application of the Directive on posting by conducting inspections that examine proportionality and

function on the basis of a risk assessment. Cooperation with the REDER network is very useful for inspection work. While the REDER network has a hard time reporting on observations in the field to the trade union organisations because of confidentiality rules in criminal proceedings, the trade unions can, on the other hand, help the network by transmitting important information.

However, we do not expect to get any information from the employers. We have signed tripartite agreements in high-risk sectors such as building, transport, cleaning, security, etc., but the good intentions displayed by the employers all too often lead to unreliable information. The big companies are embroiled in staff disputes and serious workplace accidents. In such situations, we go to other authorities such as the prosecutor's office, the judicial police, etc.

→ Social dumping in Europe and Belgium

In Europe, the number of posted workers is high. In Belgium, thanks to their compulsory registration in the Limosa system, we can estimate their number at

140,000 persons and 500,000 movements per year. During the transposition of the Directive, representatives from certain member states criticised the Commission's statistics. We believe on the contrary that the report submitted was thorough. We responded to MEPs that 80% of companies that post workers raise no real problems and that any simple technical or administrative bugs could be resolved.

In fact, the big differences in pay systems in Europe require daily adjustments.

On the other hand, we raise our voice against social dumping and abuses that are part of an actual business model. It is difficult to move against companies that take advantage of loopholes in regulations to generate more profit. Putting an end to these practices requires forceful means and legal convictions.

Even if only 20% of postings in Belgium raise serious problems, the impact is not negligible.

In addition to the personal drama experienced by posted workers, the labour market is harmed. Since 2009, the impact has grown. As a result, in 2014, 12,000 jobs in the Belgian sector were lost and in 2016, more than 20,000 were lost.

Social dumping creates unfair competition and destroys local jobs in Belgium.

→ The labour inspectorate in Belgium

The Belgian labour inspectorate set up a 25-person team named Covron, specialising in social dumping. Our risk assessment is based on several sources, including trade union information, and the information and social research department collects complaints, which now number more than 10,000.

The social security office is at the heart of the network of stakeholders. Digital data bases were set up for the employers, the public and the inspection offices. The inspectors have access to many applications via their login and electronic ID card. >>>



→ **DIMONA:**
a system for reporting local workers

DIMONA is designed to collect mandatory digital reporting on local workers including the date when the worker's contract ends. Every quarter, the employer must indicate every worker's remuneration and work time. On that basis, social contributions are calculated. The social security office releases this information to institutions that dispense social services, such as unemployment benefits, sickness insurance, retirements, etc. The inspectors are allowed to consult the system.

→ **LIMOSA:**
a system for reporting posted workers

A posted worker must be declared by his employer no later than the day he is registered in Limosa. This reporting system was set up in 2007 in order to keep an eye on the flow of foreign workers. It provides reliable statistics and simplifies administrative formalities for all involved. Payslips from the sending countries must be sent in; the inspectors are able to understand them and can check on the presence of illegal workers.

LIMOSA provides information on the identity of the posted worker and the employer, the activity concerned, the workplace and the Belgian client or the main ordering party. These data are necessary to conduct investigations and trace commercial and contractual relations between companies. Some are active in several countries and on several worksites in Belgium.

The declaration certificate, which is entered online, can be downloaded in PDF format and printed. The posted worker can therefore keep a copy and the labour inspectorate can require the employer to produce it. The requirement to file the declaration is generally adhered to.

There is a plan to set up a single registry and a central data base for the labour inspectorate and the government partners.

→ **5) Registration of worksites**

The labour inspectorate can also strengthen its analysis by making use of the mandatory registration of worksites to which it has access on the social security home page. This registration must be done before the start of worksites of a certain value and must include the names of the subcontractors.

This information is important for the employers because the ordering party can be held jointly liable in case of an employee-related debt of a co-contractor, i.e. social security contributions. On the basis of this declaration, the employer can verify whether his subcontractors have any social security debts. Where necessary, he must withhold 35% of invoices submitted to him in order to avoid joint liability and an administrative sanction equal to 5% of the value of the contract.

→ **Checkin At Work (CAW)**

Checkin At Work (CAW) is a declaration system for workers' attendance on the worksites for purposes of safety. On the large nuclear and petrochemical sites, the risk of work accidents is high and it is important to be informed immediately of them.

This requirement applies to worksites of a value of at least 500,000 euros, but this threshold is expected to be lowered in future to include all mobile worksites.

→ **DOLSIS (formerly GENESIS)**

DOLSIS is an integrated communication platform for social inspectors. It provides them access to all data. **DOLSIS** includes two sections for posting: Limosa and A1 declarations submitted by the social security bodies.

On this platform, the inspector can conduct research separately from the original data base, using the name, social security number, address, etc. of an employer or a worker in order to check compliance with labour relations rules. A search can be made

for an investigation on a particular employer, an individual, an inspector or an office.

→ **E-PV (digital infringement reports)**

Any infringement included in these reports is sent to the ministry, entered online on a web interface and is accessible to the four inspection offices. This single report structure requires an electronic signature using the electronic ID-card.

This procedure strengthens the validity of a criminal report and avoids any challenges, thereby facilitating the work of the inspector.

Only the copy addressed to the offender can be printed.

→ **GINAA**

The single electronic infringement report is sent to **GINAA**, which is a tool for monitoring the execution of decisions, such as criminal convictions, administrative fines, etc. Consequently, the inspectors have access to the follow-up proceedings in a particular case.

In conclusion, the key to inspection work in Belgium is communication. The efficiency of the system is achieved by access to data by public services and inspection offices.

**4 - Exchange of views
on the morning's topics**



■ **Serge PLECHOT**
Secretary Général
FNSCBA-CGT

The REDER network was necessary and cooperation between the trade union organisations and the labour inspectorates is beneficial. However, the brochures and the computerised systems

are not enough. As the workers underscored, direct contact is most important.

What means do the labour inspectors have to work in the field? In France, the number of inspectors is falling and the inspection visits have decreased as a result. But the visits are the only way to observe what is happening on a worksite.

■ **André FADDA USI CGT**

The testimony of our Rumanian comrades illustrates the situations we see every day in France. **The REDER network is a powerful tool for improving information, communication and coordination of trade union organisations, which is indispensable for effective action.**

The use of posted workers, often on a temporary basis, is arranged by the ordering party. We are now looking into the activities of a large Polish temporary employment group that sends posted workers to other EU countries. Large companies in the Baltic States, Poland and Bulgaria, in coordination with the ordering parties and French subcontracting chains, dispatch the posted workers.

For example, in the building of the EPR at Flamanville, the Irish company Atlanco, which has 14 branch offices in the world, posted Polish workers. It was fined 70,000 euros and banned from posting workers to France, but it continues its activities via a subsidiary. Other companies, temporary or not, do likewise. The inspectors know the directors, foremen and the site managers who continue to operate under a new company name. We have seen margins of progress in terms of traceability of these companies and a will to take action. But we need to improve our knowledge of how they operate.

On the issue of occupational diseases, it is already difficult to uphold the law governing temp workers in France. Those from other countries, apart from the fact that they work 50 to 60 hours a week, are constantly exposed to harmful and noxious substances without any kind of medical oversight. >>>



There are no statistics on French temp workers who have suffered occupational diseases. The situation of foreign workers is even worse, because once they return to their country, they have no social security coverage.

At Saint-Nazaire, in 2015, a Polish worker suffered a 25% burn. Today he is in a dire situation without the support of the Polish trade union organisation, despite appeals. It was impossible for the Polish labour inspectorate to pursue its investigation in the face of the freedom to provide services argument and the fact that workers who are victims of a work accident are not able to take action against their company. Some are even threatened when they return to their home country.

We are therefore interested in stepping up cooperation with the trade union organisations and the labour inspectorates in support of the workers and in defence of their rights and their physical and moral wellbeing.

■ The French labour inspectorate

I am part of the national monitoring, support and control group in the DGT, set up in 2015. The French labour inspectorate gave support for the creation of the REDER network.

In the area of posting, the companies' imagination is boundless. The letter-box company is now a thing of the past. Today we see more elaborate arrangements. The judicial appeal in the Atlanco case was recently held in Caen. In France, foreign companies set up shell companies in order to capture market share and organise the importation of labourers through intra-group mobility. This is a new way of skirting the rules on posting, labour law and the EU Directive.

Turning to traceability, Belgium is very advanced.

Its size and closeness to the European Commission have helped its work.

In France, we have set up an information system on the provision of international services, known as PSI for its French initials, to monitor postings, and we will soon have in hand a more reliable tool. The organisation of the labour inspectorate has also been reviewed and has created the Unité Régionale d'Appui et de Contrôle du Travail Illégal (URACTI). The trade union organisations can also contact the offices of the labour inspectorate and get in touch with the national monitoring group (GNC). We need to benefit from experience acquired in the past two years and I recommend such contacts in order to pay closer attention to the emblematic cases that deserve investment.

I would also like to recall the role of the bodies that represent the staff of the ordering party, in particular the works councils, and I hope that they exercise all their rights.

On the matter of exposure to occupational risks, in particular carcinogenic substances, the labour inspectorate will have new powers in this area under the April 2016 regulation.

Lastly, ties between the labour inspectorates in the various EU countries are being set up in a Euro-posting network. Recently, the French labour inspectors travelled to Portugal to inspect a company that exports labourers. By the same token, we have also welcomed inspectors from the Portuguese labour inspectorate to France to conduct checks in the west of the country.

On the subject of death threats, posting cases are sometimes similar to human trafficking and criminal organisations. The judiciary has additional investigatory powers and we need to know how to set them in motion. In that context, the workers can file complaints and the trade union organisations can join the prosecutor in legal proceedings.

■ Yves GAUBY FNSCBA - CGT

I was moved by the testimony of our Rumanian colleagues. Our co-workers at the Nord Pas de Calais federation have begun organising on the worksite. Since this was insufficient, we met the Dunkirk CGT federation to talk about social dumping, set up a working group and we decided to meet the workers. We blocked access to the worksite in May 2015 and held a meeting at the entrance to denounce these practices by large groups in France such as Bouygues, Vinci and Lafarge. This fight enabled us to secure an inter-trade union and inter-branch office on the worksite and that is how we were able to contact the Rumanian workers. The reporting of the Cash Investigation also helped us. Two days a week we were represented on the worksite and we managed to meet the workers face-to-face in the canteen. I would stress the importance of the presence of the CGT.

It is thanks to onsite action and the work of the REDER network that we secured respect for your rights. Thank you.



■ Ramona Mercedes VELEANU
FGS Familia

FGS Familia is interested in the REDER project. Before attending this event, representatives from the Rumanian government told us that these cases are outside of our remit and that the problem concerns the host country.

But our citizens are Europeans, whether or not they are members of a trade union. The Rumanian government should be concerned by the wellbeing of

its citizens, wherever they live. Rumania, which is taking its time transposing the Directive, did not consult the trade unionists. They responded that the minimum wage is 300 euros. It is quite understandable that Rumanians wish to work elsewhere in order to earn a decent salary.

The problem is that the minimum wage never increases in Rumania. The East European companies come seeking cheap labour, threatening to relocate to China if we increase wages. Whether we're a sending or host country, the problem of posted workers concerns all of us.

Do the trade union organisations have access to the data submitted by the Belgian labour inspectorate? In Rumania we have no knowledge or access to dates and locations of the worksites. In the case of public works, the trade union organisations have the right to enter the worksites with the permission of the employers. But the employers often behave differently in Rumania, compared with how they behave in France.

■ Philippe CROISER FNTE - CGT

I work in shipbuilding. On my worksite, there are many Rumanian and Polish workers.

If a worker who does not speak French comes to see us, how can we receive him?

How can we develop the network in other sectors of activity?

What contacts can we mobilise?

■ Philippe VANDEN BROECK

The data to which the Belgian labour inspectorate has access is confidential because it is personal. This might seem a disadvantage for the trade union organisations but it would not be easy to open up access because there must be a guarantee that all their members will respect confidentiality. >>>



On the other hand, the trade union organisations have access in the field to information that the labour inspectorate does not have. Information obtained in person, through meetings in the trade union offices or in the canteen, for example, is important and is not included in the official data bases.

In Belgium, we have carried out a transport initiative that we will be extending to the building trade. We have observed some fictitious arrangements with letter-box companies, thanks to the check lists that we submitted to the trade union organisations and that provided information that we needed.

Lastly, the size of Belgium and its proximity to the European Commission are not an advantage. Belgium has been convicted several times by the European Court of Justice for the way it calculated remuneration of posted workers. With four or five companies like Atlanco, we have plenty of work for the entire year.

■ Eric AUBIN

Expanding the network to other sectors is one of the goals of the REDER network. We should think about that together.

Now that this morning's meeting is coming to a close, I would like to thank the participants for the high quality of their presentations and in particular our Rumanian colleagues for their testimony.



Assessing the project

■ Luc NORGA *Belgian CSC BIE trade unionist*

Cooperation between trade union organisations and labour inspectorates is a challenge in the fight against posting fraud.

The difficulty is getting these two inaccessible worlds to cooperate, which is made harder by the trade unions' inability to access the institutional data bases.

1 - Complementarity between the trade union organisations and the labour inspectorates in the fight against posting fraud



→ Ways to cooperate

The labour inspectorates in the countries involved in the project have already set up a network, whose intensity varies depending on the opportunities.

There is an official information exchange network among the member states called IMI, in addition to cooperation, collaboration and bilateral agreements between Belgium and France and France and Poland, as well as relationships of trust between national institutions and individual persons.

IMI is slow, limited in its communication and reserved for the public authorities. Including the trade unions is wishful thinking. Bilateral cooperation or cooperation outside IMI offers more flexibility. That is why a network like REDER is so useful.

→ The competitive advantages of inspectorates

The inspectorates represent the public authority, can demand documents and investigate possible

abuses. They are the guarantors of the application of legal provisions. Their findings constitute official proof and have full legal weight in court. Lastly, the inspectorates are on an equal footing with other administrations and have more or less broad access to official data bases.

→ The competitive advantage of trade unions

In Belgium, the trade unions are active in the field through local structures, their activists and affiliated employees in the companies.

They have the right to question individuals and to negotiate in the companies, in the sectors of activity and at policy level.

The trade unions also have the right to represent the workers in labour jurisdictions and are free to communicate, in particular with the media.

They are less subject to the duty of confidentiality and professional secrecy than the labour inspectorates. >>>





→ 4) Complementarity

The exchange of knowledge between inspectors and trade unions is an initial area of complementarity and can take on the following forms:

> **Recourse** to the inspectorates' resources in terms of knowledge of the law and procedures for guaranteeing its application;

> **Use of** official tools and internet sites (*information sheets on the minimal standards in sensitive sectors, for example*);

> **Training of** trade union representatives, trade union staff and contact persons in the realities of posting and detection of abuses.

Turning to prevention and information, complementarity can consist of recourse to trade union networks and communication tools such as internet sites, newspapers, trade union brochures and others.

Communication via media such as leaflets and brochures should not be overlooked. They can be distributed on the worksites and made available to the workers for later reading, with references to useful websites. **The REDER network is one example of this.**

Complementarity between inspectorates and trade unions is also useful in information for posted workers concerning their rights in the host country. Information prior to departure is indeed important. It can be complemented by information when the A1 certificate is delivered.

Information for local workers on the situation of posted workers is also important. In the building trade, 20,000 jobs have been lost in Belgium out of a total of 160,000 blue-collar jobs. On average, 30,000 full-time equivalents (FTE) are filled by posted workers, i.e. more than the number of jobs lost. Despite the crisis, activity in the building sector has continued to grow at a rate of 2 to 3% in 2015. Jobs should therefore increase but instead they continued to fall by 3 to 4% per year.

L'information des travailleurs locaux is a means to combat the xenophobia that this situation can produce. While the posted workers arrive willingly, that does not mean they have no rights. Some have no sickness insurance at all and receive no compensation in the event of a work accident. They are exploited and their pay should be the same as local wages.

Information for companies on their responsibilities must be provided via the project managers and project owners. The challenge is to make them aware of their joint liability in cases of fraud and abuse and of the registration of people on the worksites.

Lastly, complementarities are possible in the area of alerts. The inspectorates want to receive news of disputes and information from the field. In that connection, it would be useful if they could indicate clearly the data they need to deal with a case, as the Belgian labour inspectorate does with its check lists.

There are several communication channels: toll-free numbers, local and national relationships, multiparty regional platforms, etc.

Concerning the multiparty regional platforms, I am not sure that they replace the tools destroyed by the European Court of Justice, i.e. the registration committees. They gave the social partners a means of bringing pressure to bear. When a company declared six or seven workers for a job that required one hundred, we could question the company and ask them to justify those numbers and even strike the company's name from the registry. These platforms provide nevertheless important contact points for the development of relations of trust between inspectorates and local trade unions.

In dealing with abuse and fraud, the role of the trade unions is to question the companies, the media and the politicians in order to expose social dumping. The problem is that communication is often one way. In Belgium, information can be had from anonymised numbers or if the trade union has a

representation mandate from the workers. On the trade union side, communication is open and must be improved with the inspectorates. In legal proceedings communication is limited by judicial inquiry secrecy. These are areas where we must be vigilant.

The partners in the REDER project are seeking a European framework that includes the trade unions and the inspectorates. A future Directive could strengthen these exchanges in dealing more effectively with posting abuse.

At the same time, the inspectorates are asking for a European platform that can give them access to the data bases containing cases of fraud in all the European countries. Improvements in the IMI could be a way forward.

Lastly, the drawing up of black lists in order to name and shame was raised by the trade union organisations and the EFBWW (*example: Stop social dumping*). We would like to see on a list the names of companies that have been excluded because of social fraud or tax evasion. Some companies are empty shells that pursue their activities under

another name a few months later. So we need to have a black list of the managers and directors of these companies in order to denounce their practices that are reminiscent of gangsterism. Michael O'Shea, founder of Atlanco, fled with billions of euros gotten by exploiting posted workers. Despite his conviction, he created a chain of hotels in Asia and is now untouchable. This situation is revolting.

Placing them on a black list is to my mind a useful move, even if it may run counter to the right to privacy.

In conclusion, in order to work properly, cooperation between trade union organisations and inspectors needs resources, inspectors in the field and trade unionists who have a genuine say. In Belgium, the trade unions now have the right to be informed about subcontractors, but there are still obstacles to social dialogue, such as temporary companies.

We also need to set up relations of trust like those we are forging through the REDER network. Lastly, a legal framework for dialogue would make our exchanges more secure.



■ **Manuel ROXO** *Labour inspectorate, Portugal*

The labour inspectorate is celebrating its hundredth birthday in Portugal. It was set up during World War I.

Remember that one result of the Great War was the International Labour Organisation. The problems we are experiencing today are similar.

2 - Taking action from one country to another: creation of a working group in the Portuguese labour inspectorate

→ **Context, values and organisation of the Portuguese labour inspectorate**

Portugal is a small country on the European and world scales, facing a serious financial crisis. >>>



A troika was set up to end the crisis, which has generated serious difficulties: such as the evaporation of public investment, a collapse of the building sector, a 20% increase in unemployment and others. This state of affairs has revived interest in the labour inspectorate in light of workers' mobility and the fact that our country has a tradition of exporting workers.

We want to combat social dumping.

We remain faithful to four broad principles:

- > The fight against social dumping;
- > The right of employees to work and fulfil their needs;
- > The dignity of work;
- > A rejection of protectionism.

While companies, workers and trade unions know no borders, the labour inspectorate, on the other hand, is hampered by them. This obstacle explains the lack of smooth communications. The EU Directive should take up this problem and I hope that as a result our ability to take action will be reinforced.

The Portuguese labour inspectorate is a centralised agency and is part of the state administration in the labour ministry. Our mission is a general one: safety at work, labour relations, employment and social security, among others. We hold powers in all sectors of activity, with the exception of the public sector, throughout metropolitan Portugal. The Azores and Madeira have their own jurisdiction. Geographically speaking, the labour inspectorate has 32 branch offices throughout Portugal.

Recently, our internal structure was given a tripartite (*state, employers, trade unions*) advisory board as well as informal working groups, which were not included in the law, on subjects such as the building trade, temp agencies, road transport, fisheries and the national health and safety at work strategy. We intend to pursue the principle of tripartite

dialogue in the sectors.

Our inspectorate has 360 labour inspectors and recruitment is increasing. They are supported by 239 high-level technicians and 215 office staff. Our leading missions are to improve working conditions and prevent occupational risks.

We fulfil four duties:

- > **Oversee** the application of legal provisions;
- > **Cooperate** with the authorities, the trade union organisations and the employers;
- > **Propose** and **improve** laws ;
- > **Raise awareness, inform** and **advise**.

The dissemination of information is a priority to the extent that it leads to complementary initiatives in the field. We plan to develop our web portal and set up a telephone information line.

→ The internal working group on "transnational mobility of workers and companies"

Posting is one way of examining the vaster problem of employee mobility. Our ACT working group's organisational framework includes adherence to rules on the posting of workers, cooperation with other countries and requests for information. In our work plan, we emphasise employment agencies and the posting of workers. Many employees are recruited via private services, whose job offers are an infringement of prevailing regulations.

As a liaison office, ACT cooperates with the oversight authorities who handle working conditions in other member states and it provides information on working conditions. Portugal has the same legal framework for posting inside and outside the EU, with the same formalities wherever it takes place (*IMI, Enforcement Directive, A1 certificate and national legislation*).

The working group was set up in 2013 in the wake of the financial and economic crisis. Many companies folded and the unemployment rate doubled. Portuguese people had to seek employment abroad and posting expanded considerably in the European Union, as well as in the rest of the world, especially in African countries. IMI requests grew, as did requests for intervention and information from a number of sources, such as the General Directorate of Consular Affairs and Portuguese Communities (*DGACCP*), social security and others.

This internal working group has two inspectors in the city of Braga, two in Porto, one in Coimbra and two in Lisbon. In these regions, the number of postings is greater but when we take up a case there, we only get partial answers. The internal working group has examined the posting of workers, their training on posting and the preparation of media for information purposes. We have led campaigns with town halls, foreign ministries and employment agencies.

The internal working group's main tasks are:

- > **The preparation of support and information documents**, such as information guides on the posting of workers, recruitment agencies and leaflets;
- > **The creation of tools to support the inspectorate**, including guides and check lists.

Our ACT website offers updated information on the posting of workers and recruitment agencies. This information concerns posting to Portugal and posting from Portugal to all other countries.

The ACT intranet brings together useful information:

- > such as guides, reports by law professors, domestic and European case law, brochures translated into Portuguese, training content, etc. We have also written a handbook for the IMI system, which is a model of decentralisation, and we offer telephone assistance.

We also conduct analyses and respond to requests

for information from local departments, the social partners, the public (*employers and employees*), public bodies and we take part in public events, such as workshops and seminars.

In the area of reflection and support, we offer data for the preparation of inspection visits and legal texts.

At world and inter-ministerial levels, the working group is involved in several partnerships.

ACT is a tool that is based on an approach featuring study, training and action. This helps us to harmonise procedures dealing with the subject, respond promptly to specific questions from colleagues, to focus our work on the essential points and objectivity.

It also improves coordination with other entities that may potentially be involved in these matters, such as SEF (*the Portuguese Immigration and Borders Service*) and PJ (*Judicial Police*).

Our goals are to follow the revision of the Directive on the Posting of Workers, to apply the Enforcement Directive, review the guides and information found on the ACT intranet and website, disseminate information in other languages and organise refresher training schemes for the labour inspectors on the posting of workers, making sure they are aware of changes in the law.

Lastly, we would like to reinforce our relations with the labour inspectorates of Angola, Cape Verde and Mozambique. We have signed an agreement in Cape Verde but we do not have a European framework to develop these initiatives.

In conclusion, we are very interested in taking part in the REDER network.

You are familiar with our commitment and our values. Our expectations are to obtain information quickly on specific cases in Portugal, specialised training, provision of technical information and cooperation with the Portuguese social partners.



■ **Wolfgang HERRMANN** *Fair Mobilität Germany*

I am a priest and a member of Fair Mobilität, an association that fights for fair and decent working conditions and cooperates with German trade unions and NGOs to reduce exploitation and social exclusion of workers and migrants.

Based in Bade-Wurtemberg, Fair Mobilität's goal is the development of information and counselling structures for migrant workers throughout Germany. We have opened eight offices so far. The counsellors speak an Eastern European language fluently, plus German and English. They provide information to workers and cooperate closely with trade unions.

3 - The need to work with migrant associations and other networks specialising in posting

> Assistance to migrant workers

In recent years, it became necessary to help and advise migrant workers. In order to promote the understanding of complex subjects and generate trust, advice is provided in the language of the person who seeks help in the centres. Their number, 7,000, far exceeds the capacity of the counsellors. They are mainly migrants in a range of work situations. Their common points are exploitation, job insecurity and appalling working conditions. The testimony of our Rumanian colleagues was moving but that is only one story among thousands in Europe.

We also disseminate information on the rights and duties of workers through brochures and our website so that the people concerned can read them before their departure for Germany. However, this is not enough. Migrant workers arrive at our offices dealing with precarious situations, when they have already lost their job, are out of money and do not know how to return home.

We help them file complaints and to enforce their rights by obtaining extra-judicial agreements, the support of lawyers, trade union action, etc. Co-

operation with the trade unions leads to positive results, but such cooperation remains the exception in Germany.

The migrants' wide variety of problems is troublesome and reveals their fragile position. The employers deprive workers of their rights that are guaranteed in national and EU legislation and they divide the victims. As a result, they aggravate social dumping in Germany and they contribute to the general distress on the job market.

We underscore the principle of a decent and fair job, because many migrant workers are unaware of their rights and do not speak the language of the country, which opens the door to dishonesty. In many sectors, there is no works council in the companies concerned and the trade unions have difficulties contacting the migrants. We saw this during a seminar in Warsaw. The financial pressure from the authorities on undeclared work is not enough and some in German society are indifferent to the exportation of labour, even though Germans benefit through cheaper products, working at home, etc.

> The importance of networking

In responding to the vulnerable position of migrant workers, we must be active via networks. Only by working together can we solve their very complex cases.

To that end, Fair Mobilität works closely with trade unions and seeks to organise regionally to protect workers who are being exploited. But it is no mean task, because the trade unions often say they are unable to represent migrant workers.

Often, migrant workers who come to our office have not been paid for two months and the company has vanished. We try to recover their money, but above all we need to arrange housing for them and their daily survival. Migrant workers also need psychological support. But the counsellors can't do everything. We need the help of other organisations. The challenge is for everyone to make a contribution.

Last week, we took part in a seminar on migrant employment in the homecare sector that brought together several types of players. Many migrant workers who are hired by employment agencies to work in homes are invisible because they are not housed in the same place as the others. We therefore first need to find out who is in their entourage.

Health workers who visit patients in their homes could help us.

Another source of information are meetings in their mother tongue between migrant organisations and parishes. Many Polish workers go to their parish if they have difficulties. We talk to the parishes and have invited our Polish colleague to give presentations to inform the workers of their rights and possible assistance.

Contacts with lawyers and judges specialising in social legislation and labour law should not be overlooked.

Fair Mobilität has worked with labour court judges. We presented a case in Stuttgart that the judge was not aware of. The workers were in such dire straits that they preferred to go to another country rather than await the judge's ruling. But Fair Mobilität cannot represent them in court. The employees must

represent themselves. As a result, there are very few cases that reach the labour courts.

I would like to describe the example from Stuttgart, where there are many worksites, such as railway lines, tunnels, roads, etc. In response to the exploitation of migrant workers, we held a meeting and set up the Stuttgart 21 workers' network, which brought together Fair Mobilität, the city of Stuttgart, the social services, the tax authorities and the trade unions. Today, 25 groups meet in this framework three or four times a year to exchange their experiences on the worksites.

The Bundnis faire arbeitsmigration alliance fights for decent working conditions, wage equality and adherence to social legislation for migrant workers.

The alliance provides appropriate support, a professional consultation service and a network to combat discrimination. Twenty-three organisations are members of the alliance, which represents 25% of the population of our region.

Lastly, we need to mobilise the press. We have drawn up a list of situations of work exploitation that we use to disseminate information and provoke politicians into action. We also want to open a consultation office in the Bulgarian language.

As a priest, I explain the situation and the work of Fair Mobilität during mass on Sundays. That is one way to mobilise society to support migrant workers. On our internet site some xenophobic comments have appeared, blaming us for defending migrant workers instead of Germans.

However, unlike the migrants, Germans benefit from the support of trade unions in their country.

Given the new rise of nationalism in Europe, I am pleased to take part in the REDER project and I hope our network will expand.



4 - Exchanges with the audience

■ Frédéric TURLAN *Brodolini Foundation CNCE*

Do the labour inspectors share Belgium's view about the recruitment and temp agencies? How many cases have been detected by the network and how many outside the network?

■ André FADDA *USI CGT*

Since 2010, in France, temporary employment companies have set up a system for recruiting Portuguese workers. Through shell companies managed by people close to the directors of French temp companies, they organise the posting of Portuguese workers to worksites managed by large French groups. The system is well established, but it has already led to a strike of Portuguese posted workers in 2011, which in the end was successful.

However, these practices continue. In a company in Toulouse, 35 Portuguese temp workers staged a strike to denounce their housing conditions. Similar things are being observed in Poland. The French temp companies take advantage of the same system.

The CGT has identified several of them and has taken a stand alongside the workers. In temp work, this type of organisation always develops with the complicity of large industrial groups or big building and public works companies. Every time the law is tightened up, there are new ways of getting around it. These workers sign French temp contracts without benefiting from the same rights or from the same social security contributions that were deducted from their salary in France.

Therefore, we must remain very vigilant.

■ Manuel ROXO

These contracts are beginning to be included in the

investigation of the labour inspectorate in Portugal. We need more knowledge on the way they recruit, their rules, etc. The workers are not aware of our ability to take action and the application of the law is not enough. Information is the first step towards intervention.

■ Serge PLECHOT

In France, we have detected many cases. But we always come up against the difficulties experienced by the workers when they try to contact the trade unions, because they risk being sent back home and later they may face legal proceedings. In Auvergne, one of our activists provided lodging in his own home to a posted worker for 18 months because, since he was not being paid, the worker could not buy a ticket home. The constant pressure from employers on the posted workers and on their families in their home countries hinders any action. But we will not give up and we intend to pursue our activities in the network.

■ Gilles LETORT

At its origin, the project looked at how the trade unions are organised in Europe. Broadening its scope of action requires relays in the countries where trade unions are not strong. We must be able to turn to the associations and organisations that provide support and solidarity. They can provide linguistic assistance. In light of the development of social dumping in Europe, we must remain very vigilant.

The week before our seminar, Europe's largest shopping centre in Poznan, Poland, was inaugurated. The thousand workers employed by the worksite were all self-employed and paid 300 euros. They dream of going to Western Europe and earning 600 euros.

When we arrived at Charleroi in Belgium, an Italian company's Egyptian workers protested by climbing up on a crane. We managed to secure their sala-

ries and we returned later to check the situation of the Portuguese workers who were employed by the company that replaced the first company. The labour inspectorate then stepped in.

We should use the activists in the companies as relays and go meet the posted workers.

The challenge now is to deploy and securely establish the REDER network within our group of activist supporters.

■ Marina MESURE

It is impossible to estimate the number of cases resolved by the REDER network, but there is no doubt that it has helped to inform the workers. Some 30,000 flyers have been distributed, 50 employees have been defended by the network in France and other cases have been resolved in other countries. However, it is difficult to distinguish between the impact of the network and that of the local trade unions.



■ Fabienne MULLER *Senior lecturer, University of Strasbourg*

The training of activists at the University of Strasbourg's Labour Institute has made us realise the scale of their needs. Posting requires cooperation with other oversight bodies and European players. The REDER network arose out of these realisations.

Posting is a complex operation that involves, legally speaking, three partners, i.e. the beneficiary company, the legal employer and the employee and involves one, two or three EU member states. In addition, labour law, collective agreements in the sending and host countries and social security rules are all different. Social security regimes place a limit of two years on posted work, unlike labour law, which imposes no limits.

5 - The importance of legal training for activists - including Labour Institutes and universities in the network

→ Understanding the legalities and practices

The training we offer begins with an explanation of the legal framework of posting, sometimes mistakenly called temporary work, as well as how it relates to the provision of services. A manager posted by Total to a company in France, for example, also falls under the posting rules.

In practice, fraud is added on top of the business arrangements. In the building trade, there are several levels of subcontracting with companies set up in other member states.

We attempt to decipher the difference between what

is really happening and the legal contract.

The posted worker often signs a single contract.

As a resident of Rumania, Poland or a non-EU country, the worker doesn't know his employer, only his workplace, and has only a legal connection to his employer.

Such is the case of the Rumanian workers employed by an Italian company who gave their testimony this morning.

→ Identifying responsibilities

Responsibilities are in part defined in the law of the host state. In France the law is complex when identifying the project manager, the project owner and, the direct and indirect ordering parties.

We try to explain joint liability to them that, >>>



in practice, is rarely invoked because there is no clear rule if the employer, project manager or project owner fails to remunerate the employee. The rules requiring the employer, project manager or project owner to oversee the subcontracting chain do not require them to pay the worker if the employer fails to do so.

→ Searching for and disseminating information

We inform activists of the information sources available on the internet; the public sources are vital. We also use the information sources of partners such as ECMIN and posted workers.

Our training sessions also teach the trade union organisations how to improve the quality of information, based on examples such as Fair Mobilität, who describe actual cases, successes and information for migrant workers in several languages.

These initiatives require resources that the trade unions don't always have.

→ Identifying partners

We encourage trade unionists to work with the labour inspectorates and the liaison offices, whose duty is to inform companies and workers. Their contact information is online on the dedicated European Commission site.

→ Improving practices

Trade unionists send us the hard cases and allow us to pursue the rule of law from the field. In the training sessions, we ask the activists to work on the cases they uncover and to trace the chain of liability.

The activists at the Lorient DCNS have attempted to find the intermediaries between the Lithuanian workers, the shell companies and the service beneficiaries.

→ Building a legal and trade union strategy

Our training sessions take up strategic issues. Contrary to the worker without papers, the posted worker does not risk being sent back home by the administrative authorities. However, the Macron law, by establishing joint liability of the ordering party, favours sending illegal workers back to their home country.

On these subjects, the veteran activists have contributed a great deal to our discussions. Posted workers are a category that is difficult to approach because they are under pressure and threats from the employers and the foremen.

We give priority to negotiating, even if we only get an imperfect compromise in order to recover at least a part of the remuneration, instead of a commitment to long legal proceedings requiring proof that we do not have. The labour inspectorate often has access to missing information, but they refuse to divulge it for reasons of professional secrecy as defined in criminal law. In the example of the Romanian workers at the methane terminal in Dunkirk, we needed proof of their work time in order to calculate their pay. The inspectors have access to individual entry and exit data of the workers, but they did not send them to us. We therefore had to drop the legal case.

We train activists in negotiating so that they can make use of legal skills they acquire in relations with their employer or the ordering party. It is a difficult exercise for the CGT activists who are in the midst of a power balance, but I am still convinced of the importance of legal arguments.

At the start, SICES refused to pay for transport, housing and meals for the posted workers at the Dunkirk worksite, claiming the 1996 Directive was unclear on those points. We raised French labour law, which states that these costs must be paid by the employer, and SICES yielded. On these topics, the definition of remuneration in the revised Directive is eagerly awaited.

It is indispensable for the activists to be familiar with the rule of law and to use the law in face-to-face negotiations with an employer who is usually accompanied by a lawyer.

→ Success stories and case analyses

Our training schemes take up the success stories, as well as initiatives that do not end well. We learn from their analysis in order to improve our practices.

→ Creating tools for the workers and activists

Lastly, the training sessions are an opportunity for the

activists to create tools. For example, we suggest that they work on the question of local workers who are confronted by posted workers.

In order to prevent a rise in xenophobia, the activists created a leaflet that explains posting and the benefits in local workers helping posted workers assert their rights.

This is a means to fight social dumping because a posted worker who is paid all his entitlements costs as much, or even more, to the employer than a local worker.

As a result, the trainees reach the end of the training scheme with a tool they can use directly in the field.





The next stages: the action plan for 2017 and fortifying REDER

1 - Identifying fraud

■ Marina MESURE

In pursuing the REDER network, we have drawn up an action plan for 2017 revolving around two points: training and the network's responsiveness.

Fabienne MULLER, Senior Lecturer at the Strasbourg University, just explained the importance of the first point and yesterday we talked about training the network's activists with the participation of the labour inspectors.



We are also working on developing a REDER application, to be used on Smart phones, computers and tablets, that will contain 20 questions translated into 8 languages on work time, remuneration, illegal withholding from the salary, housing conditions, transport and meals. While in the field, a trade union activist could, for example, open the application in Polish in order to identify a worker's problem, send out an alert to the network and enable Polish trade unionists to get in touch with the worker.

This simple tool would help us keep track of fraud and improve the network's responsiveness.

2 - The general labour inspectorate in Rumania

■ Dantes Nicolae BRATU

In Rumania, the labour inspectorate is a public institution set up to meet the needs of the entire country and the regional administrations. It employs 1,370 inspectors and total staff of 2,600 persons. It has a train-

ing centre and publishes a specialised journal, as well as a tripartite council comprising trade union and employer representatives. We meet on a regular basis to analyse the results of our activities and propose areas for action. This cooperation model is close to the one you envisage for approaching other people involved.

The duty of the labour inspectorate is to protect the rights and working conditions of the workers. Since 1999, it has been under the authority of the labour ministry. It comprises a health and safety department, manages the registry and issues operating permits. Labour disputes in each unit are set down in a registry and the inspectorate keeps an eye on departures and activities of the trade unions

and employer organisations. The labour mediation agencies, safety monitoring, notification procedures and the granting of commercialisation permits for technical equipment are all part of its duties. Lastly, the labour inspectorate in Rumania handles the transposition of the 1996 EU Directive. A liaison office oversees cooperation and exchanges with the European Union authorities and the IMI system.

The situation of posted workers is known only in part, from documents issued by the state retirement institution in 2015, which stated that more than 45,000 workers had been posted in other EU member states by employers registered in Rumania.

The current system has no data on relocations of the workers' place of work. We need to bridge that gap and we plan to update these data, for which a proposal was approved by the government today.

The workers come to us prior, during and after their departure, which indicates the high level of trust they have in us. The volume of information exchanged is large with Belgium, France and Italy. We manage a very large number of enquiries and requests.

The labour inspectorate traditionally takes part in European discussions:

> EMPOWER:

an exchange of experiences and actions for posted workers in 2009-2010;

> TRANSPO :

the road sector and posting, in 2010 and 2011;

> ENACTING

in 2015 and 2016;

> EURODETACHMENT III

between 2014 and 2016;

> EN-FOSTER

in 2014 ...

We would like to participate in the REDER network because cooperation with trade union partners is important. The tripartite council in Rumania, in which the employers have an advisory role, demonstrates our determination. This council helps us a great deal by raising practical problems. More than 40% of information that the trade unions send us concerns the non-payment of salaries and excessive work time. We want to expand our institutional network to include other types of national, European and international cooperation.

Lastly, we cooperate with European countries on cases of human trafficking. The Explorer project, set up with an institution in the UK, has led us to conduct checks at a farm in the south of the UK where Rumanian workers were living in insalubrious conditions. Entire families were living in miniscule rooms in sub-human conditions. In their contract there were clauses amounting to forced labour in all types of weather. We eliminated those clauses and we saw that the employer has been convicted, thanks to our cooperation,.

In France, I was invited to the labour inspectorate in 2015. I saw that they were very open-minded about posted workers. The French labour inspectorate has shared its information on the deplorable working conditions of these workers. In addition, we set up a liaison procedure in order to work together more quickly. Given the urgency of the workers' situation, we have no time to lose. It is indispensable to inform them rapidly of companies that commit abuses.

These structures are run by traffickers who exploit poverty. They work through the churches and draw up contracts in languages that the workers don't understand. In the Czech Republic, workers unwittingly signed contracts stipulating a salary of 1,000 crowns instead of 1,000 euros.

I am therefore very grateful for your invitation to take part in this workshop and I truly hope to join the REDER network.



3 - Presentation by the representatives of FGS Familia, Rumania



■ **Gheorghes BALAEANU**
President of FGS
Familia

We are the only Rumanian federation to represent posted workers.

In our country, the building trade is the most vulnerable from all standpoints.

It suffers from structural unemployment: the people trained in Rumania work in other EU countries but in Rumania we lack qualified workers to fill the jobs. The building sector is also the one that provides the most posted workers to the European Union.

Two people spoke to you today. We need to hear more testimony from thousands to understand the scope of the phenomenon.

The REDER network has helped us secure respect for the rights and the protection of Rumanian workers but our trade union has not yet become a member. That does not mean that we have not acted in their support, but we do not have your financial resources. I have travelled to Italy, Spain and other countries to talk to the trade union organisations. The posted workers are seeking a higher wage but they pay the price of deplorable conditions.

As a trade union federation, we want to cooperate with the labour inspectorate and take action in support of posted workers in the building trade. We have led initiatives against fraud and we wish to cooperate with all the trade union federations in the building sector.

Our duty, and that of the Rumanian government, is to protect them.

Lastly, we should recall that work is not a product to be smuggled. It belongs to the individual and is part of his dignity. It is our responsibility to ensure these people lead a decent life.

FGS Familia is willing to take part in the network. You can count on our support.

■ **Ramona Mercedes VELEANU**
Vice-Présidente
de FGS Familia



According to the national statistics institute, 727,500 people left Rumania to work abroad in 2011. Since that date, 700,000 more have left the country to work elsewhere.

The national retirement office, which issues the A1 forms for posted workers, cites the number of 47,000 posted workers for one region, while we estimate the figure to be 69,000. In France, there are 30,000 posted workers. These numbers mean that the workers who leave their country do not all have the A1 form. The companies they work for declare them in the host country but we have not received that information. It would be useful for us to have access to labour inspectorate data from other countries in order to identify the companies that post their workers.

I regret that I only learned recently of the existence of the REDER network and I hope that you will accept us as members. Some Swedish and Danish collea-

gues visited us in October. We discussed the same subject. They wanted to get to know us. Rumania is much more than the rural image that people often see.

We are also affiliated with a national trade union federation that is worried about posted workers and migration. The federation shares our desire to lead a joint campaign to unionise workers in the building sector in the EU member states.

The Danes showed us a trade union membership card received by the grandfather of one of them in 1937. The card was valid in ten European countries, including Rumania. In the 21st century, the status of member of a European trade union no longer exists. We should set up a system for information, assistance and prevention in Rumania designed for people who intend to work abroad.

We decided to put together information for them in the country's four large cities where we have offices.

The REDER network already has information that we need.

We would like to disseminate it in the Rumanian language, advise and encourage the posted workers to look for legal work so that they will have pension entitlements, medical coverage and can support their families.

We represent the private sector, while the Rumanian labour inspectorates and institutions represent the public. They also want to take part in the network.

With the experience acquired here, we can all join to act together in support of posted workers. We want to be more involved in the fight for social progress in the European Union.





Eric AUBIN
CGT

Conclusions and adjournment of the **Seminar**

The conclusion of this day is only one stage of a project that is already two years old. Today's work will help you gauge the quality of the work done and the relevance of the proposals.

While workers' mobility is defined by the EU, we should be able to create better living and working conditions for the posted workers, just like we should be able to influence the choices made by the European Commission and the member states.

The aim of REDER is to be involved in the recognition of posted workers and in the necessary changes. I would like to thank all those who created and developed it. We are all convinced that we need to continue this work and expand the network. Our Rumanian colleagues are of course welcome.

Our ambitions risk being hampered by the meagre means available following the decision by the European Commission. If we all agree, we will continue this work with the goal of establishing equal rights for the workers, regardless of their country of origin and their place of work.

We thank the European Commission for its support over the two years and for its attendance today; Fabienne MULLER, for her help; and Marina MESURE for coordinating the project. We would also like to thank each and every one of you for your participation and we hope to see you soon.







with financial support
from the European Union



Ważne dodatki, Zakwaterowanie, Bezpieczeństwo, Pracy ...

