



# CROSS-BORDER INSPECTIONS

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*Welcome to the sixth edition of the electronic bulletin on cross-border inspections. In this issue we celebrate an important milestone for ELA as well as several recent updates in the construction sector and the launch of a new training platform for cross-border inspections. Additionally, we zoom in on Germany as one of the major receiving and sending countries for posted workers. Finally, we provide an interview with representatives of the Italian Labour Inspectorate who unveil the significant challenges they encountered during a concerted inspection of road transport companies in several Member States.*

## ELA celebrates symbolic landmark!



This milestone reflects the dedication, efforts and commitment of national authorities and ELA to protect workers' rights and address suspected irregularities in the application of the Union labour mobility Law.

See more information [here](#) and [watch](#) this video on cross-border inspections.

## Recent news on the construction sector

ELA has launched the [#EU4FairConstruction](#) information campaign!



**EU 4 FAIR  
CONSTRUCTION**

#EU4FairConstruction

**The campaign focuses on the education of posted workers and employers in the construction sector about their rights and obligations under relevant legislation.**

Coordinated by ELA, the campaign disseminates information and includes online and local information sessions to enhance cross-border enforcement of construction sector rules across EU Member States.

The EU 4 Fair Construction campaign was presented at the dedicated conference in Helsinki on the 17th of October 2023 (see more information on the event [here](#)).

Additionally, check out the latest publications in the sector:

- ELA has published a Report on '**Construction sector: Issues in information provision, enforcement of labour mobility law, social security coordination regulations, and cooperation between Member States**'. This report addresses challenges related to the enforcement of labour mobility and social security law in the construction sector, with a focus on the posting of workers, available [here](#).
- ELA's Leaflet '**Posted Workers in the Construction Sector: Know your Rights and Obligations**' is now available [here](#) in all the official languages of the EU and several third country languages!

## New training online platform on joint and concerted inspections

From the 1st of November, ELA launched an online platform to provide training on concerted and joint inspections (CJIs), through five interactive modules (in English), covering general information on ELA and CJIs, CJIs planning, CJIs implementation, CJIs follow-up, as well as key General Data Protection Regulation (GDPR) and data protection aspects.

The objective is to empower the competent national authorities with the know-how to initiate, execute, and follow up on CJIs, boosting their involvement in these inspections and ensuring the efficient cross-border enforcement of EU labour mobility rules. Suitable candidates from the EU Member States' labour, social security, and enforcement authorities can be nominated by their authorities, as communicated by ELA via the National Liaison Officers (NLOs) network.

Please find more information on ELA's tools to train and support national authorities on CJIs on the dedicated page, [here](#).

# Zoom in on Germany: sending and receiving posted workers

This edition zooms in on the situation of posted workers with regard to Germany due to its pivotal position in the EU labour market, acting as a primary hub for incoming posted workers and a significant source of outbound workers, influencing key aspects of employment regulations and cross-border labour dynamics. As per incoming workers, in 2022, approximately 10% of Germany's workforce consisted of foreign nationals (more information [here](#)). According to [data collected by the European Commission](#), Germany is EU's primary hub for posted workers, with 1.4 million postings in 2020, mainly in services (37%) and construction (24%) sectors. Key countries of origin for posted workers in Germany include Poland, Slovenia, and Slovakia.

Germany has also been a notable contributor to the outflow of posted workers, with a [remarkable increase](#) of 95.7% from 2010 to 2018 and 278.1% between 2018 and 2019. This surge in the number of postings registered can be attributed to several factors. In 2019, neighbouring countries like Austria and France implemented stricter Portable Document (PD) A1 certificate regulations, compelling German employers to comply and report more on the workers going to those countries. In the issuing Member State, these [certificates](#) prove that the social security regulations specific to that Member State are applicable, and confirm that the person is not required to contribute to social security in any other Member State. Additionally, incoming workers to Germany are also required to possess a PD A1 certificate. This ensures that workers entering Germany are similarly adhering to social security regulations. Failure to present a PD A1 certificate upon request can result in severe administrative penalties. In this regard, in 2019, the implementation of a digital application system marked a significant shift in the processing of requests for PD A1 certificates in Germany. All German employers are required to digitally submit applications for [PD A1 certificates](#), that are also issued and delivered by the authorities in a digital format. This led to a more efficient and streamlined application and verification process and consequently increased the number of registered PD A1s (see [here](#)).

[Regulation \(EC\) No 883/2004](#) pertains to the coordination of social security systems, and Germany plays a significant role in issuing PD A1 certificates under Article 12 of this Regulation. These certificates are used when an employee primarily works for a company in one EU country but is temporarily assigned to work in another EU country. Germany's issuance of PDs A1 certificates is particularly notable in two key sectors: industry, with a focus on construction (61%), and services (38%), underscoring its significant role in both sending and receiving workers in these fields. In contrast, only a minimal percentage (1%) pertains to the agricultural sector. More information on PD A1 certificates can be found [here](#).

Germany has [effectively transposed](#) the [Posted Workers Directive](#) into its legal framework and, as a consequence, enforces joint liability between contractors and subcontractors. Notably, it ensures their adherence to collective agreements, especially concerning the statutory minimum wage. This joint liability scheme means that both the contractor and subcontractor share responsibility for ensuring fair wages and working conditions for posted workers. Additionally, as of the 1<sup>st</sup> of January 2023, the [Supply Chain Act \(LkSG\)](#) mandates corporate responsibility for human rights and environmental protection in supply chains, imposing due diligence obligations on companies. This national legislation is in step with the EU's evolving regulatory landscape, particularly the [proposed Corporate Sustainability Due Diligence Directive \(CSDDD\)](#), which, if enacted, will require companies to implement due diligence processes to mitigate adverse impact on human rights and the environment. Moreover, to combat poor working

conditions in construction, Germany [implemented a ban](#) on temporary agency work since 2017, which is applicable not only to German temporary work agencies (TWAs), but also to any temporary work agency posting workers to Germany.

Industry alliances play a pivotal role in [combating illicit employment](#). In the context of [German law](#), illicit employment refers to situations including but not limited to where employers fail to fulfil social insurance or tax reporting obligations, engage in unpermitted employment of foreigners, violate regulations on temporary staffing, disregarding minimum wage and labour conditions, or facilitate misleading services to wrongfully obtain social benefits. Furthermore, the German Customs Administration cooperates with social partners in designated sectors to strengthen these efforts. [Bilateral agreements](#) with countries like France, the Netherlands, Austria, Czechia and Bulgaria are enhancing the fight against transnational unreported labour and illicit employment through discussions, the exchange of best practices, and administrative cooperation. Additionally, advisory centres, working in partnership with trade unions under the German Trade Union Confederation (DGB), focus on improving labour conditions and ensuring fair wages for workers from Central and Eastern European EU member states.

## Interview with Italian authorities: an example of CJI in the road transport sector

*An interview with representatives of the Italian Labour Inspectorate.*

In December 2021, ELA supported a concerted inspection in Italy, Belgium, Romania and Slovakia with the objective of ending illicit activities in relation to non-genuine posting of workers by TWAs, social security tax fraud and labour exploitation in the road transport sector.

The case began with complaints from Romanian workers to the Romanian embassy regarding the poor working conditions they faced in a company based in Ravenna (Italy) where they had been posted. The investigation brought to light a number of infringements, related also to posting of workers, in relation to multiple companies. More specifically, an Italian transport operator set up fictitious companies based in Belgium, Slovakia and Romania to avoid paying taxes and social security contributions in Italy. To achieve these objectives, the undertakings involved used various fraudulent schemes that included non-genuine posting of workers from these companies to the parent one. Moreover, the investigation uncovered that the drivers from the fictitious companies were working solely in Italy and were under the direct control of staff of the Italian parent company. ELA has been contacted by the Italian authorities to request its assistance in coordinating the inspections in the four Member States involved. More information can be found [here](#).

### What was the main form of support that was provided by ELA in the context of this operation?

The Italian Inspectorate expressed that ELA played a pivotal and extremely valuable role throughout the inspection process by enhancing the cooperation between authorities, handling logistics planning and providing interpreters. Particularly, the exchange of information with the National Liaison Officers involved in the case has been described as very smooth and successful. The investigations were carried out through “concerted” inspections, and not “joint” inspections, meaning that the inspections happened simultaneously in Italy, Slovakia, Belgium and Romania with each national authority operating in its own territory, supported by staff of ELA. Ahead of the concerted inspections, ELA actively participated to meetings with the involved authorities to, amongst

other tasks, establish a common list of enquiries to be asked to workers and employers during the inspections. Subsequently, each concerned Member States adapted the list to comply with their specific needs. ELA was also involved in follow-up meetings to ensure the exchange and translation of information obtained through the concerted inspections.

### **What was the main challenge you encountered in the context of this operation?**

The investigation process revealed several challenges. A major obstacle stemmed from the lack of a comprehensive database for the registration of posted workers, and, especially in the sector of road transport where the information available from declarations is limited. Furthermore, even when the posting of a certain worker is registered, the data related to the posting is often limited and it is not always possible to verify elements such as the duration of the posting and the details of the working conditions.

Additionally, the Labour Inspectorate noted challenges related to the fact that workers in the road transport sector often do not have a fixed workplace. This lack of a stable location makes it more challenging to monitor their employment conditions. Moreover, the fact that violations of various nature were found (not only related to rules on genuine posting of workers, but also on occupational safety and health conditions, and social security and tax obligations) contributed to its complexity as multiple authorities have been involved in the inspections, including the Italian Public Prosecutor.

Finally, this was the first experience of a cross-border concerted inspection supported by ELA for the Italian Labour Inspectorate. Therefore, during the first stages, there was a certain degree of uncertainties as to the role of the various national entities involved. However, thanks to ELA's support in the coordination and communication between the various colleagues involved in the different Member States, the case has been conducted successfully.

### **What do you consider to be important lessons learnt from the CJI and why was this case particularly important?**

This case marked an important milestone for the Italian Inspectorate, as it initiated an inspection with ELA for the first time. In working closely with other countries, the interviewee expressed positively how they gained valuable insights into addressing shared challenges and improving efficiency.

The importance of labour authorities working closely with embassies to support mobile workers was also emphasised by the interviewee. Embassies can indeed play a crucial role in discovering cross-border cases involving their countries, facilitating cooperation and sharing information amongst mobile workers, as well as in offering interpretation services. In this case in particular, a representative from the Romanian embassy was present during the inspections in Italy. Her presence was particularly important as it helped to ease communications with the Romanian workers and to ensure the protection of their rights. In this regard, the representative of the Labour Inspectorate considers that embassies could have a key role not only as a channel of cooperation and exchange of information, but also in raising awareness, especially amongst posted workers, on their rights and on the instruments to seek protection. This is demonstrated by this case, which is an example of how infringements of posted workers rules were brought to light thanks to the complaints presented to the Romanian authorities by the Romanian workers posted in Italy.



## **Legal developments**

Recent legal developments at national and EU level:

- A recent amendment to the Slovenian Act on Cross-Border Services (*Zakon o čezmejnem izvajjanju storitev – ZČmS-1*) will increase the basis for payment of social contributions for posted employees, therefore, granting them greater social contributions, and will establish a stricter regime for employers who work with posted employees, amongst other things. The newly adopted legislation is available [here](#).
- [Directive \(EU\) 2023/970](#), adopted on May 10, 2023, establishes minimum standards to strengthen the application of the equal pay principle for work of equal value between men and women and to prohibit discrimination. This should be achieved through measures such as increased pay transparency and reinforced enforcement mechanisms.
- The German government has approved a new law to facilitate skilled workers from outside the EU moving to Germany. This law will be implemented in three stages from November 2023 to June 2024. The reform introduces an “opportunity card” with a points system, considering qualifications, experience, age, language skills, and ties to Germany. The Federal Employment Agency will simplify approval for professional drivers from third countries, eliminating some requirements. These reforms focus on workers with vocational, non-academic training. More information [here](#).
- A new law in effect since September 1, 2023, simplifies the hiring of third-country nationals in Luxembourg by exempting ADEM (Employment Development Agency) from conducting a labour market test and check for certain professions in high demand, leading to quicker certificate issuance. This amendment affects also third-country nationals already residing in Luxembourg prior to the entry into force of the new law. For other jobs, the labour market test will still be conducted but with shorter timeframes. More information can be found [here](#).

#### Practical publications from ELA:

Over the years, ELA has published several reports with practical information regarding concerted or joint inspections which remain relevant today, for example:

- Workflow guidance for Member States to request the coordination and support of ELA for a concerted or joint inspection; available [here](#).
- Cooperation obligations and practices in the enforcement of EU rules on International Road Transport in the EU; available [here](#).

## Key upcoming events

### [ADAPT Conference: Towards a workless society? An Interdisciplinary Reflection on the Changing Concept of Work and its Rules in Contemporary Economies"](#)

**Organiser:** ADAPT  
**Date:** 30 November – 2 December, 2023  
**Location :**Bergamo

### [Public procurement and labour rights](#)

**Organiser:** University of Modena and Reggio Emilia  
**Date:** 1 December, 2023  
**Location:** Modena

### [Interdisciplinary Perspectives on Resilience and the Welfare State](#)

**Organiser:** University Europa Viadrina  
**Date:** 1-2 December, 2023  
**Location :** Frankfurt

### [Analytical aspects of Concerted and joint inspections](#)

**Organiser:** ELA  
**Date:** 23-24 January 2024  
**Location:** Paris

## [Annual Conference on European Labour Law 2024](#)

**Organiser:** Academy of European Law  
**Date:** 21-22 March, 2024  
**Location:** Trier/Online



## Social media posts

The past 14 and 15 November in cy Larnaca, #EULabourAuthority and European Union Agency for Law Enforcement Training (CEPOL) organised a training on labour exploitation and labour law violations, hosted by the Cyprus Police Academy.

Post available [here](#)

#IMI-PROVE workshop, focused on the recent updates and Member States' experiences in the application of all three #RoadTransport IMI System modules,

Post available [here](#)

In Bratislava: Workshop on the enforcement of social matters in the air transport sector, with the participation of representatives from 21 EU Member States and Norway, #DGMOVE and EASA - European Union Aviation Safety Agency

Post available [here](#)

23-24 October in Bratislava: second meeting of the Forum on the #PostingOfWorkers, organised by #EULabourAuthority together with the European Commission.

Post available [here](#)

### Recent press release on posted workers:

Lessons learnt from peer reviews of single national websites on the posting of workers: booklet available now! More information available [here](#).



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