



Enhancing Economic Democracy for Posted Workers

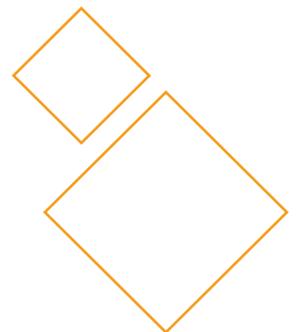
PROMO report

Bettina Haidinger, Francesco Iannuzzi, Devi Sacchetto, Nathan Lillie, Kairit Kall

This publication has been written for the project “Protecting Mobility through Improving Labour Rights Enforcement in Europe (PROMO)”, VS/2016/0222. It has received financial support from the European Union programme for Employment and Social Innovation (EaSI) (2014-2020). For further information please consult: <http://ec.europa.eu/social/easi>. The information contained in this publication reflects only the authors’ views and does not necessarily reflect the official position of the European Commission. The Commission is not responsible for any use that may be made of the information it contains.



Published in October 2018



Funded by the
European Union

Table of Contents

Abbreviations	3
Executive Summary	4
1. Introduction: Industrial Citizenship and Economic Democracy for Posted Workers	8
2. Industrial relations system, economic democracy and posted workers	10
3. Practices and challenges for enhancing posted workers' economic democracy - findings from Austria, Czech Republic, Italy, Norway and Finland	12
Single versus dual-channel workplace representation system.....	12
Institutional setting and collective bargaining.....	13
Influencing politics and legislation.....	14
Right to Union Representation.....	14
Union interest in and responsibility for posted workers.....	16
Union authority on job sites.....	17
Anti-union employers.....	18
Transnational Union Representation.....	18
Recruitment and organizing campaign.....	21
Preventive instruments to safeguard labour standards in subcontracting chains.....	22
Pressuring employers.....	22
Boycotts and blockades.....	23
Cooperation with Authorities to fight the grey economy.....	24
Information about Labour Standards and Employer Obligations.....	26
Access to Courts and subcontracting liability.....	27
4. Conclusions	31
References	33





Abbreviations

ASO - Association of Independent Unions, Czech Republic
BUAK – Bauarbeiter-Urlaubs-und Abfertigungskasse (Construction Workers’ Holiday and Severance Payment Fund)
CBA - Collective bargaining agreement
CEE – Central and Eastern Europe
CGIL - Confederazione Generale Italiana del Lavoro
CJEU - Court of Justice of the European Union
ČMKOS - The Czech and Moravian Confederation of Trade Unions
EEA - European Economic Area
EFFAT - European Federation of Food, Agriculture and Tourism Trade Unions
EMWU - European Migrant Workers’ Union
ETF - European Transport Workers’ Federation
EWBWW - European Federation of Building and Wood Workers
GBH – Gewerkschaft Bau-Holz
ILO - International Labour Organization
IMI - Internal Market Information System
IR - Industrial relations
ITF - International Transport Workers’ Federation
LCA - Latvijas Celtnieku Arodbiedrības
NGO - Non-governmental organization
Pro-Ge – Produktionsgewerkschaft (union of industrial workers)
PWD – Posting of Workers Directive
RHSD - Council of Economic and Social Accord, Czech Republic
RL - The Finnish Construction Trade Union
SL - The Finnish Electrical Workers’ Union Sähköliitto
SUIP - State Labour Inspection Office, Czech Republic
TL - Teollisuusliitto



Executive Summary

The PROMO project¹ is based around a series of policy workshops and conferences from 2017 and 2018. The project aims to make recommendations to improve:

- national labour protection systems for posted workers;
- institutions, practices and channels for promoting industrial democracy for posted workers;
- the collection of data relevant to making informed posted worker policy decisions.

Our method is to take existing research knowledge and improve on it through policy workshop discussions with experts and stakeholders. The first PROMO report (Kall and Lillie 2017), based on an extensive literature review, established that posted workers more often than not are not represented collectively and trade unions in the host countries either lack (effective) strategies focused on posted workers or consider this target group outside their jurisdiction or just too difficult to engage with. There is, however, considerable diversity between unions in different countries and sectors and some unions have taken steps to protect and represent the interests of posted workers as well. Posted workers often lack voice in their working lives and their rights are frequently violated (either accidentally or deliberately) by transnational service providers, making these workers' need for collective representation especially urgent.

Based on a literature review and focus group and individual interviews with social partners and other relevant actors in five different national/industrial relations contexts (Austria, Czech Republic, Finland, Italy, and Norway), this report aims both to identify weaknesses in the regulatory framework (whether national or European), that might be addressed through legislation or other policy action, and to make recommendations aimed at trade unions, based on best practices. The latter are not intended to be universally applicable: rather they illuminate strategies that some unions have had success with

when addressing posted worker representation problems. Obviously, trade unionists must consider for themselves whether these can also be applied (or adapted) in their home context.

1. Guaranteeing posted workers a right to join and be represented by host country unions

A right to join a union, and to receive collective representation and participate in union activities is a fundamental human right. However, posted workers are often excluded from this right due to several (structural, institutional, ideological) reasons. This system is not sustainable for the proper functioning of the European labour market (giving competitive advantage to dishonest service providers). We suggest reducing the barriers preventing posted workers from becoming members of either home or host country unions. To do this, several steps are necessary, including punitive and dissuasive sanctions for employers who intimidate workers not to join unions or who violate union rights; convincing host country unions to overcome the idea that posted workers are someone else's problem (as there might not be 'someone else' available); and enabling the more extensive integration of posted workers into local labour market and union structures.

As posted workers rarely join unions, unions are not willing or able to represent them when these workers encounter mistreatment. A good practice might be to waive time requirements for membership and representation and through that increase posted workers' trust in unions. Further cooperation with non-governmental organizations (NGOs) and labour inspectors might also enhance finding and helping posted workers.

1. See project's home page: <http://www.solidar.org/en/activities/protecting-mobility-through-improving-labour-rights-enforcement-in-europe-promo>

2. Extending unions' and works councils' right to represent workers throughout the subcontracting chains

Posted workers' most often find themselves in sectors and on work sites where supply chains are extensively fragmented. Under these circumstances, firm-based worker representation systems also fragment worker organization and representation. Notably, worker representation systems that depend on legally independent works councils tend to represent posted workers poorly. We suggest that laws be changed to allow works council representatives to represent subcontracted workers under some circumstances, and they should be encouraged to do so.

3. Establishing/extending cooperation between sending and receiving country unions / creating transnational union structures

Given the high mobility of labour and high number of short projects in sectors like construction, a more far-reaching solution for posted workers' representation problems would be for unions to make transnational membership possible based on bi- or multilateral agreements.

4. Extending/protecting the right to association and collective action (e.g. right to strike)

The right to strike is a well-established fundamental right deriving from the freedom of association, and elaborated in International Labour Organization (ILO) conventions. It has been significantly curtailed by the Laval and Viking decisions of the Court of Justice of the European Union (CJEU), which both place it below the employers' right to free movement (which strikes, by their nature, interfere with), and demands that the strike means used be "proportional" to the worker protection objectives, which might be a problem for unions. Perhaps a more fundamental difficulty for ensuring that posted workers have effective access to the right to strike is, however, that in general, this right is in practice exercised through union membership. Posted

workers are not fully entitled to industrial citizenship in their sending country, because the union there has no jurisdiction where the work takes place, nor in the country they work 1) because they normally do not work there long enough to benefit from union membership 2) host country unions do not have the right to freely negotiate on their behalf - but rather are constrained by European jurisprudence. Strikes can only be effected by host country unions in order to protect legally established standards: i.e. to enforce the law. Hence, a portable/flexible/transnational union membership for posted workers could be a solution. This would allow workers to be members of the host country's partner union, without additional bureaucracy, and reinforce posted workers' right to strike.

Posted worker wildcat strikes are an infrequent phenomenon but occur occasionally. Their legal status was never clear in the cases we are aware of, but nonetheless it was clear that in practice these striking workers did not enjoy legal protection for their action.

A possible policy solution at the European-level would be to pass EU legislation, or preferably a constitutional measure, explicitly setting out a right to strike, which is given fundamental status; secondary action should be made more widely permissible under EU legislation and national legislation should protect unorganized posted workers who strike.

5. Signing generally applicable sectoral level collective bargaining agreements

The Laval decision makes clear that wage standards based purely on union negotiation with an employer cannot be imposed on transnational service providers, without being potentially regarded as a constraint on the free movement rights of the employer. This means that any wage standards must be universal and mandatory to all firms in a given market, and must be clear and unambiguous. The best way to accomplish this is with legally extended



collective agreements. Failing this, minimum wages serve the same function, but without providing side-benefits and allowances which might be available under the sectoral agreement, nor potentially high-paid skill categories which might be relevant to workers with higher skills. Collective agreements should be given an erga omnes effect to make them Laval compatible, or minimum wage laws should be enacted which cover all workers.

6. Project-level agreements

As sectors like construction, where posting often occurs, are highly fragmented and long sub-contracting chains are used (often diffusing the responsibilities of employers and making the inspections difficult), collective bargaining agreements that would cover the whole project and include the responsibilities of different contractors and employment conditions for all workers in the chain is a good practice. Employers, who prefer to avoid inharmonious relations with unions, and negative media attention, might be motivated to sign the agreements. These agreements can be used to form committees which help disseminate good safety practices and raise awareness of relevant collective agreements and grievance procedures. They also serve to raise the profile of the unions on the site. Worker inductions through such site-level arrangements are an opportunity for unions to make contact with the posted workers.

7. Extending union cooperation with state authorities, employers and NGOs

Firms that cheat their employees are often non-compliant with the law in many other ways as well. Fighting the grey economy through the promotion of multiple measures designed to hinder the operations of shady fly-by-night subcontractors, has been a successful strategy in some countries and the cooperation of unions and employers (and state authorities) in this respect should be mutually beneficial for all but dishonest companies.

Further cooperation between different actors would also make it less likely certain groups of workers and problematic issues go unnoticed. This also assumes that problems affecting information sharing would be resolved, so that, for example, unionists and labour inspectors would be able to discuss ongoing investigations.

8. Recruiting/organizing posted workers into unions

A variety of organizing approaches have been tried for recruiting posted workers, some inspired by state-of-the-art organizing model techniques. The basic problem is that posted workers are very temporary, and difficult to organize. In no case has anyone claimed that the money spent organizing them could possibly be recouped in union dues. However, there is evidence that union efforts to engage with posted workers have raised union consciousness among posted workers in many cases, and over the long term this is likely to have a positive effect. We recommend that unions engage with posted workers, and that attempts be made to encourage union membership and union mentality. Even though targeted organizing campaigns and other expensive efforts to organize posted workers are unlikely to see long-term success, they might increase union legitimacy, create wider worker solidarity, strengthen union structures and help to tackle the grey economy.

9. Informing posted workers about host country labour standards

It is widely accepted among social partners and state authorities that efficient information sharing about local regulations is crucial for posted workers' labour rights to be respected. However, official Internet sites might not be enough, as it might be difficult to understand and also find the regulations. As a good practice several unions, sometimes in cooperation with NGOs and state authorities, have



established information/advice offices for foreign workers, or are reaching out to inform posted workers about their rights at their workplaces. However, these initiatives are often project-based and more sustainable solutions should be looked at.

10. Using media campaigns and wider popular support to pressure non-law-abiding companies

Industrial action is rarely a viable option to compel posted worker employers to respect laws and collective agreements, and legal processes rarely happen fast enough or easily enough to make them a practical solution on a large scale. For many unions, media exposure of serious labour rights abuses by service providers serve to embarrass and to “name and shame” the main contractors who have hired the posted workers’ employers. These have proven effective in projects with highly visible and politically vulnerable contractors, and are routinely used with good effect.

11. Providing equal rights to be represented in the justice system

The enforcement of posted workers’ entitlements is not only difficult but also seems to be subordinated to other forms of enforcement (such as penalties for non-compliant employers or the back payment of taxes). The first hurdle for posted workers is to learn about where to find information, advice and legal support. Second, posted workers often lack representation and access to due process for workplace issues because it has not been decided who (what union from what country) has the right and bears the responsibility to represent them. Third, cooperation between authorities and unions is brittle when it comes to sending data and information to employees’ representatives. Fourth, the procedures for revealing and pursuing a case and the subsequent steps to sue for one’s rights is extremely time consuming.

In countries where access to labour courts is restricted by membership fees (that are not mandatory for posted workers), it is necessary to provide

avenues for posted workers to also learn about and access these channels. The possibility for collective redress on behalf of posted workers would strengthen their access to the justice system.

1. Introduction: Industrial Citizenship and Economic Democracy for posted workers

Posted workers must be actively included in the institutions of economic democracy. Their inclusion preserves not only the rights of posted workers, and the reputation and popularity of the European Union's free movement agenda, but also protect the rights of host-country workers, as lower standards for posted workers undermine standards generally.

Our point of departure is that posted workers should not have fewer labour rights, meagre possibilities to influence their working lives or lower working standards than regular, host-country workers, and that this equality can only be achieved if they are actively included in institutions of economic democracy (this inclusion is referred to as "industrial citizenship" and is most often achieved through trade unions). This is necessary not only for preserving the rights of posted workers, and the reputation and popularity of the European Union's free movement agenda, but also for protecting the rights of host-country workers in the same sectors, as lower standards for posted workers undermine standards generally. Both ends require unions to be able to protect their collective agreements, minimum wages, and organizational integrity.

Posted workers, more often than not, however, do not belong to unions either in their home or host countries and trade unions face numerous challenges when trying to engage with and represent posted workers. These include institutional, ideological/union identity barriers, and the unwillingness of posted workers to join unions. This report sets out to explore the challenges and possible strategies and good practices that unions in different contexts have applied when dealing with posted workers with the main aim of providing avenues for increasing collective representation and, through that, economic democracy for posted workers.

With the growth of posted work as a policy arena of the European Union (Arnholtz 2014), various policies and legislative measures have been taken in different countries in reaction to the widespread misuse of posted work. However, the effective enforcement of workers' rights in this context has proven a difficult, expensive and sometimes uncertain process, as the industrial relations and legal mechanisms put in place to protect workers in national labour markets extend only very imperfectly across national boundaries.

Hence, we are obliged to broaden our perspective to understand how posted workers can realize their economic and social rights, their industrial citizenship. Zhang and Lillie (2015: 95) point out, that this particular form of citizenship is not only a status (labour and social rights are granted) but also a process of political struggle to redefine the power relationship between workers, employers and the state. The effective manifestation of industrial citizenship is through the power of collective action most often channelled through unions. Employers and the state are the main addressees of workers' claims and demands. Posted workers are in manifold ways excluded from this form of citizenship: their rights disregarded and unenforced; their interests are ignored; and their voice unheard in collective action.

The effective manifestation of industrial citizenship is through the power of collective action most often channelled through unions. Posted workers are in manifold ways excluded from this form of citizenship: their rights disregarded and unenforced; their interests are ignored; and their voice unheard in collective action.

Our core concept for opening up more windows of intervention for workers is that of economic democracy encapsulating workers' participation in society and at in the workplace via unions and, where

applicable, works councils. There is a general trend toward labour market segmentation and precarious employment which undermines economic democracy generally, and in this sense posted work is just a form of precarious work. However, they are precarious workers for whom specific barriers exist. We look at posted workers' actual and potential realization of economic democracy through their incorporation into economic democratic processes, measuring it against the ideal rights that workers at least in the 'old' Europe, with a long tradition of independent trade unionism and so-called social compromises between labour and capital, have come to expect. These include co-determination, workplace participation, union representation, and access to due process for workplace issues.

The report aims to tackle the following issues:

How are posted workers approached, informed, consulted, co-opted about/into decision-making at workplace and sectoral level? How are their economic and social interests considered and represented? What is their access to trade union representation, and how is their right to strike protected? What are the legal, institutional and union-cultural obstacles to the unionization of posted workers? How are posted worker issues integrated into societies' macro-institutional decision making? How do systems of industrial relations consider/incorporate/give voice to posted workers, including going beyond wage claims to encompass a vigorous and pro-active representation of posted workers? How can labour inspectorates, unions, and migrant rights groups work to improve posted workers' access into institutions of economic democracy?

In general, hypermobility, the transnational structure of employment, and the legal barriers to union rights contained in European law prevent the attainment industrial democracy for posted workers in any real sense; the problem is fundamental to the system and requires macro-level changes. Nonetheless individual unions and other actors have developed strategies and practices to treat the symptoms, if not to cure the disease - but the basic problem is

that there is at the moment no sustainable way for posted workers to be union members. For the most part, union representation requires unions to use their financial and political resources to support and service workers who are not their own members, raising the problem of systemic free-riders, but also making posted workers subjects of rather than participants in union policy.

Individual unions and other actors have developed strategies and practices to treat the symptoms, if not to cure the disease - but the basic problem is that there is at the moment no sustainable way for posted workers to be union members. Union representation requires unions to use their financial, political and industrial resources to support and service workers who are not their own members, raising the problem of systemic free-riders, but also making posted worker subjects of rather than participants in union policy.

First, the report is based on a review of the existing literature on trade union strategies towards migrant/posted workers, and secondly, on a series of local workshops and interviews in which the knowledge and opinions of mostly trade unionists, but also representatives of employers, NGOs and work councils (where relevant), operating in sectors where posting is an important phenomenon, were solicited. This research in Austria, Czech Republic, Finland, Italy and Norway resulted in country reports written by PROMO project partners. In addition, the report draws on presentations, discussions and comments by researchers, unionists and other practitioners during the conference "Enhancing Economic Democracy for Posted Workers" in June 2018 in Padua. To begin with, this report maps the industrial relations systems in the respective countries and then looks at them in the context of the different challenges, strategies, and successes that unions have had in engaging with and representing posted workers.

2. Industrial relations systems, economic democracy and posted workers

Union strategies for the representation of migrants have developed rapidly in recent years, marking a shift from earlier strategies, sometimes based on nativism, which sought to protect native members by excluding migrants (Penninx and Roosblad 2000; Virdee 2000; Holgate and Tapia 2018). New policies seek to combat social exclusion, marginalization and the growth of irregularities and the informal economy. This transformation is however incomplete, trade unions in host countries still hold contradictory attitudes towards migrants because of the threat posed to labour market stability and the jobs of native members (Danaj and Sippola 2015; Ristikari 2013; Hyman 2001). In the scope of European integration, since immigration has become a structural feature within European labour markets, most of Europe's major unions in impacted sectors have started to think of ways of involving, organizing and representing the growing number of migrant workers. Yet, this process has been both difficult and contested, although it is vitally important for many trade unions (Holgate 2005; Martinez Lucio and Perret 2009; Danaj and Sippola 2015).

One of the major problems unions face regarding posted workers is that posting is a transnational phenomenon while unions continue to be organized (administratively, but also ideologically) as national institutions. Despite these constraints, different studies have shown that migrants are not impossible to unionize (Milkman and Wong 2001; Wills 2009; Danaj and Sippola, 2015; Wagner and Refslund 2018; Danaj et al. 2018; Benvegnú et al. 2018; Marino, Roosblad and Penninx 2015). Successful long-term organization of migrants into their own or into local unions, however, seems to depend on the migrant integration process; i.e. posted workers, who by definition do not settle, are not easily organizable by traditional means. While posted workers are migrants, and unions generally deal with them as such, they also present additional challenges.

Successful long-term organization of migrants into their own or into local unions, however, seems to depend on the migrant integration process; i.e. posted workers, who by definition do not settle, are not easily organizable by traditional means. While posted workers are migrants, and unions generally deal with them as such, they also present additional challenges.

European trade unions' policies toward migrants are characterized by tensions between group-oriented actions (aimed at including migrant workers via specific structures, and with targeted policies) and universalist approaches which include migrants in the same way as native or settled workers (Kahmann 2006; Krings 2009). The attention that unions give to migrant workers cannot be taken for granted and their ability to mobilize these «new workers» may result from the interaction of a multiplicity of factors: ranging from the unions' specific identities guiding their strategic choices, to unions' legacies of internal organization to processes of internal communication and decision-making (Marino et al. 2015). Similarly, it is argued that the national, sectoral and institutional dynamics of trade unions can explain their ability to provide representation and include non-organized, insecure and fragmented workers, including migrant workers (Wagner 2015; Baccaro et al. 2003; Frege and Kelly 2003; Penninx and Roosblad 2000). Studies focused on the revitalization of union action have stressed how unions with a stronger institutional position (and therefore the capacity for political voice) are less inclined to revitalize their action and to adopt bottom-up innovations. However, Bengtsson (2013) also argues that the institutional position of the unions is not sufficient to explain their different method of action. One should also consider other factors that might weaken the unions' position, like specific sectoral features and the level of precariousness. Likewise, Marino and Roosblad (2008) assert that trade unions with a strong corporatist



influence and a greater institutional root, usually put less effort into recruiting and organizing migrants, while antagonistic unions, which are often in pursuit of institutional legitimization, point towards more inclusive policies and organizational strategies.

Posting: a challenge within a challenge

Posted workers represent a «challenge within a challenge» for trade unions: in addition to the trouble unions have representing and organizing migrant workers (e.g. Hardy et al. 2012; Marino and Roosblad 2008; Tapia and Turner 2013), they also must address the precarious labour and social rights of posted workers in particular in an integrated European market. Posted workers face greater difficulties than individual migrants in exercising economic democracy and industrial citizenship not least because labour and social rights granted at national level are subordinated to the right of free provision of services in EU law (e.g. the Laval case in Sweden) (for an overview of legal challenges in representing posted workers, see Kall and Lillie 2017). Posted workers do not have a legal right to equal treatment (although the new Posted Workers Directive (PWD) has improved the situation), and they do not have an effective right to strike for higher wages or better treatment - they can only strike to gain those things which have already been guaranteed to them by law.

In addition, the mobilization of posted workers to change their situation is constrained by their condition of hyper mobility. This limits their interest and practical ability to participate in unions in a place they intend soon to abandon. They are aware that they are employed because they are cheaper and more flexible than local workers and this «wage comparative advantage» between host and home countries sometimes leads them to adopt a wage maximization attitude (Berntsen 2015). The exclusion and social segregation that posted workers often experience comes both from segregated working and living places (Caro et al. 2015; PROMO National Report Italy). They lack knowledge of the institutional, social and regulatory context of host

countries, and usually do not speak the language well or at all; various control techniques are used by their employers; usually they lack previous trade union experience, and they also fear losing their jobs (and being blacklisted), or not being paid (Alberti and Danaj 2017; Danaj and Sippola 2015; Lillie and Wagner 2015; Houwerzijl and van Hoek 2011; Wagner and Berntsen 2016; Kall and Lillie 2017; Wagner and Lillie 2014).

Posted workers do not have a legal right to equal treatment, and they do not have an effective right to strike for higher wages or better treatment - they can only strike to gain those things which have already been guaranteed to them by law.

Posted workers' mobilization to change their situation is constrained by their condition of hyper mobility. This limits their interest and practical ability to participate in unions in a place they intend soon to abandon.

Moreover, in some sectors, like construction, these obstacles are exacerbated by the very nature of the industry, based on extreme geographic and temporal mobility. According to Berntsen (2015) construction workers have few opportunities to socialize, and they are usually not interested in unionization. In addition, Berntsen (2015) argues that the unionization of these workers can be also opposed by employers' retaliation against workers, which may result in dismissal (Houwerzijl & van Hoek 2011) or the loss of accommodation since employers often directly control the accommodation system (Berntsen and Lillie 2014).

Another factor contributing to the weakening of union power and the willingness of posted workers to engage in activities to defend their rights is the fragmentation of production precisely in those sectors most affected by the posting of workers, such



as construction and transport. Posted work often interacts and overlaps with the complex systems of subcontracting in which de facto employers and liability are difficult to decipher. By reducing the size and by multiplying the number of subcontractors, severe forms of labour exploitation become difficult to uncover. Kay and Arnholtz (2007), in their study of posted workers in Denmark, note that unions struggle to obtain information about the position and status of the companies participating in the supply chain. The authors stress that fragmentation increases the risk of non-compliance with collective agreements because monitoring collective agreements along the supply chains is tricky. Sometimes employers just disappear when unions try to use the legal system to make claims on behalf of workers (Kay and Arnholtz 2007). Wagner and Lillie (2014) point out how some foreign service provider companies in the German construction sector used the subcontracting system to avoid the works council system.

The presence of migrant workers and even more of posted workers within local labour markets is certainly a fundamental challenge for industrial relations and for industrial citizenship but it can also be used as an opportunity to update union strategies and revitalize trade unions. As noted by Danaj and Sippola (2015) the decrease in union membership and the increase in precarious work makes organizing migrant labour even more important for the survival of union structures. If solidarity is to be extended effectively, the inclusion of migrant workers in national industrial relations systems should no longer be considered an exception, it should become a natural and regular feature. This is not just a matter of ethics, but also a pragmatic necessity (Kahmann 2006).

3. Practices and challenges for enhancing posted workers' economic democracy – findings from Austria, Czech Republic, Italy, Norway and Finland

Union policies and strategies towards migrant workers in general and posted workers in particular in

the countries covered by PROMO research vary according to their different industrial relations legacies and different union cultures. Below we describe the characteristics of industrial relations systems and union cultures that proved to be of particular interest for enhancing the union representation, inclusion and empowerment of posted workers.

Single versus dual-channel workplace representation system

In Norway, Finland and Italy, worker representation at workplace level is dominated by trade unions, whereas in Austria, works councils, which are legally independent of unions (elected by company staff), are the primary firm-level worker representatives. In Italy and Austria workplace representation is mainly enforced in big companies; the workforces of small and medium-sized companies mostly do not elect a works council or workers' representatives. In the Czech Republic, unions are in principle the primary worker representatives, but are relatively weak, particularly in regard to regulating posted work. To a degree, NGOs have tried to fill the space left open by unions. However, there are exceptions of stronger and more pronounced union activities at workplace level, e.g. at Foxconn, targeting also non-standard workers and trying to embrace the interests of all – agency, migrant, Czech - workers. However, there is no information about targeting posted workers specifically in Foxconn.

Local union presence is stronger in a single-channel representation system, and it makes recruitment and union representation easier. Austrian works councils do not represent the union at work-place level (however they are supported by industry-specific unions, and are the main channel for recruiting members) but are bodies in their own right, working in direct cooperation and conflict with company management. Such a works council's mandate makes it less likely that posted workers will be approached and perceived as potential clientele - or union members.



In Finland, union membership is organised through shop steward networks and a Ghent-system linkage of membership to unemployment benefits (Kall et al. 2018). It is a single-channel representation system, meaning that the representation at the workplace level is linked to the representatives of the trade union organizations. Finnish unionists have a mandate to defend their legally extended collective bargaining agreements (CBAs), and so the idea that union stewards or officials might end up representing posted workers in a subcontractor company which has not agreed to abide by the CBA, and does not have any union members in it is not something they have to contend with. The extended CBA is the law of the land in Finland, and all firms in covered sectors must abide by the appropriate CBA. Where there is extensive subcontracting, this is of key importance: a works councillor typically perceives his or her authority only inside the firm, while in a single-channel (union) system, shop stewards are not so constrained. Single-channel systems function significantly better than dual channel (works council) systems when confronted with transnational subcontracting/worker posting arrangements (assuming that unions have a sufficiently strong shop-floor-level presence).

Single-channel systems function significantly better than dual channel (works council) systems when confronted with transnational subcontracting/worker posting arrangements (assuming that unions have a sufficiently strong shop-floor-level presence).

Norway also has a single-channel representation system. The level of unionization both at company and industry level is decisive for the strength of the local trade unions. In total, around 50 per cent of the Norwegian workforce is unionized. Only companies bound by collective agreements will, as a rule, have local trade union representatives as these are elected on the basis of these agreements. The enforcement of collectively agreed rights, like wages, working time, overtime payment, reimburse-

ment for travel and lodging, co-determination and decent working conditions more generally, depends on the trade union presence at company level and cooperation between employers, trade union representatives and health and safety delegates. Extended agreements are left to the Labour Inspectorate to enforce, but local trade union representatives play an important role also in these situations. Regulations aimed at the enforcement of extended collective agreements depend on union activity, like the shop stewards' right to check pay-slips and contracts.

Institutional setting and collective bargaining

In the Nordic countries and Austria strong institutionalized bargaining systems, legislation and the regulation of representation at industry and workplace level are in place. In Austria and Finland, and partly in Norway, industry-level collective agreements are binding on all companies, including foreign service providers. In Norway, the demand to make some regulations in collective agreements generally applicable in sectors where use of Central and Eastern European (CEE) labour is prevalent, like construction and ship building was a high priority for unions. When an agreement has been extended, local trade union representatives will have access to various tools in order to enforce the regulation, including chain liability, right to access documents and so on.

The Finnish industrial relations system with its relatively strong unions, high union density and generally applicable sectoral level collective bargaining agreements is, in comparison to other systems, rather resistant to the social dumping practices related to posting (see, for example, Sippola and Kall 2016). Unions regard themselves as partners in national politics, with a role in shaping Finland's political-economy and safeguarding its competitiveness. Unions in sectors where posting has become an important phenomenon have recognized the problems of posted work, and pushed for regulatory solutions, such as more comprehensive monitoring by tax authorities and mandatory ID cards for construction sites. The Finnish construction union believes these measures have significantly reduced



the possibility for firms to avoid universally applicable sectoral level collective agreements.

Collective bargaining in the private sector in Italy takes place at two different levels: industry and company level. The latter – becoming increasingly important – regulates certain crucial aspects of the employment relationship. Italy's union landscape is characterized by union pluralism, and by industry-based categories of national federations. They differ in terms of ideological orientation, organization, identity, international cooperation and attention to the phenomena of labour market transformation. Autonomous forms of union organization, such as grass roots unions, also exist. These unions address the issue of migrant or posted work differently, explicitly giving legal and organizational support to migrant workers' struggles.

If posted workers are covered by a collective agreement or minimum wage, unions may have a right to take action on their behalf to defend the agreement. The main issue for Finnish unions is defending their legally extended collective agreements and assisting posted workers who have been mistreated to achieve justice. Usually, the second objective can be achieved through the first. Finland's wage bargaining system consists of a framework of sectoral agreements, which in most industries are legally extended over the whole sector by government decree. Finland's implementation of the Posted Workers Directive covers all industries. Posting employers are thus legally required to pay wages in compliance with industry collective agreements, for those aspects of remuneration explicitly mentioned in the PWD.

In Norway, the extension of collective agreements in several industries has been the most effective tool to combat low-wage competition in the aftermath of the EU/European Economic Area (EEA)-enlargements. Securing the right pay for foreign workers was improved, and the system also makes it easier to find out about the exact sum that the workers are entitled to (Eldring et al. 2011).

Influencing politics and legislation

In Austria, Finland and the Czech Republic, trade unions are highly involved in policy making. In the Czech Republic trade unions focus on collective bargaining and negotiation with the government and employers in order to influence or change policies and legislation drafts, and their power varies according to the changes in the political composition of the government (Čaněk 2017, pp. 309). In Austria, the social partners' generally have considerable (though declining) institutional power to negotiate and influence labour and social standards. This standing also translates into close relations with political parties, the legislative process and the authorities (Astleithner and Flecker 2017). In Finland, the social partners have a close involvement in policy making and are generally highly influential in shaping labour market legislation. Because of this, the Finnish Construction Trade Union (RL) together with the employers' federation, Rakennusteollisuus have been the main actors in designing government measures to reduce the grey economy in construction - through which they have also regulated posted work. In Italy, federations and confederations at national level engage in collective bargaining, cooperate with national institutions (Cassa Edile) and trade unions abroad, and in specific EU-wide trade union projects, lobbying for the attainment of effective legal instruments to protect posted workers.

Right to Union Representation

Union rights are exercised through national industrial relations (IR) systems, which are conceived and implemented according to a methodologically national understanding of unionism. As a result, migration and in particular, posting, puts workers into a grey zone that is challenging to national IR systems and the union representation of workers. The nature of posting as a form of work-based mobility rather than migration means that workers tend not to build many local attachments, including not joining unions (Caro



et al. 2016). It creates for them a “mobility trap” by undermining collective resistance, because posted workers tend to regard moving on to another job as a more realistic solution (Berntsen 2016). Their job contracts generally offer little in the way of enforceable employment protection, they usually do not have recourse to the courts in practice for a variety of reasons mostly having to do with the transnational nature of their employment (Čaněk et al. 2018). Their employment is by nature flexible, unpredictable, and time-bound. As a result, unions face institutional/legal barriers as well as new groups of unorganized workers who are socially isolated and difficult to organize. They also face employers whose business strategies rely on low wages, are implacably opposed to unionization or even payment of legal wage levels.

Posted workers are therefore difficult to recruit into unions. There are several proximate causes for this. The temporariness of work, together with the hyper-mobility of posted workers and production sites overlap with a complex system of subcontracting chains. For example, Austrian trade unionists stressed the difficulty in coping with the problems that emerge in the subcontracting chain. The extreme volatility of productive relations together with a complicated information system, often makes it difficult for trade unionists to find posted workers and also to verify their contractual status. Hence, neither the works council reps nor the supervisors of the largest construction sites are able to verify the formal status of the workers. The introduction of mandatory site-ID cards, as in Finland, makes clear which worker works for which employer, among other things. This measure is also under discussion in other countries, e.g. in Austria.

Furthermore, the majority of posted workers are employed in sectors, such as construction and road transport, characterized by hyper-mobility and small-sized firms, which are in many countries historically characterized by a low rate of unionization. Among the main limitations encountered by trade unionists engaging with posted workers are linguistic and cultural barriers: a problem that many unions

have tried to overcome by providing translation services, often in an informal way (as in Finland and Italy). Moreover, as clearly emerged from the Italian case, the spatial segregation of groups of posted workers from the host society and sometimes from other groups of workers isolates them from unions’ outreach activities. In Austria, members of works councils made assumptions that posted workers would not be supportive of, aware of, or ready to consult with trade unions. They perceived posted workers either as accomplices of their employers or as victims of a mafia-style system who are unwilling or unable to fight. This view of posted workers as fundamentally “unorganizable” or as free movers appreciating the temporariness of work is also common among unionists. It has a basis in experience and cannot be neglected as an argument. On the other hand, it is not always true, and also dismisses the likely rationality of posted workers attitudes: they are simply not asked to become members, they are not well served by existing union structures, and they know it.

Unions often assume posted workers are not supportive of, aware of, or ready to consult with trade unions. They perceive posted workers as fundamentally “unorganizable” or as free movers appreciating the temporariness of work. This perception has a basis in experience and cannot be neglected as an argument. At the same time, it is not always true, and also dismisses the likely rationality of posted workers attitudes: they are simply not asked to become members, they are not well served by existing union structures, and they know it.

Furthermore, trade unionists stressed that the unionization of migrant, including posted, workers is often difficult because many of them have not had positive experiences with trade unions in their countries of origin and often have no knowledge of the role of trade unions. In some cases, the lack



of interest in trade unions is also influenced by an attitude of wage maximizing, which, by perceiving themselves as temporary workers, could inhibit a claim of their rights.

In this context, the free rider problem must be mentioned. Often, posted workers first contact unions after they have experienced severe mistreatment and expect or hope for immediate support, although they are not members of the union. In Finland, according to the construction union, it is sometimes difficult to find the balance between helping members and non-members. Union members have absolute priority, but in some cases the unions consider that helping non-members is justified.

Union interest in and responsibility for posted workers

In systems with a stronger workplace-based union presence such as in Italy, Finland and Norway, the active approaching of migrant workers, and among them posted workers, is more pronounced: in Italy grass-roots and traditional unions follow different approaches, with grass-roots unions being more open-minded and committed to organize and to empower migrant workers to self-organize. Italian traditional unions, conversely, in line with Finnish and Norwegian unions, acknowledge posting as an important issue in the context of migrant work in general: programmatically, they aim to supervise the interests of all workers regardless of the nationality or background of the worker. Strategically, they have devoted resources and efforts to approach, inform, and partly to represent and organize them.

In Austria, with some (novel) exceptions (see below), migrant workers as a group are not explicitly approached and organized by Austrian trade unions, neither are posted workers (Gächter 2000; Stern 2012).

In the Czech Republic, individual trade unions provide information for migrant workers in foreign languages, however their efforts vary. The ČMKOS provides information leaflets² in Mongolian, Bulgarian, Romanian and Ukrainian about the minimum

wage but also about the role of trade unions in collective bargaining in the Czech Republic. These leaflets do not target posted workers specifically and contain limited practical information about unions as such or about ways of joining unions.

Some sectoral unions provide information for posted (or migrant) workers. More specific and extensive information in foreign languages (Ukrainian, Russian, Romanian, Bulgarian, Polish, and English) is provided by Nové odbory - The New Union, which was established in 2016. This trade union also explicitly states an interest in including everyone, irrespective of nationality or citizenship³. Moreover, Nové odbory also offers the possibility of individual membership. In practice there is a low level of migrant workers in the union. Some NGOs, such as Diakonie are investing resources in active recruitment strategies (typically their activities include communication and distribution of informational materials in the housing facilities of migrants). It sometimes seems that NGOs replace trade unions as the primary representatives of migrant workers. However, posted workers are seldom encountered by NGOs. Their clients among posted workers are more often Ukrainians sent via Polish visas, who are often in an illegal position, which also limits their means to enforce labour rights. This could be the reason why they are communicating with NGOs more frequently than other posted workers. NGOs provide their services including legal and social consultations for free. This means that posted workers often decide to use the services provided by NGOs rather than those provided by unions (where they must become members first).

Another option is to use mafia or enforcer structures, i.e. actors that assist in collecting unpaid wages. However, this option does not constitute a systematic change in the violation of the rights of these workers. A relatively new practice that emerged in the Czech Republic is the so-called solidarity network, which helps to claim unpaid money using volunteers. Nevertheless, the possibilities for helping workers are marginal. (Trčka et al. 2018)

2. <https://www.cmkos.cz/obsah/771/zahranicni-zamestnanci>

3. Nove odbory's policy statement in English: <https://noveodbory.cz/images/Policy-statement.pdf>

A specific phenomenon is posting from third countries (Čaněk 2018). The workers posted through illegal practices do not approach institutional structures when facing problems at their workplace. Rather they use informal structures, such as the above-mentioned solidarity network.

A remarkable development is the increasing importance of advice centres and initiatives for migrant, including posted workers. NGOs or other explicitly non-union organizations, sometimes state-funded, as well as grass-roots unions are stepping in as advisors or advocates of workers in non-standard employment situations, among them posted workers. In Eastern Europe in particular, NGOs (e.g. Delavska svetovalnica, Slovenia) are taking over union-like roles. In Germany, “Fair Mobility” runs eight advice centres with different language and sectoral focus throughout the country since 2012. It is financed by the two federal ministries, whereas the political responsibility for this initiative lies with the German Trade Union Confederation (DGB) Executive Board. Advisors provide information leaflets on labour rights and minimum conditions, organize information events and also engage in outreach information to migrant workers. In cases of labour law violations, centres seek out-of-court clarifications, partly in cooperation with trade unions, and can create public pressure via the media or politics and help to clarify the options of a lawsuit. However, their aim is not to engage in collective bargaining negotiations or to organize migrant/posted workers or to represent them in court.

In some countries, advice centres and NGO-initiatives are becoming important as support structures for migrant including posted workers in cases of labour law violations. NGOs or other explicitly non-union organizations, sometimes state-funded, as well as grass-roots unions are stepping in as advisors or advocates of workers in non-standard employment situations.

In Italy, by contrast, grass-roots unions such as ADL-Cobas explicitly approach migrant and precarious workers to engage in strikes and collective struggles for better employment conditions. Increasingly, such non-traditional unions demand being accepted as partners in collective bargaining negotiations.

Union authority on job sites

Posted workers do not often come to unions through the expected channels; usually they do not encounter works council representatives or shop stewards in their firm to ask them to join the union, nor do they join Ghent-type unemployment schemes, nor do posted workers stick around long enough for an “organizing model” type campaign to reach them. A union’s authority and capacity to visit work sites and check up on adherence to standards is key to effectively being able to contact posted workers.

In Norway and Finland, trade unions at the work place level play a monitoring role. In Finland, the construction union Rakennusliitto monitors employers through firm-level shop stewards and site-level health and safety representative committees. The union also sends officials to sites to check on conditions by examining paperwork and talking to the workers. Union officials emphasize the importance of strong site-level networks across all the contractors in the monitoring and enforcement of standards. Because most difficulties in irregular employment circumstances arise with subcontractors in multi-firm constructions, site-level union structures allow the union to monitor smaller subcontractors, where there are less likely to be shop stewards. In particular, these site-level structures are important for the monitoring of foreign-based contractors and work agencies, who are the ones that employ posted workers.

In Norway, many shop stewards tip off the Labour Inspectorate about breaches in labour conditions

21. Interview at the Department for Labour Safety and Labour, Government Office of Budapest, 11 October 2017.

22. Telephone interview with Slovak labour inspector, Košice, 6 October 2017.

or low salaries, either at their own workplace if they cannot cope with the challenges or in subcontracting or neighbouring companies without trade union representatives. Labour inspectors who often have informal contacts with shop stewards in order to collect information appreciate these tip offs, and in such cases also cooperate. However, shop stewards are often frustrated because the Inspectorate is not able to exchange information about further proceedings with them due to confidentiality regulations. This point of view is also shared by Italian trade unions who are not allowed to access data via the Internal Market Information System (IMI) for instance. Hence, union action is inhibited by very slow flows of information about specific companies. In Austria, a representative of the construction workers' union Bau-Holz (GBH) makes a similar point:

“Authorities attend to their own business: financial police gather taxes; social security institutions gather social security contributions. Nobody cares about the wages. There is no comparable authority for this endeavour. We [the union] do not have any competence and permission to inspect. We even may not inspect files. Recently, a database on construction sites listing all new construction sites, was set up but neither we and nor the chamber of labour are authorized to look into it. It would really be a simplification for enforcing workers' claims if we had permission to consult this database. (...) We as workers reps are completely excluded, we who are actually claiming the wages.” (Trade unionist GBH, Austria)

Anti-union employers

Another element that can strongly influence whether posted workers seek protection is the attitude of employers and intermediaries who often exert strong control over the workforce. Workers fear, justifiably, that when approaching a union they might lose their job. In Norway, for example, many of the foreign workers' contracts are temporary contracts or de facto they have little protection. Thus

if the employer is not satisfied with the worker, he can choose not to offer him or her a new job. Both the uncertainty about their contract and their stay in Norway make it difficult for the unions to help them. This may also encourage workers not to approach the union during the active work period but to postpone an eventual meeting to the end of the working period. Likewise, in Italy some unionists referred to cases where after having convinced workers to denounce severe forms of labour exploitation by making the support of the union structures available, the workers dropped the charges as a result of pressure received from employers and intermediaries. The control exercised by employers or intermediaries (including through economic blackmail) are factors limiting trade union intervention and legal protection.

The control exercised by employers or intermediaries (including through economic blackmail) are factors limiting trade union intervention and legal protection.

Transnational Union Representation

A possible solution to the free-rider problem would be a transnationally portable membership. An important example is the European Migrant Workers Union (EMWU) promoted and supported by some German sectoral trade unions and in particular by the IG BAU. Despite being considered by some unionists as a positive experience, it has not succeeded in overcoming its organizational limits and thus becoming a fully useful representation body for posted workers. According to Greer et al. (2013), one of the reasons for the EMWU's failure was the scepticism of other European unions and the lack of real collaboration among them.

Several home and host country unions have signed mutual assistance agreements (Houwerzijl and van

23. Focus group interview, Estonian Labour Inspectorate's representative, Helsinki May 2017

24. Interview at the Department for Labour Safety and Labour, Government Office of Budapest, 11 October 2017.

Hoek 2011). For example, Eldring (2015) summarizes a case where in 2007 the Latvian builders' union (Latvijas Celtnieku Arodbiedrības - LCA) and the Norwegian United Federation of Trade Unions (Fellesforbundet) signed a cooperation agreement that commits both parties to organize, represent and enforce the rights of Latvian workers posted to the Norwegian construction sector. This means a member of LCA posted to Norway can rely on assistance from Fellesforbundet in disputes regarding wages and working conditions. The two unions also agreed on exchanging information on Latvian companies undertaking work in Norway and vice versa. The Norwegian union has also provided financial support to the Latvian trade union.

From 2014 to 2017, the largest Italian confederal trade union the Italian General Confederation of Labour (Confederazione Generale Italiana del Lavoro - CGIL) implemented a cooperation project on posting (Ride - Rights without borders) together with Romanian, Hungarian and Slovenian partners and in collaboration with the European Federation of Building and Wood Workers (EFBWW). The CGIL has recently launched another project, called TIDE POWER - (Trade unions in DEfence of POsted Workers). In addition, to advising expats and migrant workers, including posted workers, Italian unions have installed offices throughout Europe, that mainly deal with tax and social benefits issues. At the same time, difficulties regarding international cooperation with "some unions" from Eastern European countries were reported:

"What we experience as wage and social dumping, they [unions of the country of origin of posted workers] see as an opportunity for the economic growth." (Interview with CGIL, L'Aquila, Italy)

Often, however, international cooperation and transnational intervention are actually add-ons to programmes that continue to have the individual national level at the epicentre rather than being undertaken as autonomous programmes on a transnational basis. In most cases, these actions

are both bilateral and sectoral and do not concern a broader transnational plan (such as the pan-European labour market) or the economy as a whole. Yet, a transnational trade union approach could help unions to counter the erosion of their national power, as well as to influence European politics to implement a kind of transnational bargaining at least for those workers who are highly internationalized (such as in transport and construction).

Moreover, a strong transnational organization may directly access, through local branches, the bureaucratic structures of individual countries, and finally, may be a better instrument to meet the challenges arising from the internationalization of production systems (Greer, Ciupijus, & Lillie, 2013). Nonetheless, the current experiences of transnationalization such as the European Trade Union Confederation or the sectoral trade union federations operating at European level seem to be insufficient for dealing with today's challenges. Donaghey and Teague (2006) argue that phenomena such as labour migration should oblige unions to review the status of their supranational organizations by granting them greater autonomy, power and expertise in order to support processes of political legitimacy. Similarly, Greer et al. (2013) claim that without a valid instrument of international action, even the national collective agreements are difficult to enforce in relation to migrant labour and the phenomenon of posting.

A transnational trade union approach could help unions to counter the erosion of their national power, as well as to influence European politics to implement a kind of transnational bargaining.

A strong transnational organization may directly access, through local branches, the bureaucratic structures of individual countries, and finally, may be a better instrument to meet the challenges arising from the internationalization of production systems.



At European level, sectoral unions such as the EFBWW, European Federation of Food, Agriculture and Tourism Trade Unions (EFFAT), IndustriAll or the European Transport Workers' Federation (ETF) have established projects and programmes explicitly targeting mobile workers, among them posted workers. For example, the EFBWW hosts a website and an App providing concise information on wages, working conditions and the rights of construction workers for all European Countries in all European languages. Construction workers can find useful links and the contact details of trade unions representatives ready to help and support them in case of need: <https://www.constructionworkers.eu/en>.

Unions who are members of IndustriALL⁴ mutually accept membership of workers who are the member of another affiliate. This means instance that a Czech worker, who is a member of a trade union in the Czech Republic but who works in Austria can access advisory services in Austria without the need to become a member of the respective Austrian trade union, i.e. the advice will be provided on the basis of his/her Czech trade union membership. The same mechanism applies for foreign workers coming to the Czech Republic, who are members of unions in their state that is part of IndustriAll.

One example of a successful transnational union initiative is the establishment of a joint trade union cooperation office in Romania, encompassing transnational membership, organizing, advising and representing workers. Details are given in the box below.

ETF: Trade Union Joint Cooperation Office for truck drivers (<http://www.etfroadsectionblog.eu/>)

The European Transport Workers Federation (ETF) is active in establishing sustainable relations between national transport unions in Western and Eastern Europe to address the massive problems and violations reported by drivers on internatio-

nal journeys throughout Europe. This strategy was pushed forward as a key policy pointer in past ETF congresses. After four years of intense discussion, workshops and outreach work in parking areas that aimed to combine practical work with debates on how an effective cross-border cooperation should be structured, a cooperation office in Romania opened in September 2017. Information, advice, representation and organizing of drivers were identified as the main priorities..

This initiative is carried out and supported by the Romanian truckers' union (SLT), a Danish union (3F), two Belgian unions (BB-UBT, ACV-Transcom), the Swedish blue-collar union and the Dutch FNV. Each union financially supports the office in Romania and contributes to the capacity building of the Romanian trade union. The cooperation office works on a mutual assistance basis. A driver who is a member of the Romanian union is assisted by the respective project partners in Belgium, Sweden, Denmark and the Netherlands when he/she experiences problems at the workplace in their countries and he/she benefits from assistance there. The support comprises legal assistance but also assistance in case of road side checks, seizure of the vehicle or imposition of fines the driver feels are not correctly applied. An important aspect of this joint union cooperation is the sustainable capacity building of the SLT union in Romania. This also means that drivers are encouraged first and foremost to become members of the Romanian trade union.

In the meantime, SLT is quite successful in recruiting new union members. With the support of the Romanian labour inspectorate, SLT has brought 14 court cases against non-compliant Romanian employers. With the help of the partner unions in Western Europe, 50 cases of infringements have been solved out-of-court. SLT also develops policy-oriented strategies to lobby for drivers' interests at European and national policy level.

4. <http://www.industrial-union.org/>

Recruitment and organizing campaigns

Successful union recruitment campaigns are often based on a combination of leadership and bottom-up approaches and on the simultaneous involvement of centralized and local structures. Literature on union organizing, including of migrant workers, suggests that aggressive campaigning, following an “organizing model” strategy can help to recruit workers. These campaigns are resource intensive, however. Many unions will not have the resources, and even if they do, they may not find it worthwhile. The high turnover and effort to organize posted workers makes it difficult to justify the effort required (Berntsen and Lillie 2016).

However, successes, notably in the case of organizing construction workers involved in the construction of the Copenhagen metro, could be regarded as an alternative exceptional strategy for unionizing posted workers (Arnholtz 2018): It focused on union presence in some companies (the ‘best’ ones) and the involvement of high-skilled workers who were also the easiest to organize. The representation of these workers legitimized the union’s presence in the workplace and allowed the trade union to track irregular business practices.

A particularly useful approach in organizing highly mobile and precarious workers employed in small-sized and geographically dispersed firms has turned out to be the «zonal» approach in which union activity moves away from sectoral or company intervention and proceeds to local and territorial areas, thus involving workers of different sectors (Alberti and Danaj 2017).

Often, successful campaigns for organizing migrant workers were based on building large coalitions with other stakeholders such as civil society, community organizations, customers, social movements and on using highly creative tactics to get public and media support and to put pressure on employers. This includes using strong media exposure as a strategy to pressure employers. Thus, organizing campaigns both mobilize and recruit posted workers at the

same time, and also attempt to bring pressure on intransigent employers in other ways.

Organizing campaigns both mobilize and recruit posted workers at the same time, and also attempt to bring pressure on intransigent employers in other ways.

Sometimes, trust is built through relationships established with individual personalities such as community leaders or key persons who, if enthusiastic about their trade union path, can help their compatriots to approach trade unions. For example, in Norway, unions try to establish relationships with and convince workers, who have a powerful voice within their groups and can act as agents, helping their colleagues and facilitating union action. As a Norwegian unionist stressed:

“It was very difficult to organize the Polish workers, but then we got hold of one strong person, and it was done! All the others became members. It was very important that the national trade union had information and registration forms in several languages”(local shop steward, The Norwegian Food and Allied Workers Union).

In the workplace, an important means of approaching posted workers and gaining their trust is to appoint or elect a union representative among them. For example, the Finnish trade union SL had positive experiences with electricians who had joined the union at the sites where an SL representative had been elected. However, with SL resources it is only possible to organize a special representative for posted workers when there are many of them in a single workplace. By contrast, some unionists stressed that appointing a representative does not always have a positive effect since the unionization rates of posted and migrant workers are principally related to the length of the working period.



Preventive instruments to safeguard labour standards in subcontracting chains

Posted workers often are most severely exploited in the more complicated and dubious subcontracting chains. One preventive instrument against abusive employers is the obligatory and advance announcement of subcontracting firms. In Norway, Finland and Italy, collective agreements state that - where applicable - unions and competent authorities (in Italy for instance Cassa Edile) must be notified about the use of subcontractors, the number of posted workers employed and about the beginning of the construction works.

In Norway, subcontractors are also audited before being hired, and this includes the unions' assessment of whether subcontractors meet their obligations regarding wages and working conditions. In such cases, foreign workers can be approached in advance to inform them about their rights. In many of the large companies within shipbuilding, construction, or fish processing, local trade union representatives play an important role as watch dogs when it comes to wages and working conditions for workers employed by foreign sub-contractors. However, a prerequisite for this involvement is a solid union member base, an employer that is interested in following the rules and local trade union representatives that treat this work as a priority.

Another instrument in the same vein is the establishment of project level agreements, used in Italy and Finland. These are advance agreements among unions, contractors, buyers and other public bodies before the beginning of a construction project, aimed at establishing a common rules framework. In Italy, this tool was used by the unions during the construction of Milan EXPO 2015 and, according to unionists, in addition to producing significant improvements in terms of workers' safety, allowed the trade unionists to control the living and working conditions of the posted workers employed there, and ensure compliance with Italian collective agreements (including remuneration).

According to the Finnish Industrial union (Teollisuusliitto, TL), on big construction sites involving work falling under multiple union jurisdictions, it makes sense to build a cooperative team of representatives from different trade unions (RL and the Finnish Electrical Workers' Union Sähköliitto, SL, are a part of these). Trade union action at the site is discussed and agreed with the client in good time before the beginning of the work. TL considers their current system good practice: cooperation between the union representatives, employers and future employers ensures that problems regarding working conditions will be solved easily and efficiently. Through these sorts of site-level structures, foreign service providers and their workers are also learn about site-level safety procedures and industrial relations norms.

An effective instrument against abusive employers is the establishment of project level agreements, used in Italy and Finland, which provide advance agreement among unions, contractors, buyers and other public bodies before the beginning of a construction project, aimed at establishing a common rules framework.

Pressuring employers

Sometimes, contractors and client firms of transnational service providers who use posted workers cooperate, to different degrees, with unions, and allow them to do their representation work.

In Norway, for example, a large construction contract was entrusted to a Spanish-Italian contractor a few years ago. Before the project started, the contractor's management asked for a meeting with the Norwegian unions. The company wanted to ensure compliance with the contractual and salary conditions, according to Norwegian laws and collective agreements. The union has developed a strong and



respectful relationship with company management and were encouraged to inform and organize workers at the sites. The results were the recruitment of about 900 new union members (mainly workers from Italy and Spain), a local collective agreement, a full-time shop steward and a mobile union office on the site. In addition, all workers' delegates attended courses to learn about the Norwegian labour market system, and employers benefited from agreed working time arrangements that were more flexible than permitted by the Working Environment Law.

Other times, companies resist cooperation and need to be convinced. Unions have traditionally used strikes to confront reluctant employers but that is not always an option, and so unions need a variety of tactics in their toolbox.

A key tactic many unions use to pressure negligent employers has been strong media pressure. This media pressure and the attention paid by public opinion can increase the willingness of posted workers to trust unions by reducing the fear of employer retaliation. For instance, in Italy, (Milan and L'Aquila), there was strong media coverage of disputes involving some posted workers, and in the case of Milan, the union held protests during the inauguration of a building where there had been problems over the rights of posted workers.

A key tactic many unions use to pressure negligent employers has been strong media pressure. This media pressure and the attention paid by public opinion can increase the willingness of posted workers to trust the unions by reducing the fear of employer retaliation.

In Austria, collaboration between NGOs and trade unions seems to be stronger and more institutionalized than in other case study countries, as demonstrated by the Sezonieri campaign, which could be considered as a successful attempt to combine self-organizing, NGO support and traditional union

structures⁵. It is a joint initiative run by the union of industrial workers (Pro-Ge), NGOs and activists to support harvest workers. The main goal is to raise awareness about existing collective bargaining rights, labour and social law, as well as to offer support in enforcing these rights at the individual and collective levels. Most harvest workers are migrants and their average stay in Austria only lasts a few weeks. Often they have almost no knowledge about their rights. Sezonieri provides free and anonymous advice in the native language of the workers: via posters, leaflets that are directly distributed in the fields, a website (sezonieri.at), and info-hotlines.

In addition, the Sezonieri Campaign supports labour struggles and self-organizing. In autumn 2013, about 70 land workers from Romania and Serbia decided to down tools. With the help of a highly visible protest, they drew public attention to their unbearable working conditions. Next, these workers approached the trade union Pro-Ge in order to fight against their exploitation. This was the kick-off of the Sezonieri Campaign for seasonal harvest workers in Austria. Throughout the campaign Pro-Ge successfully managed to fight for wage claims that had been denied by employers. In part, the campaign achieved further, but more indirect improvements – for instance through strengthening the negotiation powers of seasonal workers by providing legal information; or by raising public pressure and thereby forcing employers to give in to workers' demands.

Boycotts and Blockades

The Finnish RL keeps a blacklist of contractors that are boycotted due to non-compliance with the collective agreement. Contractors which work with blacklisted firms may find themselves subject to site-level blockades. Boycotts are used also in the electrical sector. When a boycott occurs (or is threatened) RL and SL usually share the same interests and cooperate. The system works as a deterrent and a remedy of last resort - subcontractors

5. <http://www.sezonieri.at>

for firms avoid falling onto the blacklist and main contractors avoid being associated with those on the blacklist. While there are a large number of firms on the blacklist, blockades occur very rarely in practice. Usually it is sufficient to make the main contractor aware that there is a problem or that a blacklisted subcontractor is on site: the main contractor will generally fix the problem and/or end the relationship before a blockade becomes necessary.

The extended collective agreement provides Finnish unions with legal grounds for using industrial action if contractors, also including foreign subcontractors, do not comply with the CBA. In contrast to the situation in Sweden which precipitated the Laval judgement, these grounds are compatible with the EU regulatory framework set out by the Laval decision, because the unions are defending a clear, legally established standard. The compatibility of Finnish collective agreement provisions with Laval and the PWD has been confirmed, for example, by the CJEU's Sähköliitto decision, while the wording of the Laval decision implies that industrial action is permitted for the purposes of defending a clear, legally established standard which applies to both foreign and domestic firms equally.⁶ Therefore, unlike the unions in Sweden, or Denmark - or for slightly different reasons Germany⁷ - Finnish unions have not found that the Laval Quartet judgements constrain their activities. For this reason, the RL has not felt the need for major changes in its strategy or in the Finnish industrial relations system to allow it to continue to enforce its collective agreements.

The fact that site blockades can be used to defend the collective agreement does not imply that they generally are, particularly given recent improvements in the legal framework in Finland such as better tax monitoring and ID cards, which provide other instruments to limit the grey economy and prevent employer fraud. The RL's policy of blacklisting seriously negligent employers remains in effect, however, and the RL has the legal right and means to execute site blockades as a means to remedy

serious breaches of labour standards which cannot be remedied any other way.

Cooperation with Authorities to fight the grey economy

In Finland, a mandatory ID-card system (to identify which workers work for which employers) and tax code legislation in the construction industry have proven to be useful practices for preventing a grey economy. One problem however is monitoring the use of ID-cards, especially on small construction sites and in the energy sector. According to the opinion of one union (RL), increased inspections are not seen as an option to prevent social dumping because inspection resources are already stretched to a limit. The solution should rather be found on the system level: Dishonest firms should not have access to construction sites at all.

The RL maintains that the introduction of new regulations and tightening of their enforcement has made it difficult for unethical actors to conduct business in Finland. Serious problems are less common than they used to be, and when they do come to light, employers and authorities are usually willing and able to resolve them in a way which ensures the workers in question receive their due.

The cooperation of unions with the authorities proves to be an effective way to prevent fraudulent practices by companies. In the Finnish construction industry, a mandatory ID-card system has been introduced to identify and to check which worker works for which employer. In Italy and Austria, the social security funds of the construction workers play an important role in uncovering violations of posted workers' rights and cooperating through crosschecks with unions.

6. The employer's representative we spoke to at SY disagreed that the established standards are clear enough. >>>

7. In the German case, it is not the Laval and Viking judgement which directly affected their regulatory system, but rather Rueffert, with its restrictions on imposing wage standards through public procurement processes.



By contrast, in the Czech Republic there is less cooperation. Trade unions in the Czech Republic focus on collective bargaining and negotiation with government and employers in order to influence or change policies and legislation drafts (Čaněk, 2017, pp. 309). Tripartism is institutionalized in the Czech Republic in the “Council of Economic and Social Accord” (RHSD) which includes representatives of government, trade unions (namely representatives of the two biggest trade unions confederations - ČMKOS and ASO) and employer or company federations. Cooperation among national authorities and workers’ representative organizations (unions, NGOs, works councils, etc.) is also very limited (not only on the issue of posting of workers). However, a project was carried out jointly by local NGOs (Diakonie), SUIP (labour inspectorate) and the Ministry of Labour and Social Affairs (Inovacemi k prevenci pracovního vykořisťování občanů EU). The aim of this project was to inform Bulgarian citizens who worked in the Czech Republic about their labour rights.

An important role is played in the construction sector in Italy and Austria by construction workers social security funds, respectively the Cassa Edile and the BUAK (Construction Workers’ Holiday and Severance Payment Fund). In Austria, the BUAK is an important institution chaired by social partners (both unions and employers’ organizations). Through a system of inspectors, the BUAK is able to check the regularity of wages and other workers’ rights, including the rights of posted workers. Indeed, all construction workers in Austria are entitled to receive benefits from the social security fund. This means that companies (including foreign companies) operating in Austria are obliged to pay additional payments to BUAK for the duration of posting contracts. In 2011, the new law to fight wage and social dumping came into effect. The BUAK has been authorized to carry out checks on payments in the event of posting or temporary cross-border agency work in the construction sector.

In Italy, the Cassa Edile is an important bilateral institution chaired by the social partners. The Cassa

Edile does not inspect production sites or working conditions. Its task is to collect employee social security contributions and distribute these funds as benefits to construction workers. In some cases, however its role has proved to be very important in uncovering some violations of posted workers’ rights thanks especially to its system of crosschecks. The national collective agreement for the construction sector states both that the general contractor (the leading company) must provide Cassa Edile with the list of companies in its subcontractor chain (including those using posted workers) and that the general contractors (adjudicating entities) must take responsibility, through the principle of joint liability, for compliance with the contractual conditions by subcontracting companies too. The Cassa Edile can compare the data of the companies that pay workers’ contributions with the companies on the list. If the data does not correspond to the list (for example, if a company present in the subcontracting list is not registered at the Cassa Edile) Cassa Edile officials may request an inspection. In addition, in case of irregularities, Cassa Edile can refuse to issue the Durc model (which is a document that certifies the payment of social contributions by firms) without which the companies cannot participate in the assignment of works. The system of cross-checking was fundamental in at least two cases (Florence and Milan). However, this tool cannot always be activated. In particular, unionists stressed that since Cassa Edile is also organized on a territorial basis, it might not have uniform attention to irregularities and its actions differ according to the context.

An example of how to prevent wage and social dumping has been established in maritime transport: union-based inspectors are empowered to inspect working conditions on vessels. Many ships on international waterways are registered under the so called “flags of convenience”. This means that the ship’s owners register a merchant ship in the shipping register of a country other than that of the ship’s owners, and the ship flies under that country’s en-



sign, or flag state. They seek out the countries that apply the lowest working conditions and hire staff under those low standards. However, some of these ships are nevertheless covered by collective bargaining agreements, approved by the International Transport Workers Federation (ITF). The conditions set in these agreements are subject to potential inspections, carried out by inspectors, employed by the ITF's member unions. In doing so, they play an important role in safeguarding working conditions, advising workers and intervening and helping in cases of abusive employer practice (e.g. in case of abandonment). Although this arrangement is particular and sector-specific, it is a good example of how to implement internationally applicable and enforceable conventions and of additional functions for unions in employment relations that stretch beyond national borders.

In the maritime industry, working conditions on international vessels are subject to inspections by International Transport Workers' Federation inspectors. This practice shows how internationally applicable and enforceable conventions could be implemented effectively if trade unions have the capacity to carry out inspections.

Information about Labour Standards and Employer Obligations

Fraudulent practices can also be prevented by providing targeted and effective information for posted workers and companies about posted workers' labour rights and entitlements in the receiving country. In some cases, fraud is not deliberate, and can be prevented by making available clear and unambiguous information about standards. In any case, information about national standards and requirements (such as workers' entitlements) should be (and generally is) readily available, or enforcement of those standards on foreign services providers could be found to violate freedom of movement rights.

In all of the case-study countries, the main information for posted workers and posting employers including minimum wage requirements and employment regulations and the steps required to ensure compliance with these laws, can be accessed on multilingual websites administered by the state authorities.

However, official information sites might not be sufficient, as rules and regulations can be complicated or relevant information is just not looked up or found. Direct contact with and information for the posted workers by unionists is still poorly developed in several countries, although good practices, like union-operated information centres for migrant workers are gaining more ground. For example, recently an advice and information centre *Faire Arbeit / Fair Work* has been set up in Styria (in southern Austria on the border with Slovenia) and explicitly addresses workers posted from Slovenia to Austria. It cooperates closely with BUAK to inform posted workers about their rights. They receive - together with the notification to be registered with the BUAK - an information letter in Slovenian about the advice centre. Unionists also reach out to construction sites to approach workers and distribute leaflets. The workers welcome the possibility of an anonymous advisory service in Slovenian. They have to arrange an appointment in advance for personal advice. This provision of information also has a preventive effect according to the trade union Bau-Holz (GBH):

"If we inform people about their entitlements, how much they are entitled to receive on construction sites in Austria - often they are really surprised about the amount - this has a preventive character. He [the worker] spreads the word about wage levels, working hours etc. and about the existence of our counselling centre - and that's more than preventive."
(Trade unionist, GBH, Austria).



A common feature of activities implemented by unions in some European countries seems to be the need to provide information to migrant and posted workers on collective agreements and workers' rights, including the remuneration levels of the host country. An important part of this work by trade unions is the effort made to overcome linguistic barriers, considered one of the main problems in organizing posted workers.

In Finland, unions ensure their websites are multi-lingual and during the organization of information events union members distribute multilingual flyers. The Finnish trade union RL has Russian and Estonian mother-tongue members who monitor working conditions. Tools such as Google Translate (Finland) or video interpretation (Austria) are also used to help workers and overcome language problems. Norwegian unions have invested human and financial resources to provide interpretation services and overcome the language problems of transnational workers. In Italy, the CGIL union informally involved an external person - from the same country of those workers - in order to translate workers' claims. Attempts to provide information in different languages and to guarantee interpretation services have proved to be an important success factor in reaching and representing posted workers. However, beyond these services, posted workers don't seem to be a particular target group for unions. In fact, Austria is the only country in which specific activities for posted workers have been launched. Norwegian and Finnish trade unions address some needs of posted workers within the frame of initiatives targeting the broader group of migrant workers. In Italy, the unions provide information to workers (all workers) on national collective agreements, but these actions do not target any specific group, so are not tailored to the needs of posted workers.

Other important initiatives implemented by the unions of some countries include the opening of information and support centres directly in the sending countries. The main objective of this strategy is to give workers information about the receiving countries and to help them to solve problems. For example, for some time the Finnish trade union RL

had an office in Tallinn that provided information for Estonians considering working or already working in Finland, but this was closed (highlighting the short-term project-nature of these kind of initiatives). The Italian CGIL union also has several offices in European countries, although their function is to offer tax assistance both to Italian expats and migrant workers (who work or have worked in Italy). However, in some cases the local structures of the CGIL have asked their foreign departments both to provide information to posted workers (before leaving) and to obtain information on the regularity of the companies' tax and social security contributions.

Targeted, unambiguous and effective information for posted workers and companies about posted workers' labour rights and entitlements prevents abusive and fraudulent practices. In many European countries, multilingual information administered by state authorities is available. However, official information sites might not be sufficient. Hence, union-operated information centres for migrant workers, such as the Austrian GBH initiative "Faire Arbeit / Fair Work" have been set up to provide direct, multilingual and low-threshold advice for posted workers.

Access to Courts and subcontracting liability

Regulation, information and union representation for posted workers are necessary to safeguard labour standards; however, it is essential that workers are able to claim effectively what they are entitled to. Which institutions consider themselves responsible for this task? Who supports posted workers in enforcing their rights?

Due to the bi- or sometimes even multinational circumstances of cases, responsibilities become ambiguous, difficult to undertake, and costly. When it comes to workers' concerns about underpayment or non-payment of wages, they may be hesitant to contact the relevant state institutions inspecting wages for clarification of their entitlements.



In Austria, there is a system of “chambers” to provide due process for workers, but posted workers do not necessarily have access to this system. It is obligatory for every worker employed by a firm based in Austria and who pays a social security contribution in Austria to be a member of the chamber of labour. The worker pays 0.5% of their gross salary as a membership fee to the chamber. It is the most important institution advising employees about their labour and social rights. It also represents workers before the labour court in cases of claims against employers for non-payment of money owed. According to a survey in 2011 among migrant workers, the chamber of labour is the first and most frequently consulted information source and contact point for labour law related concerns (60%) (Riesenfelder et al. 2011). It is not obligatory for posted workers to be members of the chamber of labour since their social insurance is paid abroad. There is an ongoing discussion within the institution about whether posted workers can nevertheless be advised and furthermore represented by the chamber when they approach it for support. In Vienna, for instance, posted workers are represented in exceptional cases, namely “if a bigger number of employees is affected, and as a consequence, their representation is of general interest, namely to protect the Austrian wage level.” (Chamber of Labour, Austria). In an ongoing debate about the chamber’s position on the question of representation of posted workers there are two standpoints: on the one hand, representation should be strictly limited to members, i.e. workers paying social insurance contributions in Austria. The other option would be an extension of the chamber’s representative mandate to individual posted workers, even though they are not members. Such a step would considerably increase posted workers’ protection. The rationale in this case is that many posted workers approaching the chamber are falsely declared as posted, hence they actually should be socially insured in Austria and then they would automatically be members.

When the chamber agrees to represent workers, it is a long and tedious process, as is described in the

following case: 10-15 construction workers, posted by a firm based in Slovakia and socially insured there, worked on a construction site in Vienna. They only received part or none of their wages. The chamber of labour represented these workers in the labour court. First, charges have to be brought in Austria. They are translated and then delivered to the company’s office abroad. This procedure takes quite a long time, in this case the delivery was delayed further because the firm’s delivery address was one of a so-called letter-box company. Eventually, the order to make payment was delivered, an objection was raised but finally a default judgement was given. At the time of writing, the order for execution is pending. The chamber was successful in claiming the workers’ entitlement in court, but the collectability of the claim is difficult: collection proceedings are conducted against the Slovakian firm, but success is unlikely. How, then, are entitlements secured? An option could be the bankruptcy compensation fund in Slovakia - if such a fund exists - or in Austria if the Austrian contractor considers itself responsible for compensation (due to the link to Austria, the construction site).

In the Czech Republic, the main institution that posted workers can turn to in case of labour rights violations is the State Labour Inspectorate (SUIP). SUIP provides basic information in foreign languages (French, Polish, Ukrainian, German, Bulgarian, Romanian, Vietnamese and Russian) about the rights of workers in the Czech Republic, including specific information for posted workers. In cases of labour rights violations, an electronic complaint form must be filled in – and it is only available in Czech. The possible barriers to using this electronic complaint form are not be limited to language but also the complexity of the form, and insufficient information about this complaint mechanism. The state inspectorate cannot enforce individual workers’ rights: the worker him/herself would have to sue the employer for unpaid wages. However, this is a long and expensive process and access to



legal representation for foreigners is limited. NGO lawyers or pro-bono lawyers could be an option, but their capacity is limited. Posted workers have often returned to their country of origin by the time the legal process begins.

In some countries, the difficulties faced by trade unions and PWs are exacerbated by particular legislative provisions. In the Czech Republic, for example, if undocumented workers decide to sue their employer for an infringement of their rights, they encounter many obstacles: Posted workers need «proof» of employment in the case of illegal work because there is nothing that can be done in relation to the theft of salaries if there is no evidence that the worker has been hired. So, in the case of posting through Polish visas, help is not feasible under the current legislation.

In Finland, unions do usually help mistreated posted workers, e.g. to claim wages, whether they are union members or not. However, if representation goes to court, the posted worker must be a union member for a certain period, or employ his or her own lawyer. Most of the problems can be solved at work place level, anyway, and this is considered as part of the unions' role. Unions represent workers individually or collectively in court over claims regarding their employers. Unions' protection and support of non-members is subject to an on-going debate. For the construction workers union RL support for non-members is in certain cases justified if the social impact and also the effect on members' employment is high enough. RL members' jobs and working standards can be secured by getting dishonest firms out of the market. In addition, supporting non-members helps to inspire their confidence in the union and takes the message of the union forward among workers. If a non-member migrant/posted worker has been helped by the union at some point the worker is usually very grateful and will most likely become a loyal union member if he/she decides to stay in Finland.

Unions' protection and support of non-members and their representation in court over claims is the subject of on-going debate. Union members' jobs and working standards can be secured by getting dishonest firms out of the market. In addition, supporting non-members helps to inspire their confidence in the union and helps spread the union message among workers.

Because of the way supply chains are structured, subcontracting liability is often the only option available for workers who have been abandoned by their employer. The rules regulating liability in subcontracting chains have proved to be a useful tool for the protection of posted workers, especially in cases of non-payment of wages and social contributions or when employers disappear. Although minimal, these regulations have represented a protection against some of the most serious perversions of the phenomenon of letter-box companies. Subcontracting liability arrangements, however, are very diverse and vary from country to country.

In countries like Germany and Norway, liability extends to the whole chain, thus offering better guarantees that workers will receive their remuneration when the direct employer (or next in the chain) is not complying. However, workers also have to know how to use the liability regulation to their advantage. An important advisory and support organization for workers to claim liability throughout the supply chain is Fair mobility/Faire Mobilität, a project run by the German union umbrella organization. It provides advisory services and assists in the enforcement of fair wages and working conditions for migrant workers from Central and Eastern European (CEE) countries on the German labour market. A recent example is the case of a Czech lorry driver posted from a Czech transport company to provide transport services for Deutsche Post-DHL⁸. The worker was only paid the Czech wage plus reimbursement for daily expenses - which is incorrect in such a situation. Faire Mobilität helped to claim (informally, not via a court decision) the German wage from Deutsche Post-DHL who was the principal contractor of this service. This out-of-court settlement was an exemplary case for

8. <http://www.faire-mobilitaet.de/++co++dc23c90c-c229-11e7-b140-52540088cada>

enforcing liability claims in the logistics sector. Many more drivers have become aware of this possibility.

Rules regulating liability in subcontracting chains – though minimal and varied in their cover - have proved to be another useful tool for the protection of posted workers.

Crucial for their effectiveness is that workers know how to use the liability regulation to their advantage. Advisory and support organizations for workers, such as Fair mobility/Faire Mobilität in Germany help to enforce liability claims.

Likewise, in Italy, the principle of «joint liability» (governed by various articles of the civil code and law n° 92/2012) establishes joint and several liability for the contracting companies. This principle has become an important tool for union action and verification to ensure wages and social benefits. In one of the major cases concerning the posting of workers in Italy (Military academy in Florence), irregularities were found thanks to the cross-checks made by the Cassa Edile which noted the presence of workers in a posting without prior communication. Cassa Edile staff then requested trade unions and labour inspectors to carry out checks on the workplace. The case of Florence is particularly interesting not only because it was a public work project, but especially because unionists from the Fillea-CGIL (the major Italian construction union) regularly went to the site, especially during the lunch break. The union delegates had not noticed the presence of Hungarian workers (hired by a Romanian construction company but managed by an Italian owner) since they did not eat in the company canteen with other workers, they were sent to a shack to eat alone.

In Austria, the Anti-Wage and Social Dumping Act foresees the liability of the direct contractor (and in specific cases also for the principal contractor) in construction works and related cleaning works. Posted workers can assert their claims (in case the direct employer is not paying) to the applicable minimum wage in Austria against the client commissioning the construction/cleaning works.

To assert claims, the worker has to inform the Construction Workers' Holiday and Severance Pay Fund (BUAK) of the pay claim by no later than eight weeks from when the pay was due. The BUAK investigates the details on which the pay claim is based and supports employees in calculating the amount of claimed wages and in identifying the client potentially liable for covering the claim. Finally, BUAK informs the client, the contractor and the employee of the results of the investigations. If the client does not, however, pay the amount specified by the BUAK, the employee must bring a civil action against the client.

For BUAK and the Chamber of Labour, the period for filing the claims is unrealistically short because workers do not know about this possibility and do not come in time. Hence, the abolition of these periods is an important demand of the Chamber of Labour: "The legislation has created a loophole for employers here. Elsewhere, expiry periods are much longer, up to three years. This is the only occasion such short expiry periods are in place." In addition, as the representative of the Chamber of Labour states, the enforcement of liability claims is illusory without institutional support. Hence, liability claims from the contractor are just as difficult to claim as entitlements abroad. This is due to the short expiration period but also due to the complicated constructions and fraudulent business practices in subcontracting chains involving bogus companies.

"The cases we are pursuing because we consider them as having a chance of success are selected cases involving public procurement and that are well documented. This year up until now (May 2018), I have two cases that are prosecuted before court. It is impossible to accomplish more cases. It involves an incredible amount of research work. And you have to motivate workers to keep up with the proceedings. They must stay or come back when the court proceeding takes place. However they are very mobile, working one time here and next month in Germany." (Chamber of Labour, Austria)



Unions' endeavours to help posted workers with cases through the court system are tedious, time consuming, and often constrained by legal barriers and the transient nature of posted workers' jobs. Realistic expiration periods for claims, collective redress and unambiguous mandates of unions or other posted worker support structures to represent them before court strengthen posted workers positions vis-à-vis abusive employers.

In Finland, "contractors are required to ensure that their partners comply with statutory requirements before signing a subcontracting or temporary agency work agreement."⁹ Contractors must obtain all the reports and certificates specified in the Act on the Contractor's Obligations and Liability when Work is Contracted Out. The aim of the Act is to prevent the grey economy, and to promote equal competition between companies as well as compliance with terms of employment.¹⁰

According to the construction union RL the Act on the Contractor's Obligations and Liability when Work is Contracted Out is a good tool but there are loopholes. The main problem is that if the chain is long, liability does not apply to the principal contractor (only to the next contractor up in the chain). For the unions RL and SL the ideal would be to have a chain liability, but in Finland this is unlikely because the employers are against that.

In Norway, chain liability for wages, introduced in 2010, in the areas covered by an extended collective agreement means that all contractors in the chain are liable for the unpaid wages and holiday pay of employees further down in the chain. The individual worker has to make the claim, but the trade unions might assist them. Payment of wages is a matter of civil law. According to a study, there has been limited use of this possibility to claim unpaid wages, even though trade unions had very strong claims regarding chain liability for many years before it was introduced. Too little knowledge and limitations in the system may be the reason for

its limited use. A lack of documentation and cases becoming too old (older than three months) are two points given as explanations (Alsos and Eldring 2014).

4. Conclusion

Our research of five country-cases, Norway, Czech Republic, Finland, Italy, and Austria, reveals significant variations between countries in the way posted workers are approached and represented by trade unions. Posting needs to be regarded as a form of migrant work alongside other ways of managing recruitment and employment. Migrant workers are generally harder to organize and represent than non-migrants and are usually in a more precarious employment situation. Nonetheless, it is clear that posting specifically undermines worker access to industrial democracy in ways that reinforce other factors which contribute to precarious employment.

First, posted workers do not have a clear right to join or form trade unions or works councils. While unions do try to organize and/or represent posted workers, there is evidence that when posted workers do join or otherwise engage with unions, they might be fired or not get their contracts extended. This situation is exacerbated by the fact that union representation is structured along national lines, that unions and works councils often do not have the right or the capacity to represent workers in the subcontractor firms where posted workers often work, and posted workers do not have a clear possibility to exercise their right to strike.

National bargaining systems where the extended collective agreements are automatically applied to posted workers provide one solution to the problem of posted worker rights: posted workers, despite not being union members, have de jure access to the labour standards in the collective agreement. Whether they have practical access to the processes for enforcing those agreements, however,

9. <http://www.tyosuojelu.fi/web/en/black-economy/contractor-s-obligations-and-liability>

10. <https://www.tilajavastuu.fi/en/act-on-the-contractors-obligations-and-liability-when-work-is-contracted-out/>

depends from one context to another. In countries such as Norway and Finland, where unions are assertive about visiting work sites, inspecting contracts and talking to posted workers about their conditions, posted workers do have access - although it is difficult and risky to use, and requires resource intensive enforcement activities by the unions. In other places, such as Austria, where the posted work issue has not been tackled as systematically, access is not as clear.

This said, extended collective agreements do not solve the issue of industrial democracy. From the union perspective, they are forced into a position where they are expected to defend the interests of free riders - i.e. workers who benefit from the collective agreement but do not pay dues (or do pay, but only for a short period) or mobilize in defence of collective worker interests. From the perspective of the posted workers, there is no opportunity to participate in union activism or union democracy, and to have their voices and distinctive interests represented via union influence. Some unions have made special efforts to provide specific structures and opportunities for migrant workers, such as, for example, the Finnish Construction Trade Union's migrant worker section. This, however, does not resolve the problem for posted workers - for whom there are more difficult and fundamental barriers to union participation.

Likewise, posted workers do not have practical access to host country labour court systems. While some cases have been pursued successfully in some countries, these are the exception, rather than the rule. Furthermore, in Austria, there is no systematic and equal (including equally free of charge) possibility for posted worker access because of the way worker representation in the labour courts is organized.

As a result, unions and migrant rights NGOs have been compelled in many cases to pursue campaigns and similar means to seek redress for workers whose rights have not been respected. Media attention to examples of workers being abused as

a result of EU free movement sometimes adds to pressure on employers to resolve outstanding complaints of wage theft and other issues.

In conclusion, while recent steps such as the Enforcement Directive, and the revision of the Posted Workers Directive, demonstrate a serious political effort at the EU level to address the regulatory problems raised by posted work, they are unlikely to serve as more than a starting point to be built on - by unionists and NGOs in the field, in national politics, through transnational cooperation and in the European Union institutions.



53. Focus group, Finnish Labour inspector, Helsinki, 24 May 2017.

54. <https://www.etuc.org/press/revision-posting-workers-directive-justice-workers-now-depends-meps#.WfxtlWeGd44>

References

- Alberti, G. & Danaj, S. (2017). 'Posting and Agency Work in British Construction and Hospitality: The Role of Regulation in differentiating the Experiences of Migrants'. *The International Journal of Human Resource Management*, 28, 1-24. [10.1080/09585192.2017.1365746](https://doi.org/10.1080/09585192.2017.1365746).
- Alsos, K. & L. Eldring (2014). *Solidaransvar for lønn*. Fafo-rapport 2014:15.
- Arnholtz, J. (2014). *A 'legal revolution' in the European field of posting? Narratives of uncertainty, politics and extraordinary vents*. Unpublished PhD thesis, Department of Sociology, University of Copenhagen.
- Arnholtz, J. (2018). *Active enactment and virtuous circles of employment relations: how Danish unions organised the transnationalised Copenhagen Metro construction project*.
- Astleithner, F. & Flecker, J. (2017). *From the golden age to the gilded cage? Austrian trade unions, social partnership and the crisis*. In: Lehndorff, S., Dribbusch, H. & Schulten, T.: Rough waters - European trade unions in a time of the crises. Brussels: ETUI. 173-196
- Baccaro, L., Hamann, K. & Turner, L. (2003). 'The politics of labour movement revitalization: The need for a revitalized perspective'. *European Journal of Industrial Relations*, 9(1), 119-133
- Bengtsson, E. (2013). 'Swedish trade unions and European Union migrant workers'. *Journal of Industrial Relations*, 55(2), 174-189. <https://doi.org/10.1177/0022185612473211>
- Benvegnú, C., Haidinger, B. & Sacchetto, D. (2018). 'Restructuring Labour Relations and Employment in the European Logistics Sector. Unions' Responses to a Segmented Workforce'. In: Doellgast, V., Lillie, N. & Pugliano, V. (eds.) *Reconstructing Solidarity. Labour Unions, Precarious Work, and the Politics of Institutional Change in Europe*. Oxford University Press, Oxford, 83-104
- Berntsen, L. and Lillie, N. (2014). *Hyper-mobile migrant workers and Dutch trade union representation strategies at the Eemshaven construction sites*. *Economic and Industrial Democracy*. E-pub ahead of print 18 June 2014. DOI: [10.1177/0143831X14537357](https://doi.org/10.1177/0143831X14537357)
- Berntsen, L. (2015). Stepping up to strike: 'A union mobilization case study of Polish migrant workers in the Netherlands'. Transfer: *European Review of Labour and Research*, 21(4), 399-
- Čaněk, M (2017). 'Trade unions and migration in the Czech Republic, 2004-15'. In S. Marino, Roosblad J. and R. Penninx (eds). *Trade Unions and Migrant Workers*. Edward Elgar Publishing, pp. 307-327.
- Čaněk, M. (2018). *Transnational Monitoring and Enforcement of Posted Work: The Case of Czech Republic*. Brussels: SOLIDAR. Available at http://www.solidar.org/system/downloads/attachments/000/000/778/original/TNC_Report_-_Country_Study_Czech_Republic.pdf?1527502287
- Caro, E., Berntsen, L., Lillie, N., & Wagner, I. (2015). 'Posted Migration and Segregation in the European Construction Sector'. *Journal of Ethnic and Migration Studies*, 41(10), 1600-1620.
- Connolly, H., Marino, S., & Lucio, M. M. (2014). 'Trade union renewal and the challenges of representation: Strategies towards migrant and ethnic minority workers in the Netherlands, Spain and the United Kingdom'. *European Journal of Industrial Relations*, 20(1), 5-20. <https://doi.org/10.1177/0959680113516848>
- Danaj, S. (2018). 'Posted Work and Occupational Safety and Health: A Literature Review'. Dve Domovini. *Two Homelands Journal*, 48, 37-54.
- Danaj, S., & Sippola, M. (2015). 'Organizing posted workers in the construction sector'. In J. Draho-koupil (Ed.), *The outsourcing challenge: organizing workers across fragmented production networks* (pp. 217-235). Brussels: ETUI aisbl,



- Danaj, S. and M. Sippola (2015). *Organizing hyper-mobile transnational construction workers*. ETUI Policy Brief, No. 11/2015. Available at <https://www.etui.org/Publications2/Policy-Briefs/European-Economic-Employment-and-Social-Policy/Organising-hyper-mobile-transnational-construction-workers>
- De Wispelaere, F., & Pacolet, J. (2017). *Posting of workers*. Report on A1 Portable Documents issued in 2016. European Commission, Brussels. Retrieved from <http://ec.europa.eu/social/BlobServlet?docId=19040&langId=en>
- Donaghey, J. and Teague, P. (2006). 'The free movement of workers and social Europe: maintaining the European ideal'. *Industrial Relations Journal*, 37: 652–66.
- Dundon, T., Gonzalez-Perez, M. and McDonough, T. (2007). 'Bitten by the Celtic Tiger: immigrant workers and industrial relations in the new "glocalised" Ireland'. *Economic and Industrial Democracy*, 28: 501–22. Dunlop,
- Eldring, L. A. M. Ødegård, R. K. Andersen, M. Bråten, K. Nergaard and K. Alsos (2011) *Evaluering av tiltak mot sosial dumping*. Fafo-report 2011:09
- Fedyuk, O. and V. Volodko (2018). *Is transnational labour rights protection possible? Sending country's perspective: Ukrainian country report*. Charitable Foundation Zaporuka. Available at <https://drive.google.com/file/d/1pXZugNnTJSy-bl8oNcQ8b-e0DmPcvOUOq/view>
- Frege, C. M. and J. Kelly (2003) 'Union revitalization strategies in comparative perspective', *European Journal of Industrial Relations*, 9 (1), 7-24.
- Friberg, J.H. & L. Eldring (2011). *Polonia i Oslo 2010. Mobilitet, arbeid og levekår blant polakker i hovedstaden*. Fafo-rapport 2011:27
- Gumbrell-McCormick, R., & Hyman, R. (2013). *Trade Unions in Western Europe : Hard Times, Hard Choices* (Vol. First edition). Oxford: OUP Oxford. Retrieved from <http://search.ebsco-host.com/login.aspx?direct=true&db=nlebk&AN=641613&site=ehost-live>
- Gächter, A. (2000). Austria: Protecting Indigenous Workers from Immigrants. In R. Penninx & J. Roosblad (Eds.), *Trade Unions, Immigration, and Immigrants in Europe, 1960-1993 A Comparative Study of the Actions of Trade Unions in Seven West European Countries* (pp. 65–89). New York/Oxford: Berghahn.
- Greer, I., Ciupijus, Z., & Lillie, N. (2013). 'The European Migrant Workers Union and the barriers to transnational industrial citizenship'. *European Journal of Industrial Relations*, 19(1), 5–20. <https://doi.org/10.1177/0959680112474748>
- Haidinger, B. (2017). *Fraudulent Contracting of Work: Road Haulage Sector* (Working Paper). Dublin: Eurofound. Retrieved from <https://www.eurofound.europa.eu/sites/default/files/wpef17003.pdf>
- Hardy, J., Eldring, L. & Schulten, T. (2012). 'Trade union responses to migrant workers from the 'new Europe': A three sector comparison in the UK, Norway and Germany'. *European Journal of Industrial Relations*, 18(4), 347-363
- Tapia, M. Holgate, J. (2018). 'Fighting precariousness: Union strategies towards migrant workers in the UK, France, and Germany' in Doellgas. In V. Doellgast, V. Lillie, N. and Pulignano (Ed.), *Labour unions and the politics of institutional change in Europe* (Ru). London: Routledge.
- Van Hoek, A. & Houwerzijl, M. (2011). *Complementary study on the legal aspects of the posting of workers in the framework of the provision of services in the European Union*. Report for the European Union.
- Hyman, R. (2001). *Understanding European Trade Unionism: Between Market, Class and Society* (London: Sage Publications).
- Kahmann, M. (2006). The posting of workers in the German construction industry: responses and problems of trade union action. Transfer: *European Review of Labour and Research*, 12(3),



- Kall, K. & Lillie, N. (2017). Protection of Posted Workers in the European Union: Findings and Policy Recommendations based on existing research. PROMO briefing paper. Available at: http://www.solidar.org/system/downloads/attachments/000/000/700/original/2017_09_26_PROMO_Briefing_Paper__Kall_final.pdf?1506505471
- Kall, K., Lillie, N., Sippola, M., & Mankki, L. (2018). Overcoming Barriers to Transnational Organizing Through Identity Work: Finnish–Estonian Trade Union Cooperation. *Work, Employment and Society*, 095001701774608. <https://doi.org/10.1177/0950017017746086>
- Kay, S., & Arnholtz, J. (2007). Strong Trade Unions Meet EEC Workers. Locating, Monitoring and Organising EEC Workers in the Danish Construction Sector. In IIRA, Manchester, 3rd – 7th September 2007 Track 2 Strong (pp. 1–18). Manchester.
- Krings, T. (2009). ‘A race to the bottom? Trade unions, EU enlargement and the free movement of labour’. *European Journal of Industrial Relations*, 15: 49–69.
- Lillie, N., & Wagner, I. (2015). ‘Subcontracting, insecurity and posted work: evidence from construction, meat processing and ship building’. In Jan Drahoukoupil (ETUI) (Ed.), *The Outsourcing challenge: organizing workers across fragmented production networks* (pp. 157–174). Brussels: ETUI.
- Lillie, N. (2016). ‘The Right Not to Have Rights: Posted Worker Acquiescence and the European Union Labour Rights Framework’. *Theoretical Inquiries in Law*, 17(1), 39–62.
- Lillie, N., & Sippola, M. (2011). ‘National unions and transnational workers: The case of Olkiluoto 3, Finland’. *Work, Employment and Society*, 25(2), 292–308.
- Marino, S., & Roosblad, J. (2008). ‘Migration and trade unions. A comparison between Dutch and Italian trade union actions and strategies’. Transfer: *European review of labour and research*, 14(4), 625–638.
- Marino S., Penninx R., Roosblad J. (2015). ‘Trade Unions, Immigration and Immigrants in Europe Revisited: Unions’ Attitudes and Actions Under New Conditions’. *Comparative Migration Studies*, 3(1), pp 1–16.
- Martinez Lucio, M. Perret, R. (2009). ‘The diversity and politics of trade unions’ responses to minority ethnic and migrant workers’. *Economic and Industrial Democracy*, 3(30), 1–24.
- Milkman, R., & Wong, K. (2001). ‘Organizing Immigrant Workers. Case Studies from Southern California’. In Turner, R., Katz, L., Hurd, H.C. (Ed.), *Rekindling The Movement: Labor’s Quest for Relevance in the 21st Century*. Ithaca: Cornell University Press.
- Nergaard, K. (2016). *Organisasjonsgrader, tariffavtaledekning og arbeidskonflikter* 2014. Fafo-notat 2016:07
- Nergaard, K. (2018). *Organisasjonsgrader i norsk arbeidsliv* 2016. Fafo-notat 2018:04.
- Penninx, R., Roosblad, J. (2000). *Trade unions, immigration, and immigrants in Europe, 1960–1993: a comparative study of the attitudes and actions of trade unions in seven West European countries*. Berghahn Books.
- Pulignano, V., Meardi, G., & Doerflinger, N. (2015). ‘Trade unions and labour market dualisation: a comparison of policies and attitudes towards agency and migrant workers in Germany and Belgium’. *Work, Employment and Society*, 29(5), 808–825. <https://doi.org/10.1177/0950017014564603>
- Refslund, B., & Arnholtz, J. (2017). *Displaying power, but altering identity: how Danish unions managed to organize the transnationalized Copenhagen Metro construction project*. Paper presented at SASE 29th annual meeting, Lyon, France.
- Refslund, B. (2018). ‘When strong unions meet precarious migrants: Building trustful relations to unionise labour migrants in a high union-density setting’. *Economic and Industrial Democracy*, 0143831X1876098. <https://doi.org/10.1177/0143831X18760989>



- Riesenfelder, A., Schelepa, S., & Wetzel, P. (2011). *Beschäftigungssituation von Personen mit Migrationshintergrund in Wien* (p. 813). Wien: AK Wien.
- Ristikari, T. (2013). *Finnish trade unions and immigrant labour*. PhD thesis, University of Tampere.
- Schatz, S. & Wetzel, P. (2014). *Entwicklungen im Bereich des Lohndumping* (p. 138). Wien. Retrieved from [http://www.lrsocialresearch.at/files/Lohndumping_Endbericht_2014-05-16\).pdf](http://www.lrsocialresearch.at/files/Lohndumping_Endbericht_2014-05-16).pdf)
- Sippola, M. & Kall, K. (2016). 'Locked in inferiority? The positions of Estonian construction workers in the Finnish migrant labour regime'. In: Dolvik, Jon Erik; Eldring, Line (Eds.). *Labour Mobility in the Enlarged Single European Market* (215-240). Emerald Group Publishing Limited.
- Stern, S. (2012). 'Protektionistische Klientelpolitik oder Kampf um gleiche Rechte? Österreichische Gewerkschaften im Umgang mit un(ter)dokumentierter Arbeit'. In G. Biffl (Ed.), *Migration und Integration*. Verlag omnium. Retrieved from <http://si-se-puede.at/2012/11/05/protektionistische-klientelpolitik-oder-kampf-um-gleiche-rechte/>
- Maite, T. & Turner, L. (2013). 'Union Campaigns as Countermovements: Mobilizing Immigrant Workers in France and the United Kingdom' in: *British Journal of Industrial Relations*, 51:3, pp. 601–622
- Trčka, M., Moskvina, Y., Leontiyeva, Y., Lupták, M., Jirka L. (2018). *Employment of Ukrainian Workers with Polish Visas in the Czech Republic: From the Main Patterns of Labour Exploitation towards Points of Intervention*. Multicultural Center Prague. Retrieved from <https://drive.google.com/file/d/1o0nt8w9mmuMhilFgphe4hj5jq8Jtm-Zid/view>
- Wagner, I. & Berntsen, L. (2016). *Restricted rights: obstacles in enforcing the labour rights of mobile EU workers in the German and Dutch construction sector*. *Transfer*, 22(2), 193–206. <https://doi.org/10.1177/1024258916636025>
- Wagner, I. & Lillie, N. (2014). 'European Integration and the Disembedding of Labour Market Regulation: Transnational Labour Relations at the European Central Bank Construction Site'. *Journal of Common Market Studies*, 52(2), 403–419. <https://doi.org/10.1111/jcms.12096>
- Wagner, I. & Refslund, B. (2016). 'Understanding the diverging trajectories of slaughterhouse work in Denmark and Germany: A power resource approach'. *European Journal of Industrial Relations*, 22(4), 335–351.,
- Wagner, I. & Lillie, N. (2015). 'Subcontracting, insecurity and posted work: evidence from construction, meat processing and ship building'. In J. Drahokoupil (Ed.), *The Outsourcing challenge: organizing workers across fragmented production networks* (pp. 157–174). Brussels: ETUI aisbl.
- Wagner, I. & Refslund, B. (2016). 'Understanding the diverging trajectories of slaughterhouse work in Denmark and Germany: A power resource approach'. *European Journal of Industrial Relations*, 22(4), 335–351. <https://doi.org/10.1177/0959680116682109>
- Wills, J. (2009). 'Subcontracted Employment and its Challenge to Labor'. *Labor Studies Journal*, 34(4), 441–460. <https://doi.org/10.1177/0160449X08324740>
- Virdee, S. (2000). 'A Marxist critique of black radical theories of trade-union racism'. *Sociology*, 34(3): 545–65
- Zhang, C., & Lillie, N. (2015). 'Industrial citizenship, cosmopolitanism and European integration'. *European Journal of Social Theory*, 18(1), 93–111.





solidar

Rue de Pascale 4-6
1040 Brussels
Belgium
T +32 2 500 10 20
F +32 2 500 10 30

Twitter: @SOLIDAR_EU
Facebook: SOLIDAR
www.solidar.org
solidar@solidar.org



This report has been written by: Bettina Haidinger, Francesco Iannuzzi, Devi Sacchetto, Nathan Lillie, Kairit Kall

Published and disseminated by: SOLIDAR

We are grateful for the provision of information by all our interviewed trade unionists and employers' representatives as well as representatives of other institutions. We also want to thank the members of the PROMO project and participants of the conference "Enhancing economic democracy for posted workers" (14-15 June 2018, Padova) for their input on the paper in particular and the PROMO project in general. Special thanks to Line Eldring who provided extensive feedback on this paper's earlier version. Contact: haidinger@forba.at

SOLIDAR is a European network of membership based Civil Society Organisations who gather several millions of citizens throughout Europe and worldwide. SOLIDAR voices the values of its member organisations to the EU and international institutions across the three main policy sectors; social affairs, lifelong learning and international cooperation.