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POSTED WORK: INFORMALITY AND SOCIAL REGULATION

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Abstract

Posting represents a growing dimension of intra-European mobility. The present paper introduces an analysis of posted work, based on transnational research conducted with Portuguese workers in the construction sector in France including 45 interviews and observations. Inspired by the theory of social regulation (Reynaud), our approach considers posted work as a social system, opposed to traditional industrial relations. The result of the regulation process shows a shift from migration to mobility characterised by poor working conditions and unofficial negotiations and agreements. But we do not consider posting as “informal” employment. Posting creates its own rules that need to be considered as much as legal elements in order to understand the growing trend and the use of these workers.

Keywords: posting, social regulation, informality, Europe, construction sector.

POSTED WORK: INFORMALITY AND SOCIAL REGULATION

Posting is, supposedly, a *temporary* mobility and presumes the return of the worker to the country of origin after a maximum period of two years. Posting today represents 1% of all European employment. An employee is considered "posted" when working in a member state of the European Union different from their usual place of work: a company sends one of its employees abroad, as part of a transnational offer of services, putting them at the disposal of a national company to perform a specific, professional task¹.

A comparative study of 12 EU countries revealed four different types of posting-related employment (Cremers, 2011): 1) posting with subcontractors, providing well-paid skilled workers belonging to their core workforce; 2) subcontractors who can provide a workforce from a country with low social security payments; 3) posting with illegal cuts in the worker's wages for administrative costs, housing, transport, and tax; 4) different forms of fake posting. As such, posting cannot be considered undeclared, illegal or informal *per se*. But precarious employment situations of posted workers in various sectors raise the issue of "social dumping" threatening working conditions and national or sectoral collective bargaining. Over recent months and years, discussions on posted work led to diverse political initiatives at the national and European levels. They focus on containing and reversing widespread abuse of the European rules that regulate posting². The literature points to the case of the

¹The French Labour Code L. 342-1 provides four cases (Desbarats, 2006):

- The classic case of a French company that has contracted with a foreign company, the latter sending its employees to France to perform the service;
- Posting between branches of the same company or between companies in the same group;
- Posting of employees by a company of temporary work - established outside France - to a company established on French territory;
- A foreign company may temporarily post workers to France, to perform an operation on its own account, in the absence of any contract between the two companies.

All foreign language sources in this paper are translated by us.

²Directive 2014/67 / EU of the European Parliament and of the Council of 15 May 2014, and project of the European Commission to revise the Directive "Posted work" in 2016.

construction sector in France (Lefebvre, 2006) and especially the existence of non- or under-declared work (Kahmann, 2006). The effects of employment linked to foreign subcontracting and posting were noted in other countries. For example, in Germany about half of the native workforce in construction was replaced by foreign service companies (Bosch *et al.*, 2011). Research on posting includes cross-national and sectoral approaches and more recently transnational employment relations (Wagner, 2015a; 2015b).

Our contribution to this debate wants to be twofold, empirical and theoretical. We would like to add to transnational research the movement of Portuguese workers posted to the construction sector in France, a case that remains largely unexplored. Furthermore, we would like to introduce an approach that analyses posting as an autonomous system of social regulations (Reynaud, 1983), capable of creating its own rules opposed to traditional industrial relations. These new rules are agreements between workers and employers. We do not consider such practices as “informal”. Our view turns the formal/informal employment opposition into an encounter between a system of industrial relations providing legal rules, collective agreements and state supervision and an autonomous sphere of posting where union activity and supervision are almost absent.

The latter raises questions: Who sets the actual rules of posting? Do the posted workers negotiate their working conditions? Does the shift from migration to posting change the life of Portuguese workers in the construction sector in France? What are the roles of the Portuguese employers and the French user undertaking in this process? May this case contribute to the general understanding of informality in the labour market?

In order to answer these questions, we conducted a series of recorded and transcribed in-depth interviews (n: 45) with mostly Portuguese workers (33, Appendix, Tab.1). These interviews were conducted over a three-year period in various locations in France and Portugal.

The article is structured in two parts. The first part describes the context, history and development of posting. It summarises literature, discussions and approach. The second part displays the present rules of posting, empirical findings and defines posting as a different social system.

Literature and Approach

Our approach wants to show progressively the idea that posting should not be considered as “deviant” or “informal” in order to explain its genuine nature and its ability to create lasting own rules. Contrary to functionalist theory, we are analysing posted work with the help of Reynaud’s theory of social regulation (Reynaud, 1983). With this theory posting is the object of a social process leading to arrangements and ultimately to a social rule that is disputed, fragile and that describes an existing social system. This approach is not determined by state borders or by legal rules. But political and legal aspects are important as they contribute to the construction of the social rule. The perspective of posted work as a process is essential to its understanding and explanation (Maggi, 2016). We will detail these aspects with current literature which, of course, mostly follows other theoretical frameworks.

Historical and Current Developments of Posted Work in the EU

Today, the most important text relating to posting is European Directive 71/1996.³ The Posting Workers Directive (PWD) codifies temporary expatriation, and describes a minimum social basis to guarantee the rights of posted workers. Three situations of posting between two states are mentioned: contracting/subcontracting; transfers within the same company; temporary work (van Hoek, Houwerzijl, 2011a). To protect employees in the country of

³Directive 96/71 / EC of the European Parliament and the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services. Journal official no L 018, 21/01/1997 p. 0001-0006.

destination the PWD details maximum work periods and minimum breaks/leave, minimum wage, health and safety in the workplace, equal treatment of men and women, as well as other provisions on non-discrimination.

The PWD was the result of a long process. In the 1950s posting already existed, and in the early 1960s discussions were being held on its connections to the freedom of workers, services, establishments and goods. It was recognised that the provision of services involved specialised cross-border workers (Houwerzijl, 2006). In the 1980s, European construction trade unions demanded the inclusion of a social clause for public works to guarantee working conditions and collective agreements in the country of destination (Cremers *et al.*, 2007). After discussions, the European Commission voted on a proposal for a directive on posting workers in 1991. It was only five years later that the scheme was finally adopted because of ongoing debates on various issues such as the temporary nature of posting, a common definition of workers, minimum standards for working conditions, and relations between posting and collective bargaining (*ibid.*).

Then, three simultaneous processes connected to the European labour market took place:

- The enlargement of the European Union from a small number of countries in the 1950s to today's twenty-eight member states. Between 2004 and 2007, the presence of former Eastern European countries with weak union traditions was perceived as a threat to the regulation of labour standards in the rest of the EU (Woolfson, Sommers, 2006);

- The free movement of persons, a fundamental right guaranteed by European Union treaties, permitted the removal of borders between the Schengen Convention member states⁴;

⁴France. Ministère de l'Intérieur. Direction des libertés publiques et des affaires juridiques. Schengen, accord du 14 juin 1985: textes de référence. Paris: Direction des journaux officiels, 1996.

- The freedom to provide services in the internal market of the European Union, adopted in 2006, known as the "Bolkestein" directive, is the basis for the transnational provision of services within the EU⁵;

- In almost all industries there was the strong development of outsourcing of the labour force. For example, data for construction show a strong reduction of direct labour and the creation of more "flexible" workers⁶.

Together with the employment crisis, these developments triggered an increase in posted work, and led to its spread within the European Union. According to official declarations 516,000 employees were posted to France in 2017, more than doubling since 2014 (Appendix, Fig.1) ⁷. Polish citizens represented the largest population posted in France (38,000), followed by Portuguese citizens (34,500), then by Romanian workers (27,000). The construction sector accounted for 47% of the number of days worked by employees posted to France (DGT, 2015). 58% of Portuguese declarations are concentrated in this very sector⁸. The official number of posted workers in the European Union increased by nearly 45% between 2010 and 2014, rising from 1.3 to 1.9 million people (Richard, 2014). According to Pacolet and De Wispelaere (2017), in 2015 posting increased to 2.05 million, with three main countries of origin (Poland: 463,174; Germany: 240,862; France 139,040) and three main destinations (Germany: 418,908; France: 177,674; Belgium: 156,556). France received 25% more postings in 2015 compared to 2014. Most of the EU postings

⁵Directive 2006/123 / EC of the European Parliament and Council of 12 December 2006 on services in the internal market. Journal officiel L 376, 27/12/2006 p. 0036 - 0068. Between 2005 and 2006 the expression "Polish plumber" crystallised the public debate in France.

⁶ See for instance the ILO publication (2009): Changing employment patterns and collective bargaining: The case of construction, ILO, http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---

⁷Source : Cour des comptes (2019), Direction générale du Travail (DGT, 2015).

⁸Here we must add posting to temporary agency work in the construction sector agency, sectors that are counted separately.

were in the construction sector (36%). 64,970 posted workers came from Portugal, and 54.3% entered the construction sector (ibid.).

Statistics on posting are, however, considered "flimsy" given the codification of this type of employment. In the past, the majority of workers posted in France escaped screening. Grignon (2006) declares that at least 80% of posted workers were not subject to compulsory prior declaration. Oversight bodies and the administration therefore know neither their identity nor their workplace (Cremers, 2011). The PWD encountered jurisprudence that shed a complementary light on posting, especially through the Court of Justice of the European Union (CJEU) and its decisions⁹. From a legal and formal perspective, transnational posting oscillates between two poles. The first seeks to strengthen the economic freedoms exercised within the European Union, and the second aims at improving the working conditions of those who are subject to posting. The goal of the former is to increase mobility within the European Union, and to boost job creation in particular. Since the discussion of the Bolkestein directive, the liberalisation of services crystallised these debates (Loder, 2011). The CJEU ruling on this issue confirmed the link to the free movement of services, with the exception of temporary work (Amauger-Lattes, 2014; Amauger-Lattes, Jazottes, 2007).¹⁰

Two main logic guided the design of the legal rule. The first reflects the fact that posted workers were not meant to enter the labour market of the host country. This view supports an interpretation of posting in terms of "mobility"

⁹Over the last 30 years, four decisions in particular (Webb, Rush Portuguesa, Viking, Laval) shaped jurisprudence in this field:

- Eur-lex - Case 279/80 - Judgement Webb - December 17, 1981,
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61980CJ0279:FR:PDF>

- Eur-lex - Case C-113/89 - Rush Portuguesa - March 27, 1990, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61989CJ0113:FR:PDF>

- Europa - Case C-341/05 - Stop Laval - December 18, 2007,
http://ec.europa.eu/dgs/legal_service/arrets/05c341_fr.pdf

- Europa - Case C-438/05 - Viking - December 11, 2011

See also Gennard (2008)

¹⁰Our analysis of the legal rule developed here is particularly indebted to Marie-Cécile-Amauger Lattes.

rather than in terms of "migration". The second considers posting as a modality of the implementation of manpower "service" (Guiorguieff, 2014). It follows that no work permit was required in the country that hosted a posted worker. Similarly, when it came to defining the social status of posting, the law of the country of origin prevailed concerning social security, and was subject to certain restrictions concerning the labour law (Amauger-Lattes, 2014). Beyond giving precedence to the country of origin, this leads to the coexistence, on construction sites located in France, of as many social schemes as there are nationalities, sometimes more than a dozen¹¹.

To this jurisprudence the PWD adds an obligation for Member States hosting posted workers on their territory by establishing a nucleus of mandatory and enforceable rules. It specifies the nature of the relevant standards, and it grants competence to the judge of the host country to implement the provisions of the PWD (van Hoek, Houwerzijl, 2011). The directive thus makes allowances for applying the laws, administrative regulations, and collective agreements in the construction sector¹². It applies to minimum wages and work rules in case of posting.

At the request of France in particular, the PWD was supplemented by an implementing directive adopted in May 2014. It specifies how to determine the substance of posting, the responsibilities of orders for which the service is provided and the administrative requirements that may govern the use of this form of work. Member States had until June 2016 to transpose this directive into national law, but this deadline has not been systematically respected. Following the request submitted by seven Member States (France, Germany, Benelux countries, Austria and Sweden), the European Commission presented in March 2016 a draft revision of the PWD to ensure fair and equitable remuneration

¹¹Interview, labour inspector, Midi-Pyrénées, 2012

¹²Légifrance. 2015. Convention collective nationale des ouvriers employés par les entreprises du bâtiment du 8 octobre 1990.

conditions. After difficult negotiations, the revised PWD was adopted by the European Parliament and the Council on 28 June 2018 to be applied in 2020.

Current Debates on Posting

Yet, a fundamental criticism opposed these legal rules. First, respecting the regulations still leaves room for "unfair" competition. Second, in practice, the rule of posting is not respected at least in certain sectors and countries. The literature on posted work shows a variety of comparative research projects supported by European institutions (Cremers, 2011; van Hoek, Houwerzijl, 2011a; 2011b; Clark, 2012; Voss, Faioli, Lhernould, Iudicone, 2016; Pacolet De Wispelaere, 2017). The situations in different countries are compared, giving a detailed overview of legislation, jurisdictions, administrations, current situations of posting, labour markets, collective bargaining, company cases, and political initiatives. Without generalising the results for each country, sector or situation, a number of posting-related issues still remain: the lack of information and reliable data on the total number of posted workers; the difficulty of considering posting as a single employment status given the different forms and models it can take, the tension existing between the freedom of travel/services and social protection, and the need for further improvement and enforcement of the regulatory framework. The "enforcement gap" (Wagner, Berntsen, 2016) represents a core issue in current discussions.

The debate in the literature derives from two sources. First, the regulatory framework still leaves loopholes for "deviant" practices; and secondly, posting in some sectors and some countries resemble social dumping when compared to the working conditions of the local workforce.

Concerning the first aspect, legal uncertainties remain, reminiscent of the initial discussions on the PWD (Voss *et al.*, 2016): an unsatisfactory definition of the meaning of "temporary" posting, the need to prove that the connection to the posting company's home country is genuine, the nature of the guaranteed core

of employment conditions, the lack of definition of minimum rates, the legal tensions existing between objectives of freedom and protection, and the problems of implementing and enforcing the PWD. All this concurs to highlight the need for a policy that prevents fraud and anticipates abusive practices (Cremers, 2016).

As to the second factor, that of “social dumping practices”, the literature draws attention to several points. This view is illustrated by a report which observed that "perfect compliance with the directive on posting can leave a cost difference of up to 50% between French and posted Polish employees" (Grignon, 2006: 28). The considerable differences in the cost of social security schemes challenge the economic incentives attached to hiring the local workforce. Other elements appear to back the social dumping theory: avoiding social regulations, advantages in terms of competitiveness including high-wage countries and large multinational corporations that bet on the competition between national governments (Bernaciak, 2015). The existence of letterbox-type companies especially is singled out in most research projects. Letterbox companies are legal entities, established on paper in any European Union country, with or without a link to business (McGauran, 2016): they allow for taxes, wages, labour standards and social contributions lower than those applied in the countries of legal residence. Right from the beginning, the directive spurred continuous discussions and criticism, including on the part of trade unions, as well as national governments and political parties that call for a revision of the directive. Labour organisations consider that applying the posting directive is made difficult by the use of a long-term workforce, by supply chains operating with a series of sub-contractors, and finally by the use of false documents (Clark, 2012). Fraud is thus facilitated by the lack of legal obligations, because controls are carried out only after the fact, and more broadly, by the absence of any administrative monitoring of posting. If the legal arrangements seem perfectly consistent, the exploitation of comparative advantages between states creates a gray area where international industrial conflicts may appear and

informalisation occurs (Woolfson, Sommers, 2006). Widespread globalisation (Sassen, 1994) and neoliberal policies (Heintz, Pollin, 2003) are considered key to the specific European form of labour represented by posting.

An Approach Based on Transnational Social Regulation

Freedom of movement and residence for workers in the EU is a right established by the 1957 treaty of Rome and 1992 Treaty of Maastricht. But there is a fundamental difference with posting, related to the cross-border provision of services. This sort of employment is linked to the country of origin and enforcement of the specific posting rules in the host countries are often not on the same level compared to nationally regulated employment. As we observed, illicit forms of posting from one country to another are often considered by theory as “informal” work¹³. Indeed, the ILO describes the “informal economy as referring to all economic activities by workers and economic units that are – in law or in practice – not covered or insufficiently covered by formal arrangements” (OECD/OIT 2019). As presumably legal activities, that definition would include here the posting case we have explored. Other definitions of informal work do not exclude illegitimate activities. In a broader sense, informal employment includes both legitimate activities for which one receives payment, and illegitimate or criminal activities (Nightingale, Wander 2011). A consensus would exclude criminal activities from that definition and focus for informal

¹³We believe that the increase in publications on informality, informal work, the economy or the informal sector in recent years reflects the growth of this form of employment. The perspective of informal economy and work may have a side effect of confining these workers within a functionalist theoretical framework. The terms “informal” and “informality” are not the only ones in question. Other terms such as “illegal”, “false”, “illicit”, “deviant”, “non-standard”, “undeclared posted work”, etc. can be used to describe a lack of formalisation. Our view is that these terms are often not limited to qualify an area of exploration, but may be part of a diverse and implicit theoretical framework that separates workers on principle. Moreover, in this respect, posted work would only be one form among others that do not belong to “standard” employment relationships.

employment on tax and regulation avoidance (*ibid.*). Our case study would also be covered by this definition of informal employment.

After volunteer work, and child and elder care, posting could be seen -at least in part- as a third type of informal employment linked to “undeclared work” (Jensen, Pfau-Effinger, Flaquer, 2010). As fake or illegal posting it undergoes informalisation (Cremers, 2011), when compared to the formal employment practices of the host country. The view that off-and on-shore practises undermine states’ abilities to maintain traditional collective bargaining systems and working conditions is a step further in this direction. Lillie (2010) considers those practices to be a general process of variegation and deterritorialization. Areas of exception in the form of off- and on-shore practises (maritime shipping, posting and subcontracting in construction) could ultimately become the new norm of employment driven by capitalist action out of (worker’s or state) control. “Because the employment conditions of posted workers often violate local law and practice, the bargain between worker and employer remains informal and implicit” (Lillie, 2016: 42). “As a consequence of unlawful practices by companies and of the informal arrangements between them and their employees, workers experience different degrees of precarity in the country of destination” (Voivozeanu, 2019: 96). European liberalisation allowed the importation of “informal work practices” inducing new competition with nation-related employment systems (Wagner, Lillie, 2014). This opens a perspective whereby transnational work spaces impose their own social regulations and may indicate new angles for collective action (Wagner, 2015b). It broadens the view of national models of collective bargaining and questions social theories of comparative research in which national, societal or Nordic models are used as a scheme for analysing current features of work and employment.

Our approach suggests alternatively that there is a growing difficulty to distinguish the normal and exceptional, the formal and informal. Furthermore, it may be counterproductive to qualify posting even in specific cases as “informal”,

representing a “deviant” or a “new” normativity. The concept of “informal economy” fell short, a long time ago, in defining a distinct situation (Bremner, 1976). To distinguish it from a formal economy is not only to say that the official rules apply only imperfectly, but that there is a kind of degradation of the law in practice (Reynaud, 1988); that the “bad intelligence” of the formal rules, the oppositions between groups, the irruption of individual intrusions distort or disrupt their application.

Indeed, posting constantly relies on formalised employment practices, even when it frequently appears, at the end of a verification process, to be undeclared work (informal). That is the reason why it is difficult, during fieldwork, to ask a posted worker if he/she is “really” posted. He/she thinks he/she is posted, even if he/she hardly knows what rights and obligations this implies and cannot give any clear evidence of their employment status. The point where formal and informal spheres meet is highly significant. Our approach transforms this opposition into a control/autonomy opposition based on the theory of social regulation (Reynaud, 1983). It suggests the existence of spaces of negotiation, conflict and compromise between two types of regulation that create a social system: one regulation is linked to autonomy (e.g. employee representatives), the other to control (e.g. management, Reynaud, 1988).

We consider, furthermore, following the plurality of social systems (Reynaud, 1989) that two competing social systems in the sense of a non-functionalist definition exist: traditional industrial relations and posting. Posting would be considered an “autonomous”, transnational social system, itself based on an opposition between autonomy and control (posted workers vs. employers/user undertaking). This “autonomous” posting system is capable of constructing its own rules, that is what we wish to show here, related or opposed to the system of legal rules and traditional collective bargaining (control). Deviance (social dumping) can be collective, and it goes further than deviance, demanding a different rule. That critical view of functionalist theory and the

necessity to take into account “autonomy” based on Reynaud’s developments (Maggi, 2020) is central to our proposition.

The analysis of organisation shows that the "negotiation" between those who have the monopoly of legitimate regulation, and those to whom they try to apply the rule, is necessarily partly clandestine and implicit. This view shows, especially for posting during the last two decades, that explicit negotiation and enforcement of formal rules cannot cover every situation. Our approach between 2011 and 2015¹⁴ produced a series of observations and interviews, all recorded and transcribed, with Portuguese workers in the building sector (Table 1), with Portuguese employers, and, on the French side, labour inspectors, trade unionists and civil servants (n=45)¹⁵. Other observations were carried out while following

¹⁴Between 2011 and 2012 research was funded by the European Commission (DG Employment Social Affairs); and between 2013 and 2015 by ANR through SMS Labex, Toulouse. Our research started with a European project (PostER) in 2011, with the aim to analyse examples of the working and living conditions of posted workers in five countries (Belgium, France, Germany, Sweden and the UK). Information on posted workers’ employment rights and their enforcement was supplemented with interviews of posted workers in order to present a picture of the reality behind the policy debates (Clark, 2012). Designed as an exploratory research, we experienced problems obtaining detailed feedback from workers to describe their situation in long interviews with recorded and transcribed data. Their precarious situation, mistrust and linguistic difficulties prevented us from describing their activities in detail. We then adapted our methodology in a second project. Our choice to continue working in the construction sector and on the Portuguese workforce in France was guided by practical aspects. On the one hand, we already had good contacts with local unions and with labour inspectors who encouraged us to persevere in the construction sector, considered as the most “sensitive”. On the other hand, we were joined by a Portuguese sociologist interested in posting. We also shifted our focus from comparative to transnational research. From 2013 onwards, we implemented a transnational approach favouring movement. We travelled between various locations for more than 24 months. First, in March 2013, we visited the Ile-de-France region to meet with posted workers. Secondly, interviews took us to the Minho region (Northern Portugal) where we interviewed other workers and their Portuguese employers while they were on vacation between two posting phases. Third, we moved to the French Alps in December of the same year. Finally, other meetings took place with workers in Midi-Pyrénées (2012, 2015), Ile de France (2013, 2014), Auvergne (2014), Corsica (2015) and back to Portugal (2015). Two other publications relate to the results in detail: Oliveira da Silva, Thoemmes ,2017; Thoemmes, Oliveira da Silva, 2017.

¹⁵All interviews were recorded and transcribed. Interviews with Portuguese workers were mostly translated from Portuguese into French, simultaneous or consecutive. 33/45 were conducted with Portuguese employees, all were on a posted worker status except for two employees of a Portuguese temp agency, one Portuguese employer was employed by his own company, and one was an illegal worker (Tab.1, Appendix, No. 15, 17, 20, 23). Absolute anonymity was ensured.

trade unionists during their activities on construction sites, especially during individual and collective disputes¹⁶.

Portuguese construction workers posted to France: social rules

Law and collective bargaining in the French construction sector

National reports give detailed overviews of the working conditions in the French construction sector (Kahmann, 2006; Lefebvre, 2006; Cremers, 2011; European Institute for Construction Labour research, 2014). Two national collective labour agreements govern the sector, the first relating to public works, the second to the building sector. The French State extends these agreements to all employers and employees. Foreign service providers apply those salary levels to posted workers. Mandatory rules are established by law, such as compliance with the collective agreement minimum wage in the construction and public works sectors. In France the gross minimum monthly wage is €1,457 (*ca.* €1,137 net) in the construction collective agreement, and increases depending on the employee's position. The legal work week (35 hours), maximum duration of the work day (10 hours), provisions and limits for overtime (180 hours max. per year), night work and leave, as well as provisions concerning housing, meals, and transportation apply to posted workers. The labour law provides detailed administrative procedures for temporary employment and posting, responsibilities for user undertaking, penalties in case of clandestine employment and necessary documents for inspection purposes. Recent changes in national law are especially linked to the transposition of the PWD related directive 2014/67/UE (Trésor-Eco, 2016): the responsibility of the client is extended to the entire subcontracting chain with regard to posting obligations, in

¹⁶We thank Diana Oliveira for her participation during fieldwork (interviews, translation), as well as the CGT Auvergne and Midi-Pyrénées construction unions for facilitating access to posted workers in these situations.

the event of non-payment of the minimum wage and in case of non-compliance with labour legislation, conditions of employment, living and housing. Unions can now defend workers without having a personal mandate. The latter disposition is important, but union coverage in France is particularly low (7.7% in general, and below 10% industry-wide) and split into many small organisations. Most of the unions don't have the means to investigate individual posting issues in construction companies. Nevertheless, some emblematic cases do exist and they are always linked to the public labour inspectorate in charge of applying the law.

A historically well-known case concerned the construction of the Atlantic line of the TGV high-speed train where workers from the Portuguese firm Rush Portuguesa carried out subcontracting work in 1986 (Cremers, Donders, 2004). It could not produce proof of any work permits for its workers and a special fine was imposed on the company. The procedure ultimately ended in the European Court of Justice, with the judgement *Rush Portuguesa* (1990) in which the judges defined posting as coming under the freedom to provide services. It allowed Portuguese companies to post their skilled or unskilled workers to France without work permits (*ibid.*). The French Labour Inspectorate (2,246 agents in 2011) is generally responsible for ensuring the enforcement of labour laws and minimum wage rules in sector agreements. Its powers to control and sanction are extensive. In 2016, it organised around 2,000 inspections per month, related to posted work, 75% of which were carried out in the construction sector. French unions can, and do occasionally call on labour inspectors to solve issues related to posted work.

A historical shift from migration to mobility: new but not "informal" rules for Portuguese workers

Historically Portuguese workers were among those who circulated the most in the European area, often to their favourite destination: the French

construction sector. This flow began with the announced departure of Algerian construction workers on the eve of Algerian independence (1962). Within fifteen years, the number of Portuguese workers rose from 50,000 to 750,000. "Their departure is often firm in words and intent. They see it as a way to amass a nest egg within a few years, in order to build a house in the village with their savings ... and come back. The project of founding a family is compounded by the desire to have one's own house. Hence the strategy to travel as a couple. With two salaries in France, the stay is shorter ... " (Cordeiro, 2002: 67). Their "to-and-fro » was massive as early as the 1960s, with a million people crossing Europe at least once a year to go to Portugal. The to-and-fro is as much economically driven as it is linked to a sense of identity. It is grounded in a migration project whose legitimacy lies in the village of origin, while the whole experience revolves around a dual French-Portuguese identity (Charbit, Hily, Poinard, 1997). But mobility is then carried out at the expense of the project to return. The latter is implemented in much smaller proportions than was first planned, especially when retirement comes. Paradoxically, what survived from this period of vast Portuguese migration to France is not so much the migration project itself, neither as a couple nor alone, but another form of movement of labour. For the newer generations of Portuguese workers, it took the form of posting in the French construction sector, especially after the 2008 crisis. Posted work comes to illustrate the idea that migration now roughly equates mobility, with a more "precarious," "irregular" and blurred status (Rea, Tripier, 2010). Mobile workers foster transnational wealth, sometimes linked to the underground economy, but also increasingly as a contribution to the more traditional and "formal" economy. This economic activity frames intra-European movements as a "circulatory territory" (Tarrius, 1992; 2015). The concept of migration implies changing one's place of life and crossing a border when it is international. The concept of geographical mobility refers to the to-and-fro, to reversible and quick changes, that of the workplace in our case.

"Posting is so fast and easy at the moment, it has nothing to do with migration (...). They put the van in my hands, saying - listen, you go to Ponte and you take two (workers), you go to Barcelos and you take two others and then you go to Toulouse. I had never set foot in France, and here is the van, the GPS and France "(Portuguese labourer, Île-de-France, 2014, No. 27).

"Everything was very unexpected, fast, they needed someone urgently." (Portuguese construction manager, North Portugal, 2013, No. 16)

"We get a phone call, we need a fixed number of people who are travelling this weekend to start on Monday," (Portuguese employee, Agency for posting, North Portugal, 2013, no. 17)

Although the concept of "mobility" has an ideological connotation (freedom, choice, flexibility, etc.) it also triggers the idea of a shift of paradigm in the nature of migration (Tarrius, 1992; Pellerin, 2011), with posting taking an ever-larger part in these new developments. Posting as a form of mobility creates its own set of transnational rules. Those rules are different, but from an objective and subjective perspective they are not "informal." Especially time regulation (Thoemmes, 2015) produces here a specific set of rules. These rules include uncertainty. The worker has to be prepared to leave his Portuguese village or town from one day to the next. Frequently he does not know what the precise destination is, the content of the mission, the conditions of housing or the duration of the stay. Mobility here follows rules of blind and unconditional availability. That is perfectly known by the workers. A worker told us in Portugal that he "always has a packed suitcase behind his door."

The Actual Rule of Remuneration and Double Accounting

A rule is an organising principle. It is a guide of action, a stallion that makes it possible to make a judgement, a model which directs the action (Reynaud 1989, De Terssac 2003; 2012). But sometimes it is quite difficult to find out which is the actual rule, in our case the salary of the posted worker. Due to

the shift from migration to mobility, the working and living conditions of Portuguese workers changed. The reason why it is problematic to determine how this affects earnings is twofold. First it is due to the ignorance of the total number of workers posted in France and to the lack of information regarding actual wages. Second, in practice, there is no agreement as to what is being measured in terms of income: wages reported or wages actually received; wages per unit of working time, correspondence of social insurance contributions to wages, etc. The rules on construction sites in France are prone to tacit agreements, based on the objective characteristics of the Portuguese labour market with an unemployment rate of 13%¹⁷ and a minimum wage of €589/month (about €505 net).¹⁸ During our research, we discovered that the wages of Portuguese workers on sites located in France were first based on the objective conditions of the Portuguese labour market. In many cases,¹⁹ clandestine bargaining starts on that "Portuguese" basis, often by way of an oral agreement.

"They have normal papers as if they were working in Portugal, but they are working here. There are many cases like this here." (Labourer, Île-de-France, 2014, No. 27).

"Working conditions are the same as in Portugal. I had nothing to sign, nothing more, it is with our basic contract that we left. (Locksmith, Portugal, 2013, No. 22).

"We started with a written pay that was more or less aligned with that of Portugal, but it is obvious that the one that was subsequently perceived was much higher" (Responsible Construction, Portugal, 2013, No. 16).

A dual system of accounting then ensues: one that declares the employee at the Portuguese minimum wage, the other that reflects the arrangement between the Portuguese employer and the posted worker. This may result in

¹⁷France (10,5%), April 2015, source: Eurostat.

¹⁸Amount calculated over 12 months. France (€ 1456), in January 2015, source: Eurostat.

¹⁹We do not generalise to every case we met, but the analysis can be applied to most of them.

undeclared pay rises or losses, sometimes very considerable, that may be granted on the basis of qualifications and professions.

"We realised the situation of Portuguese workers was distinct from French employees. Talking together, they said they had only €400 per month. While working about 40 hours a week. Except that behind this, it is quite difficult, because the company sends papers where, finally, all is good. " (Labour Inspector, Midi-Pyrénées, 2012).

Official accounts are necessary to fulfil the requirements of the traditional bargaining system under the supervision of legal rules. Negotiated accounts are necessary to reflect the relations and agreements between posted workers and their employers. Moreover, the existence of this dual contract must remain secret since, if detected, sanctions may apply. Inversely to posted workers, many former Portuguese migrants established in France work today in construction companies with French contracts corresponding to traditional collective bargaining agreements. Posted workers are sometimes "falsely" presented as Portuguese with French contracts. Hiding the status of posting seems a way for some Portuguese employers and French user undertaking to avoid questions from the labour inspectorate and investigations as pointed out by this Portuguese employee.

"A: We give all our papers. They are passed over to the (French) boss from there. If there are controls like that happens a few times, you have to say for whom you work and you have to lie.

Q: So you say you work for the French company?

A: Yes.

Q: But you did not fill out any papers with the French company?

A: No, no.

Q: Inspection does not come to ask for contracts or other papers?

A: No, but even if they ask us, we say that we left the papers with the (French) boss of the company "(Labourer, Île-de-France, 2014, No. 27).

Despite the necessity to hide an unclear employment status, the social rule of wage is subject to negotiations between the Portuguese employee, the Portuguese employer and the French prime contractor. Even if it is secret, the rule between employer and employee can be constantly revised. This negotiation around remuneration also includes employer costs such as housing, gasoline for transportation to the construction site, home leave to Portugal, annual leave, food allowance. All these elements, in principle formally distinguished from wages, are part of a common, unwritten rule, yet on which the employee's departure from Portugal hangs. In some cases, after negotiating, workers obtained from their Portuguese employers the payment of fuel costs, for food or for the return to Portugal. Late payments were kept in check by the refusal to work.

"If Saturday I still have nothing on the account, Monday I will not work."
(Tiler, Rhones-Alpes, 2013, No. 24)

The "oral promise" made by the employer, even if not in line with legal French working conditions, is considered as "formally binding" by the Portuguese employees. If the given promise is not kept, sometimes violent tensions arise between employers and employees on the construction site. Even after the end of the contract these experiences are remembered.

"I refrain from going to his village because I could take him by the neck"
(Tiler, Rhones-Alpes, 2013, No. 24).

The initial oral contract is subject to changes and negotiations. It is therefore often very complicated to understand the exact content of the remuneration rule. The difference between the legal rule (which should be reflected in the pay slips), and the actual rule governing the remuneration, is a key element to understand posting. The labour inspectors were the first to draw our attention to the fact that what is declared by employers does not always

correspond to what is actually received by employees. In most cases, the pay slip indicated an amount which amounted roughly to the statutory minimum wage, sometimes with exactly the same amount for all workers, while the real wages paid to the worker were in fact higher or lower. Lower formal figures allow employers to pay less for social insurance benefits, which are already lower because of the Portuguese origin of the workers. Still, increased real wages by negotiations between Portuguese employee and employer are inferior to what they should be according to legal and sector minimum standards and to the PWD.

At the close of our research, if we were to formulate a hypothesis based on the average trend of the views we heard (33), we would say that a posted worker from Portugal does not earn more than half of what a French worker does, including benefits. In some cases, we found small differences with French wages, particularly when employees are highly skilled. In other cases, French employees can earn more than five times as much as a posted worker. Finally, we also found posted workers not having been paid at all.

Wages must be assessed against the number of hours worked. Spontaneously, during interviews, the Portuguese workers compared their wages to those of French workers disregarding the fact that working time was not the same. The actual rule of a longer period of work was internalised by Portuguese workers and sometimes explicitly negotiated with the employer. Above all, it reflects the reality on the ground. One way or another, almost all workers mentioned unpaid overtime.

"What French companies do in a year's time, we have to do in five or six months (...). On the contract, it said 35 hours paid 39. But in a week's time I work a lot more. What with work on Saturday, it amounts to, at least, 50 to 60 hours per week. It makes a big difference with the French." (Leader, Midi-Pyrenees, 2012, No. 5).

Many of these extra hours were put in during trips to and from the construction site, between sites, and between the site and their lodgings. According to law and collective agreements, unusual travel to construction sites as well as transportation during normal working hours must be compensated by the employer.

"Sometimes we work on Sunday and we must move to go to a new site. In my case, I live in the centre of France and I have to go to X and it can be up to 1000 km drive on a Sunday. But the employer does not pay the time we spend on the road." (Leader, Midi-Pyrenees, 2012, No. 6).

Furthermore, the PWD stipulates support for housing, food and travel expenditure.²⁰ For example, temporary housing is quite common in the construction sector, but is an acute problem for posted workers. (Appendix, Tab.1.)

"Sometimes it's not so good. I share an 8 m² room with 2 other people. Before, it was worse: a house with four bedrooms could take up to 15 people. People slept in the kitchen and in the hallway. It was a bit of a mess." (Leader, Midi-Pyrenees, 2012, No. 5).

"There are many companies that put workers in containers" (Locksmith, North Portugal, 2013, No. 22).

A final point concerning housing was expressed by union representatives and labour inspectors. It focused on the strategic role of housing in relation to the availability of posted workers on construction sites, a way to reduce workers' autonomy. It served to control their private life, but even more to control their schedule, and to ensure that the worker would come early to the construction site

²⁰Directive 96/71 / EC, 4: "Allowances specific to posting shall be considered as part of the minimum wage, to the extent that they are not paid as reimbursement of expenditure actually incurred because of the posting, such as travel expenditure, housing or food. "

and leave as late as possible. In most cases, transportation between building site and accommodation was organised by and for the company.

Informality and the Social System of Posting

Both, widespread poor working conditions despite the legal framework, and complex negotiations about wages between posted workers and employers, raise a common question. Do the notions of formal and informal still have any practical and analytical value? The starting point of this analysis lies for Reynaud (1988) in the studies conducted by Elton Mayo in Western Electric, and more precisely with the classic report “Management and the worker” by Roethlisberger and Dickson (1939). At the end of the book the authors summarise their theoretical conclusions by distinguishing, within the social organisation, a formal organisation (official, explicit, written, all the rules that are displayed in an organisation) and an informal organisation (informal, unrecognised, partly clandestine, all the rules that only appears after observation of practices and after interviews with the interested parties). Both, formal and informal, are based on a system of values and beliefs.

Reynaud (1988) refers to different classical studies relying on substantial fieldwork that already showed a critique of this distinction: describing “informal” intergroup connections as auto-organisation (Roy 1954) or as capabilities of professional groups, taking the example of coal mines (Trist and Higgin, 1963). For the theory of social regulation (Reynaud, 1983) the “informal” seeks to establish a regulation against other regulations coming from above. It asserts autonomy *against* the control effort of technicians and organisers. According to Reynaud (1988), the authors of “Management and the worker” have not only underestimated that rationality of the “informal” (its objective organisation of production and defence of the interests of employees) but also its strategic nature. Moreover, the thesis of informality itself becomes “indefensible” (Maggi 2020).

That also seems the case for the current political and scientific debate about posting: underestimating its rationality and its strategic nature. Parts of the literature, especially those linked to the labour movement, consider posting as a “deviant or informal” practice which should/could be regulated by European legislation. If one may agree on the political objective, the sociological analysis shows that “getting things back to normal” will be difficult. The point we would like to make is that those two sources of regulation (autonomy and control instead of informal and formal) may describe the relations between two competing systems (posting vs traditional industrial relations).

The concept “social system” is probably the most counter-intuitive notion that Jean-Daniel Reynaud has developed in his theory. It is true that the term itself suggests a passing filiation from Durkheim, Parsons, Merton, a list that could be extended, but that filiation has never been claimed by the author (Reynaud, 1989). On the contrary, he postulates the plurality of systems, their partial character and their evolutionary nature. There is not one social system, but social systems. These systems often have blurred boundaries and are not fixed. So by using the term “social system”, the author is actually trying to distance himself from any functionalist and structuralist tradition without falling into the pure interactionism that would guide his explorations. The social system is indeed there to remind us of a framework. This framework is by definition more “robust” than a particular rule, for example, a rule on “wages”. On the other hand, the system is neither in equilibrium, nor “normative” in the sense that it would determine behaviours, nor rational in the sense that it would impose a model of rationality on the actors, nor formatted by a historical trend. This is why structural-functionalist determinism is as much rejected as determinism by the historical process (Comte, Marx). Even for the most extensive systems, such as industrial relations or societies, “one should rather compare the nature and extent of partial regulations than imagine a global regulation” (Reynaud, 1995: 55.).

With this theory of the plurality of social systems (Reynaud, 1989) the state tries to control, but “illegal” practises of posting remain and adapt. Then there are adjustments (negotiations, conflicts) between both systems, around the PWD, for example. But posting, as a continuously growing form of employment, should still be considered “in principle” as an independent system finding ways to pursue its own goals. The interests of workers, employers and states within the system of posting resist the regulation efforts of the European Union for more than twenty years.

There are also conflicts and adjustments inside the system of posting itself. Despite poor living conditions, posting can be considered as a social system deriving from ordinary normativity including opposition, discussions and negotiations (Reynaud, Richebé, 2009). It can produce actual rules of work fundamentally different from traditional collective bargaining. The relations between posted workers and their employers may be based on short or long-term contracts. According to our interviewees, contract duration varies from 2 months to 9 years, outreaching by far the legal duration of 2 years (Tab. 1). And, to a certain extent, workers can discuss their working conditions, salary increases, even if most of the time their attitude is defensive: asking for the payment of fuel for transportation or meals, for periodical returns to Portugal, asking to be paid at times or at all. The classical form of resistance, after threats and complaints, in order to engage in negotiations with the Portuguese employer, is to slow down or stop working either individually or collectively. Very rare are strikes with established union contacts, as we experienced it in a case of unfair dismissals (Thoemmes, 2014). Sometimes posted workers have representatives (for example the Portuguese worker of a group who also speaks French which is exceptional, or the worker with the longest experience in posting). As such, posting is not fundamentally different from any other employment system. Inside the posting system, agreements rely on an autonomous source of regulation (workers) and a controlling source (the Portuguese Employer). What makes posting different is

the third party, adding to the controlling source, the user undertaking, a French company in our case.

Portuguese companies appear as intermediaries who benefit foreign companies and conglomerates. Especially small-sized Portuguese companies are under the domination of the user undertaking. The actual social regulation is the result of the organisation of an economic sector around a relationship between the Portuguese employer and their employee and the ordering customer. Portuguese firms work on behalf of private French companies, and obtain government or private procurement. In that world, posting is a systematic and large-scale pattern.

"Yes, normally these are private companies, the public gives to the private and the private calls on to us. But we also take part in major projects, in the high-speed TGV lines and others. These are government projects. (...). The public gives to a huge French group and the big French business gives it to a half-dozen smaller companies. The big guy earns more than anyone else, doing nothing" (Manager, Posting Agency, 2013, North Portugal, No. 17).

The interviews conducted with Labour Inspectors confirm this trend of posting networks that has been developing over the last fifteen years. Since 2005, many declarations of posting and authorisation applications were made in southern France. The posted workforce in the construction sector is considered relatively higher-skilled when compared to previous immigrants, and even when compared to some of the local workforce, which means it can compensate for labour force shortages and substitute for the traditional workforce. In our findings, poor posting conditions do not correspond to an unskilled workforce.

"So we first saw structural construction workers. The user undertaking therefore discovered an extraordinary workforce: quality workers who were posted on top of that, hence the user undertaking had no responsibility towards that staff" (Labour Inspector, 2012, Midi-Pyrenees).

According to Labour Inspectors, the responsibility for the harsh situations experienced by Portuguese workers on construction sites lies primarily with French contractors seeking to benefit from the advantageous rules on posting.

"It is the prime contractors who create these situations and make them last. When I see that the foreperson is lodged by the prime contractor, that it's their company which is used as a mailbox, it is obvious that there is a good understanding between all these people" (Labour Inspector, 2012 Midi-Pyrenees).

The user undertaking does have a particular position regarding the social system of posting. They are on top of the controlling regulation, co- or super-employers of posted workers. But they also belong to the social system of traditional collective bargaining. They are involved in generally binding sector agreements with union representatives. The traditional bargaining system in construction has public and legal support on its side. The posting system has advantages in terms of labour costs and in providing employment for Southern and Eastern European countries. For the user undertaking, being in both systems is an advantage. They can use a mobile and a fixed workforce. Posting as a mobile workforce is still much cheaper than classical temporary work. In this perspective, posting stems partly from the strategy of Portuguese employers, and partly from that of major construction groups (Jounin, 2008; Afonso, 2012). The latter call on a double labour market: both national and transnational (Lillie, Greer, 2007). The corporate network for the transnational market is crucial, as it also encompasses recruiting agencies, lawyers, consulting agencies, and sometimes successive, or cascading subcontractors. Personal networks between Portuguese employers, employees and French outsourcers are commonly used.

The social system should therefore extend from the workplace to the whole transnational territory. Despite outsourcers taking part in both, the social system of posting is intended to stay apart from traditional collective bargaining. The conflict between social systems may ultimately refer to competing rules

issuing from two different systems of industrial relations (Dunlop, 1958). Calling posting an “emerging industrial relations system” may also be linked to the EU seeking to re-regulate European production territories through the use of the notion of transnational "service delivery" and finally to (re) qualify work. This final point may be added to the debate on the future of work. It is still wishful thinking to hope that employers will ultimately consider posting as counterproductive because it undermines stable employment relations in the longer term (Woolfson, 2007), especially in the construction sector. The shift in employment from production to service activities may be considered as a motivation for posting, especially when the traditional collective bargaining system is considered too costly (Renooy, 2007). The construction sector is impacted by a change in the way activities are viewed. Posting here means codifying labour as “service.” It may be seen as a project aimed at exempting the sphere of production from employee rights, though they are consubstantial to its existence.

Conclusion

The view that posting corresponds to informal labour practices should be questioned. The first set of observations stemming from the literature shows that posting may be perfectly in line with formal collective agreements and labour law in certain sectors and countries. For this reason, it is necessary to limit our conclusions to the specific case we described. Furthermore, posting is no longer marginal. A steady increase of workers (especially Portuguese) posted to French construction sites shows up a sector largely dependent on this form of labour.

The second set of observations about the “informality” of posting points to this article’s main contributions. Indeed, our results show that working and living conditions for posted Portuguese workers are different from those of workers covered by traditional industrial relations: they are characterised by short term recruitment, quick changes, availability, unpredictability, travel on a

circular territory between Portugal and France and between French construction sites. But their poor working conditions are not “informal” as often presented in the literature. They are the result of a negotiation process starting in Portugal with a low minimum wage and a working life in France subject to further changes. Salary may increase. Better working conditions due to the payment of transportation costs or food may be obtained, or conversely, a secretly negotiated salary may be paid late or not at all. Non-respected oral agreements create tensions between employers and employees on the construction site with an uncertain outcome. For this reason, the term “informality” does not cover the independent negotiation process and its capacity to create its own, new rules.

We consider “deviance” and “non-compliance” with legal rules as a genuine social process (Reynaud, 1991). Framed by European policy, posting is also the product of an ordinary normativity which is that of any collective action. These rules are temporary, like all rules, but quite resilient in the face of efforts at supervision and recent political changes, because they are supported by an autonomous system of social regulations. Their relationship to the traditional collective bargaining system confirms this view.

From a political point of view and more than 20 years after the PWD, the efforts to close the “gap” between the two systems are still underway. “The possibility of verifying, legally and in practice, whether a worker is correctly posted within the framework of the provision of services has become an Achilles heel of the enforcement of the use of cross-border recruited labour” (Cremers, 2016: 1). The lack of enforcement of posting rules is certainly due to weak monitoring, lack of Labour Inspectors, poor knowledge of the posting rules, inconsistencies in the applicable rules. Posted workers are mostly excluded from worker representation and formal collective bargaining (Wagner and Berntsen, 2016). Current developments try to strengthen employee rights and control operations in order to reduce the gap from the top. In 2014 the Enforcement

Directive²¹ was approved with the objective to address issues related to fraud, circumvention of rules, and exchange of information between Member States. In 2016 the European Commission presented a revision²² of the rules on posting that included changes in three areas: remuneration of posted workers, temporary work agencies regulation, and long-term posting approved by the European Parliament in 2018. Until Member States transpose the new rules (2020), current legal rules remain in place. Above all, it remains uncertain how any legal rules can tackle the current practices of the posting system.

From a sociological point of view, is the “formalisation thesis” (Rostow, 1959) back on the European agenda, leading to the disappearance of posting as an autonomous system as we described it? Nothing is less certain. Functionalist perspectives can only hesitate in attempts from the top to reduce the gap between the “deviant system” and the “legal system”, through a process of recursive formalisation, but it fails in the face of the resilience of the posting system because the autonomous character of its social regulation is not considered. On the contrary, the social regulation perspective is able to gather its autonomous character and consequently to understand the weakness of the formalisation strategy from the top. Opportunities for better living conditions may emerge on the ground. The specificity of this form of employment is its transnational character, opening locally new spaces for collective action in traditional sectors. Shifting the perspective from functionalist theory to social regulation is a first step to recognise control and autonomy of posted work and the existence of two competing systems. This may ultimately shift the analysis from static and recursive control to autonomous change aiming to unify both systems from below.

²¹<http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32014L0067from=fr>

²²<http://ec.europa.eu/social/BlobServlet?docId=15294&langId=en>

References

CETTE G.

- 1998 Les effets d'une réduction du temps de travail sur l'emploi et le chômage, *Revue française d'économie*, 13, 3 : 127-149.

AFONSO, A.

- 2012 Employer strategies, cross-class coalitions and the free movement of labour in the enlarged European Union. *Socio-Economic Review*, 10, 3:705-730.

AMAUGER-LATTES M.-C.

- 2014 *Le cadre juridique du détachement transnational : entre libertés économiques et protection des travailleurs*, Toulouse : Labex SMS.

AMAUGER-LATTES, M.-C. JAZOTTES, G.

- 2007 Libre prestation de services et circulation des travailleurs : entre concurrence et droit social. *Revue de Jurisprudence Sociale*, 11 : 911-917.

BERNACIAK, M.

- 2015 *Market Expansion and Social Dumping in Europe*. London: Routledge.

BOSCH G., WEINKOPF C., WORTHMANN, G.

- 2011 *Die Fragilität des Tarifsystems: Einhaltung von Entgeltstandards und Mindestlöhnen am Beispiel des Bauhauptgewerbes*. Berlin: Edition Sigma.

BREMAN, J.

- 1976 A Dualistic Labour System? A Critique of the "Informal Sector" Concept: I: The Informal Sector. *Economic and Political Weekly*, 11 (48): 1870-1876.

CHARBIT Y., HILY M.-A., POINARD M.

- 1997 *Le va-et-vient identitaire : migrants portugais et villages d'origine*. Paris : Presses universitaires de France.

CLARK N.

- 2012 *Regulation and Enforcement of Posted Workers Employment Rights (PostER)*.

London: London Metropolitan University.

CORDEIRO A.

2002 Le va-et-vient des Portugais en Europe. *Projet*, 272, 4 : 63–68.

COUR DES COMPTES

2019 Le rapport public annuel 2019. Paris : La Documentation française.

CREMERS J.

2011 *In Search of Cheap Labour in Europe: Working and Living Conditions of Posted Workers*. Bruxelles : CLR/EFBWW/International Books.

2016 Economic freedoms and labour standards in the European Union. *Transfer: European Review of Labour and Research*, 22, 2:149–162.

CREMERS J., DØLVIK, J. E., BOSCH, G.

2007 Posting of workers in the single market: attempts to prevent social dumping and regime competition in the EU. *Industrial Relations Journal*, 38, 6:524–541.

CREMERS J., DONDERS, P.

2004 *The Free Movement of Workers in the European Union*. Brussels: CLR/Reed Business Information.

DESBARATS I.

2006 La régulation juridique à l'épreuve du processus européen de libéralisation des services. *Colloque : Etat et régulation sociale* : 1–12. Montréal : Centre de recherche interuniversitaire sur la mondialisation et le travail (CRIMT).

DE TERSSAC, G.

2003 Travail d'organisation et travail de régulation, in De Terssac G. (Ed.), *La théorie de la régulation sociale de Jean-Daniel Reynaud* : 11–33, Paris : La Découverte.

2012 La théorie de la régulation sociale : repères introductifs. *Revue Interventions économiques. Papers in Political Economy*, (45).
<http://journals.openedition.org/interventionseconomiques/1476>

DGT

2015 *Analyse des déclarations de détachement des entreprises prestataires de services*

en France en 2013. Paris : Ministère du Travail, de l'Emploi et de la Santé.

DUNLOP J. T.

1958 *Industrial Relations Systems*. New York: Holt.

EUROPEAN INSTITUTE FOR CONSTRUCTION LABOUR RESEARCH

2014 *Posting Report France*: 33. Brussels: European Institute for Construction Labour research.

GENNARD J.

2008 Vaxholm/Laval case: its implementations for trade unions. *Employee Relations*, 30, 5 : 473–478.

GRIGNON F.

2006 *Le BTP français face à l'élargissement de l'Europe – Sénat*, Paris : Sénat.

GUIORGUEFF J.

2014 Au soutien des travailleurs détachés la Cour de justice de l'Union européenne s'attache à renforcer la protection de la libre prestation de service. *La Revue des droits de l'homme. Revue du Centre de recherches et d'études sur les droits fondamentaux*, (Actualités Droits-Libertés) : 2–8.

HEINTZ J. POLLIN R.

2003 *Informalization, Economic Growth and the Challenge of Creating Viable Labor Standards in Developing Countries* | WIEGO.
<http://www.wiego.org/publications/informalization-economic-growth-and-challenge-creating-viable-labor-standards-developin>. Accessed 7 March 2017, Political Economy Research Institute Working Paper Series.

HOUWERZIJL M.

2006 Towards a more effective posting directive, in Blanpain R. (Ed.), *Freedom of Services in the European Union: Labour and Social Security Law: the Bolkestein Initiative*: 179–198. The Hague: Kluwer Law International.

JENSEN P. H., PFAU-EFFINGER B., FLAQUER, L.

2010 The development of informal work in the work-welfare arrangements of European societies. In B. Pfau-Effinger, L. Flaquer, P. H. Jensen (Eds.), *Formal and Informal Work: The Hidden Work Regime in Europe*: 3–20. New York: Routledge.

JOUNIN N.

2008 *Chantier interdit au public : enquête parmi les travailleurs du bâtiment*. Paris :

La Découverte.

KAHMANN M.

- 2006 *Undeclared Labour in the Construction Industry: Country report - France*: 32. Brussels: European Institute for Construction Labour research.

LEFEBVRE B.

- 2006 Posted workers in France. *Transfer: European Review of Labour and Research*, 12, 3:197–212.

LILLIE N.

- 2010 Bringing the Offshore Ashore: Transnational Production, Industrial Relations and the Reconfiguration of Sovereignty. *International Studies Quarterly*, 54, 3:683–704.
- 2016 The Right Not to Have Rights: Posted Worker Acquiescence and the European Union Labor Rights Framework. *Theoretical Inquiries in Law*, 17. <https://doi.org/10.1515/til-2016-0003>

LILLIE N., GREER, I.

- 2007 Industrial Relations, Migration, and Neoliberal Politics: The Case of the European Construction Sector. *Politics Society*, 35, 4:551–581.

LODER J.

- 2011 The Lisbon Strategy and the politicization of EU policy-making: the case of the Services Directive. *Journal of European Public Policy*, 18, 4:566–583.

MAGGI B.

- 2016 *De l'agir organisationnel. Un point de vue sur le travail, le bien-être, l'apprentissage*, <http://amsacta.cib.unibo.it>, Bologna : TAO Digital Library.
- 2020 *La théorie de Jean-Daniel Reynaud. Réflexions et souvenirs*, <http://amsacta.cib.unibo.it>, Bologna : TAO Digital Library.

MCGAURAN K.

- 2016 *Impact letterbox companies on labour rights and public revenue*: 86. <https://www.somo.nl/impact-letterbox-companies-labour-rights/>. Accessed 25 August 2017, Brussels: European Trade Union Confederation.

NIGHTINGALE D.S., WANDNER, S.A.

- 2011 Informal and Nonstandard Employment in the United States, <https://www.urban.org/research/publication/informal-and-nonstandard-employment-united-states> (accessed 7.25.20).

OECD/OIT

2019 Definitions of informal economy, informal sector and informal employment. In OECD/OIT: *Tackling Vulnerability in the Informal Economy*: 155-165. <https://doi.org/10.1787/103bf23e-en>, Paris : OECD,

OLIVEIRA DA SILVA, D., THOEMMES, J.

2017 Circuler entre chantiers et pays : enquête sur les travailleurs détachés portugais dans le BTP en France. *SociologieS*. <http://journals.openedition.org/sociologies/6454>.

PACOLET J., DE WISPELAERE F.

2017 *Posting of workers-Report on A1 portable documents issued in 2015*: 58. [workers+-+Report+on+A1+portable+documents+issued+in+2015.pdf](#). Accessed 8 September 2017, Brussels: European Commission.

PELLERIN H.

2011 De la migration à la mobilité : changement de paradigme dans la gestion migratoire. Le cas du Canada. *Revue européenne des migrations internationales*, 27, 2 : 57-75.

REA A., TRIPIER M.

2010 *Sociologie de l'immigration*. Paris : La Découverte.

RENOOY P.

2007 Undeclared work: a new source of employment? *International Journal of Sociology and Social Policy*, 27, 5/6: 250-256.

REYNAUD J.-D.

1983 Conflict and Social Control: Sketch of a Theory of Joint Control. *International Journal of Sociology*, 13,4:56-70.

1988 Les régulations dans les organisations : Régulation de contrôle et régulation autonome. *Revue française de sociologie*, (1) : 5-18.

1989 *Les règles du jeu : l'action collective et la régulation sociale*. Paris : A. Colin.

1991 Pour une sociologie de la régulation sociale. *Sociologie et sociétés*, 2 : 13-26.

REYNAUD J.-D., RICHEBÉ N.

2009 Rules, Conventions and Values: A Plea in Favor of Ordinary Normativity. *Revue française de sociologie*, 50 : 3-35.

RICHARD S.

2014 The management of posted workers in the European Union. *European*

Issue, 300.

ROSTOW W. W.

1959 The Stages of Economic Growth. *The Economic History Review*, 12, 1:1-16.

ROY D.

1954 Efficiency and "The Fix": Informal Intergroup Relations in a Piecework Machine Shop. *American Journal of Sociology*, 60, 3:255-266.

SASSEN S.

1994 *Cities in a World Economy*. Thousand Oaks: Pine Forge Press.

TARRIUS A.

1992 Circulation des élites professionnelles et intégration européenne. *Revue européenne de migrations internationales*, 8, 2 : 27-56.

2015 *Etrangers de passage : Poor to poor, peer to peer*. La Tour d'Aigues : Editons de l'Aube.

THOEMMES J.

2014 Le travail détaché. Le cas des salariés portugais du secteur de la construction en France. *Revue Les mondes du travail*, 14 : 39-55.

2015 Temps, travail et régulations : en quête du processus d'action multi-scalaire / Tempo, lavoro e regolazione: verso il processo d'azione a più livelli, in Thoemmes J. (Ed.) Temps de travail et régulation sociale / Tempo di lavoro e regolazione sociale, <http://amsacta.cib.unibo.it>, Bologna: TAO Digital Library.

THOEMMES, J., OLIVEIRA DA SILVA, D.

2017 Temporalités, réseaux et mobilités transnationales des travailleurs saisonniers en Andorre et des travailleurs détachés portugais en France. *Espace populations sociétés*, 2, [10.4000/eps.7228](https://doi.org/10.4000/eps.7228).

TRÉSOR-ECO

2016 Concurrence sociale des travailleurs détachés en France : fausses évidences et réalités. *Trésor-Eco*, 171.

TRIST, E. L., HIGGIN, G. W.

1963 *Organizational Choice: Capabilities of Groups at the Coal Face under Changing Technologies*. London: Tavistock Publ.

VAN HOEK A., HOUWERZIJL M.

2011 Comparative study on the legal aspects of the posting of workers in the

- framework of the provision of services in the European Union.
- 2011a *Comparative study on the legal aspects of the posting of workers in the framework of the provision of services in the European Union*: 363.
https://pure.uvt.nl/ws/files/4045160/Legal_study_PWD_Full_report_incl_exec_sum_EN_FR_DE_1_.pdf. Accessed 25 August 2017. Brussels: European Commission.
- 2011b *Complementary study on the legal aspects of the posting of workers in the framework of the provision of services in the European Union*: 423.
<http://csecl.uva.nl/binaries/content/assets/subsites/centre-for-the-study-of-european-contract-law/map-1/final-report-complementary-study-on-the-legal-aspects-of-the-posting-of-workers.pdf>. Accessed 25 August 2017, Brussels: European Commission.
- VOIVOZEANU, A.
- 2019 Precarious Posted Migration: The Case of Romanian Construction and Meat-Industry Workers in Germany. *Central and Eastern European Migration Review* 85, 85–99. <https://doi.org/10.17467/ceemr.2019.07>
- VOSS E., FAIOLI M., LHERNOULD J. P., IUDICONE F.
- 2016 *Posting of Workers Directive: Current Situation and Challenges*.
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2817462.
 Accessed 25 August 2017, Brussels: European Parliament.
- WAGNER I.
- 2015a Rule Enactment in a Pan-European Labour Market: Transnational Posted Work in the German Construction Sector. *British Journal of Industrial Relations*, 53, 4:692–710.
- 2015b EU posted work and transnational action in the German meat industry. *Transfer: European Review of Labour and Research*, 21, 2:201–213.
- 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: European Review of Labour and Research*, 22, 2:193–206.
- WAGNER I., LILLIE N.
- 2014 European Integration and the Disembedding of Labour Market Regulation: Transnational Labour Relations at the European Central Bank Construction Site. *JCMS: Journal of Common Market Studies*, 52 (2):

403–419.

WOOLFSON C.

2007 Pushing the envelope: the 'informalization' of labour in post-communist new EU member states. *Work, Employment Society*, 21, 3:551–564.

WOOLFSON C., SOMMERS J.

2006 Labour Mobility in Construction: European Implications of the Laval un Partneri Dispute with Swedish Labour. *European Journal of Industrial Relations*, 12, 1:49–68.

Appendix

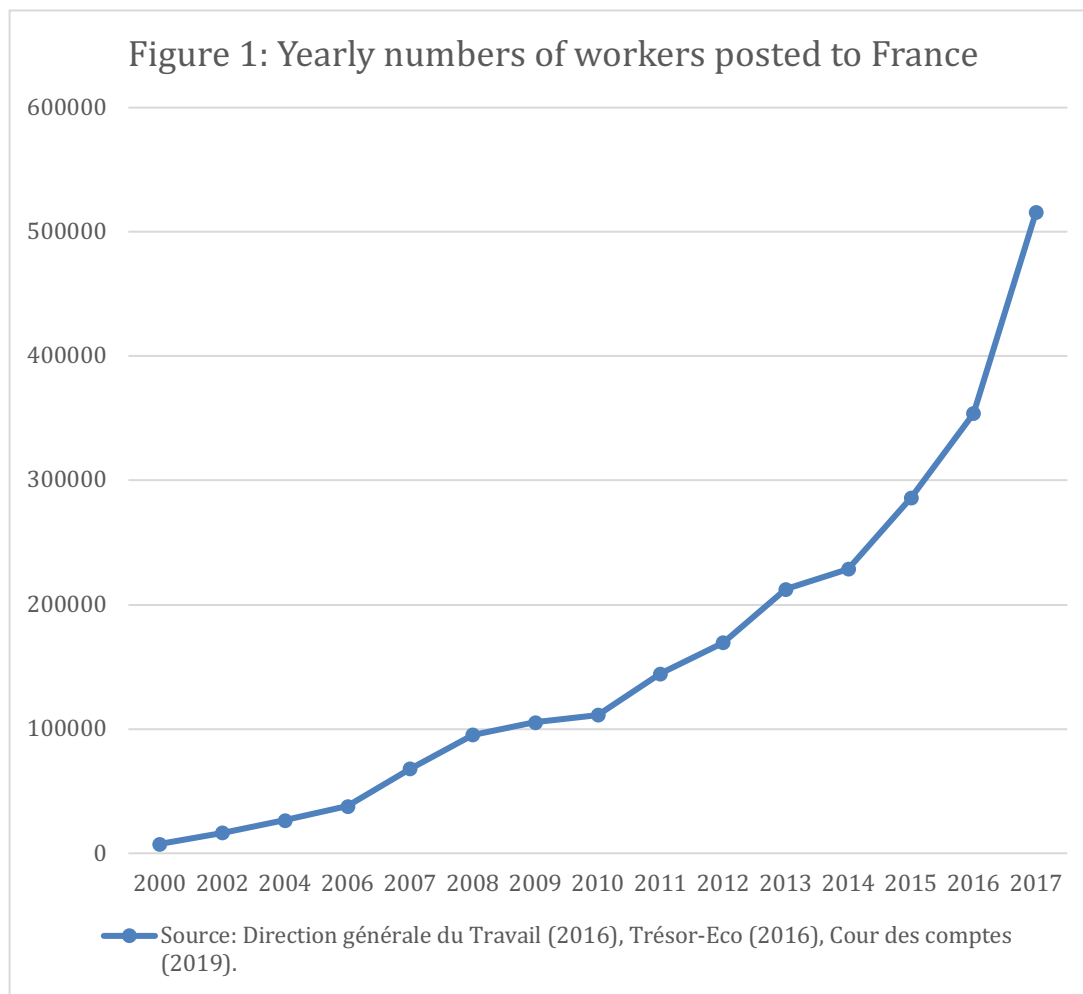


Table 1 - Profile of the Portuguese employees interviewed (n = 33)

N	Ages	Profession/ Function	Duration: contract	People/ bedroom	Location : work	Location : interview	Year
1	30-39	Leader	3 years	3	Midi-Pyrénées	Midi-Pyrénées	2012
2	30-39	Builder	2 years	3	Midi-Pyrénées	Midi-Pyrénées	2012
3	30-39	Leader	1 year	2-3	Midi-Pyrénées	Midi-Pyrénées	2012
4	30-39	Builder/ Scrap dealer	6 month	3-4	Midi-Pyrénées	Midi-Pyrénées	2012
5	30-39	Leader	6 years	2-3	Midi-Pyrénées	Midi-Pyrénées	2012
6	40-49	Leader	6 years	3	Midi-Pyrénées	Midi-Pyrénées	2012
7	30-39	Driver	5 years	2-3	Midi-Pyrénées	Midi-Pyrénées	2012
8	30-39	Leader	6 years	2-3	Midi-Pyrénées	Midi-Pyrénées	2012
9	20-29	Laborer	3 years	2	Midi-Pyrénées	Midi-Pyrénées	2012
10	60-65	Driver	1 year	2	Midi-Pyrénées	Midi-Pyrénées	2012
11	40-49	Foreman	6 years	2	Midi-Pyrénées	Midi-Pyrénées	2012
12	20-29	Leader	6 years	2	Midi-Pyrénées	Midi-Pyrénées	2012
13	20-29	Plasterer	1 year	2-3	Ile-de-France	North Portugal	2013
14	30-39	Locksmith	1 year	2-3	Ile-de-France	North Portugal	2013
15	30-39	Posting Agency	n/a	n/a	Nord du Portugal	North Portugal	2013
16	20-29	Responsible Construction	3 month	4	Burgundy	North Portugal	2013
17	20-29	Posting Agency	n/a	n/a	North Portugal	North Portugal	2013
18	30-39	Tiler	3 month	4-5	Ile-de-France	North Portugal	2013
19	50-59	Laborer	2 month	1	Aquitaine	North Portugal	2013
20	60-65	Laborer (undeclared)	1 month	3-4	Aquitaine	North Portugal	2013
21	30-39	Locksmith	5 month	2	Aquitaine PACA	North Portugal	2013
22	30-39	Locksmith/ Foresmith	5 month	2	PACA	North Portugal	2013
23	40-49	Portoguese Employer	n/a	n/a	Rhône-Alpes	Rhône-Alpes	2013
24	30-39	Tiler	3 month	2-3	Rhône-Alpes	Rhône-Alpes	2013
25	60-65	Tiler	3 month	2-3	Rhône-Alpes	Rhône-Alpes	2013
26	20-29	Electrician	4 years	2	Midi-Pyrénées	Midi-Pyrénées	2014
27	20-29	Laborer	1 year	3	Île-de-France	Île-de-France	2014
28	50-59	Laborer	9 years	3	Île-de-France	Île-de-France	2014
29	40-49	Tiler	3 month	3	Ile-de-France	Île-de-France	2014
30	40-49	Scrapper/ Leader	6 month	4	Auvergne	Auvergne	2014
31	30-39	Laborer	9 month	NR	Auvergne	Auvergne	2014
32	50-59	Laborer	9 month	NR	Auvergne	Auvergne	2014
33	40-49	Scrap dealer	3 month	2-4	Auvergne	Auvergne	2014