

Proposal of cooperation between Porto Faculty of Law – Universidade Católica Portuguesa [FD-UCP Porto] and the Portuguese Authority for Working Conditions [ACT]

I. Contextualization

Developed over the last two years, *STEP UP Protection – Stepping up the European cooperation and communication among Public & Private organizations for the Protection of posted workers' rights* is a project focused on the issue of posting. At a national level, the project has implied a close cooperation between the FD-UCP Porto researchers involved and ACT, in permanent consultation with the other actors and in accordance with the work lines previously defined. The collaboration of ACT has proven to be essential in aspects such as the identification of the most commonly practiced violations of the legislation on the posting of workers, the practical difficulties regarding its application, its compliance with European Union Law considering the various Directives with relevance in the matter, its adequacy to the national reality, and the advantages and shortcomings of the system established with a view to cross-border cooperation in the field of posting of workers (IMI). ACT has also been a key working partner in the context of holding clarification sessions on the legal regime of posting aimed at employers and employers' associations, as well as workers and trade unions. Since the project also provides for training sessions aimed specifically at ACT, these have turned out to be sessions of reciprocal learning, joint approach to practical problems and analysis of legal solutions.

The continual and productive dialogue between the national research group and the ACT representatives has allowed us to foresee the possibility of establishing, to the advantage of both parties, a channel of future institutional interaction, eminently – although perhaps not only – focused on the posting of workers. It is in this context that the following cooperation proposal is presented.

II. Proposal

a. Cooperation in terms of training actions

In addition to the practical-normative problems raised by the posting of workers being numerous and diverse, the respective legal regime has also proved not to be watertight. Quite the opposite. The European normative body has been modified to respond to the inherent need to adjust the national order. In Portugal, the latest changes, originating in Directive 2018/957, were transposed very recently through Decree-Law No. 101-E/2020, of 7 December, with many of the implications inherent to such a modification of the pre-existing regime still to be revealed and debated. Thus, the continuity of training actions aimed at ACT will undoubtedly be useful, since these actions provide an opportunity for mutual learning through dialogue and the sharing of doubts and answers in the field of posting and, in broader terms, the cross-border mobility of workers.

Our suggestion is for such meetings to take place, at the request of ACT, whenever the relevance and/or the volume of questions concerning the implementation and/or interpretation of the rules justify it. In particular, when the legal framework regarding the matter in question changes, either by normative intervention or due to relevant jurisprudential guidelines, considering either the national courts or the Court of Justice of the European Union.

b. Cooperation in terms of cross-border relations

Throughout the project, all inspection bodies involved underlined the need for closer cooperation and interaction with foreign counterparts, and it was found that there are no inspection strategies that are shared and discussed in advance with inspection bodies in other Member States, confirming, therefore, the assumption on which this project is based. Still, the feedbacks also demonstrated the excellent skills of the inspectors involved, as well as their willingness to cooperate.

We believe that, within the universe of countries involved in the project – Portugal, Italy, Spain, Lithuania and Romania – the institutional relations developed over the last two years make it possible to adopt dialogue initiatives with a view to trying to overcoming those limitations. FD-UCP Porto research team is available to act as a communication mediator in this regard upon request. It is our conviction

that this dialogue may even translate into the adoption of bilateral agreements between the ACT and inspection bodies in other countries similar to the ones in force.

c. Cooperation in terms of training and awareness-raising actions for companies

FD-UCP Porto research team declares itself available to, upon request, cooperate with ACT in the scope of training and awareness-raising actions for companies in the field of the legal regime of the posting of workers. Regardless of the implementation of this cooperation, ACT can always use, for the purposes of clarification of both employers and workers, the information materials prepared during the development of the project, which were made available to it.

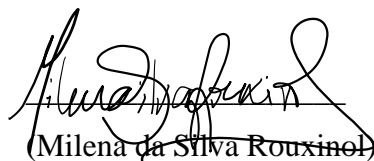
d. Cooperation in terms of proposals for amending domestic legislation and EU legislation

Throughout the project, some systematic inconsistencies were detected in national legislation, together with some points where compliance with the European regulatory framework is doubtful. In this regard, the FD-UCP Porto research team and ACT could jointly consider proposals to amend the referred legislation with a view to overcoming those and, perhaps, other problems.

e. Concretization of cooperation models

To develop and implement the proposals formulated above, the FD-UCP Porto research team proposes to meet with ACT, subject to availability of both parties, with a view to discussing such elements.

The Coordinator of the FD-UCP Porto research team,



(Milena da Silva Rouxinol)

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