



**SAFETY AND HEALTH
OF TEMPORARY
AGENCY WORKERS
AND CROSS-BORDER
WORKERS**

“SAFE AND HEALTHY WORK FOR TEMPORARY JOBS”

**EUROPEAN CAMPAIGN
OF THE SENIOR LABOUR INSPECTORS COMMITTEE (SLIC)
2017-2019**

Final report

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Senior Labour Inspectors Committee (SLIC)

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I – INTRODUCTION AND CONTEXT

1.1 Background

- In its 70th plenary meeting, during the Netherlands European Union Presidency, on May 18th 2016, the Committee of Senior Labour Inspectors decided to carry on the campaign on “**Safety and Health of temporary agency workers and cross-border workers**”.
- The French General Directorate of Labour (DGT) and the National Institute of Labour, Employment and Vocational Training (INTEFP) were the organizers of this project. Austria, Belgium, Luxembourg, Poland, Portugal, Spain, Sweden and OSH Agency have significantly contributed to achieve it.
- The campaign was launched in September 2017 and closed in May 2019.
- The campaign has been co-financed by the European Commission (EaSi Programme).

1.2 SLIC reasons to choose the temporary agencies workers

Employment in temporary work agencies in the European Union has increased rapidly during the last decade.

Although there was a lack of basic, reliable and comparable data on temporary work agencies in the EU, it was unquestionable that temporary work has become a growing form of employment. The importance of temporary agencies workers differs between countries, as shown by several studies over the European Union:

- Workers are typically male (61%) (1);
- Workforce is comparatively young (21.6% are between 15 and 24 years old, compared to 9% among the total employees);
- Workers are disproportionally unskilled;
- Incidence of occupational accidents is higher than among other groups of employees (2).

One of the most important reasons for the high number of accidents is that the temporary agencies workers are new in specific jobs and therefore less informed about OHS prevention. In fact, temporary agencies workers are not as well informed about health risks at work compared with other types of employment (3).

(1) Study on "The role and Activities of Employment Agencies", European Parliament, 2013.

²Report on the "Temporary agency work in the European Union", European Foundation for the Improvement of Living and Working Conditions, 2007.

³ European working conditions survey, Eurofound 2000.

For all those reasons, the SLIC campaign has been decided to deal with working conditions of temporary agencies workers and gather information in order to contribute for safe and healthy jobs.

1.3 Campaign aims

The European SLIC campaign has focused on the safety and health conditions of the temporary agency workers and the posting of workers by temporary agencies.

These aims have been reached through actions promoting and improving OSH in the workplace.

The juridical base was determined by the definition of “temporary-work agency” (TWA) in article 3.1.b of the Directive 2008/104:

“Any natural or legal person who, in compliance with national law, concludes contracts of employment or employment relationships with temporary agency workers in order to assign them to user undertakings to work there temporarily under their supervision and direction”.

The Directive 91/383/EEC on occupational safety and health of workers with a fixed-duration employment relationship or a temporary employment relationship is the main common reference for the SLIC campaign on TWA.

The campaign has been organized in two parts: enforcement and communication.

☐ Enforcement

Inspections carried on the temporary work agencies and user-undertakings - at national level - as well as on posted workers.

To implement this aspect, the labour inspectors could carry out joint visits or exchange information by Internal Market Information (IMI) system. This process has been called “Pilot Experience” on the cross-border enforcement regulations.

☐ Communication

Promoting information to employers (agencies and users), workers and social partners.

That was made in order to contribute to increase awareness on OSH matters. Flyers and brochures were made and a special website was created for this purpose - www.european-temporary-work-campaign.eu

More broadly, everybody had access to all information. The European Agency for Safety and Health at Work (EU-OSHA) gave its support in this field. The European and national social partners were invited to support the campaign in order to promote OSH of the temporary agencies workers and to foster social dialogue.

1.4 Participation of the Labour Inspectorates

The participation of the European Labour Inspectorates in the SLIC campaign was voluntary.

At the national level, twenty-three Member States⁴ including Iceland and Norway were involved and organized this campaign.

For almost the majority of the Labour Inspectorates, it was the first time that the temporary work agencies' sector was treated as national priority action. It was a good opportunity for analyzing this activity in the countries (companies' number, size, sectors...). Belgium and Sweden have previously carried out a national campaign.

Among them, eleven countries (Belgium, Bulgaria, Cyprus, Estonia, Finland, France, Greece, Norway, Portugal, Romania and Spain) participated on the cross-border temporary agencies workers actions. During 2018, across Europe, eight cooperation's corresponding to fifteen joint visits were organized on the temporary work agencies and user-undertakings.

1.5 Sectors

When the campaign was launched, the main sectors identified were agriculture, cleaning services, construction, food manufacturing, health care, hotels and restaurants, metal industry, transport and logistics... However, some countries also targeted other sectors taking into account the temporary work employment or other issues in this field.

1.6 Common approach of the labour inspections

For ensuring the effectiveness of enforcement of the Directives throughout the European labour inspections, it was proposed a common approach. Tools like guidelines, check lists and technical support information were elaborated in order to inspect the temporary agencies and user-undertakings.

II - MEMBER STATES APPROACH, STRATEGY AND CONTACTS WITH SOCIAL PARTNERS

With few exceptions most Member States started inspecting the TWAs. The obvious reason for this was to get information about to which user undertakings they had sent employees. The selection of TWAs was done in many Member States on the basis of TWA registers. Not all country set themselves criteria for this, e.g. occupational accidents, obligations of health surveillance; geographical factors size of TWA (number of TAWs), but selected the TWAs rather randomly. For the selection of user undertakings on the basis of collected data, the following examples can be given: the number of TAWs in the user undertakings, the risks at the workplace, the accident rate at the workplace. All member states have used the questionnaires produced by the campaign group. A number of countries translated them to their own languages.

The request from the campaign group was that three user undertakings per TWA should be inspected. Some member states managed to do this, but not

⁴Austria, Belgium, Bulgaria, Croatia, Czech Republic, Cyprus, Denmark, Estonia, Finland, France, Greece, Hungary, Iceland, Latvia, Luxembourg, Norway, Poland, Portugal, Romania, Slovak Republic, Slovenia Spain and Sweden.



all of them. One reason could be that, in particular, smaller TWAs cooperated with a single user company. Thus, the average rate seems to be around two. Due to national legislation, which allocates all OSH responsibilities to the user undertakings, one member state chooses not to contact TWAs at all. Most countries have benefited from this campaign to remind concerned actors of their OSH legal obligations and have informed on it. When it comes to sectors inspected, some member states choose just to inspect one, whereas other inspected a number of different sectors. The vast majority of member states inspected sectors highlighted in the campaign guide. In addition, some of them have also selected sectors that have certain national relevance. Among the participating member states there are also some who inspected all TWA registered in their country.

Even though the information actions were mainly focused on the TWA, UU, and TAW, there was one member state that extended these target groups by the occupational health services.

Most member states contacted national or sectorial social partners before the inspections started.

Of the two Member States that had already organized national campaigns in the temporary agency work sector in the run-up to this European campaign, there was one country that was still running its national campaign. It therefore decided to fully integrate the European campaign into the national campaign.

On the contrary to the above mentioned strategy, two member states involved in the cross-border project choose to first inspect user undertakings and then TWAs. Their reason for this strategy was that they otherwise expected the TWAs would be able to inform user undertakings, concluding that the result from inspections, wouldn't be realistic.

Cooperation between the countries participating in the cross-border pilot experience took place either through joint inspection visits (involving labour inspectors from the participating countries) or through an exchange of information (in cases where companies from these countries were involved). In one case, the joint visit was marked by the investigation of a fatal accident at work in the company where the victim performed his tasks.

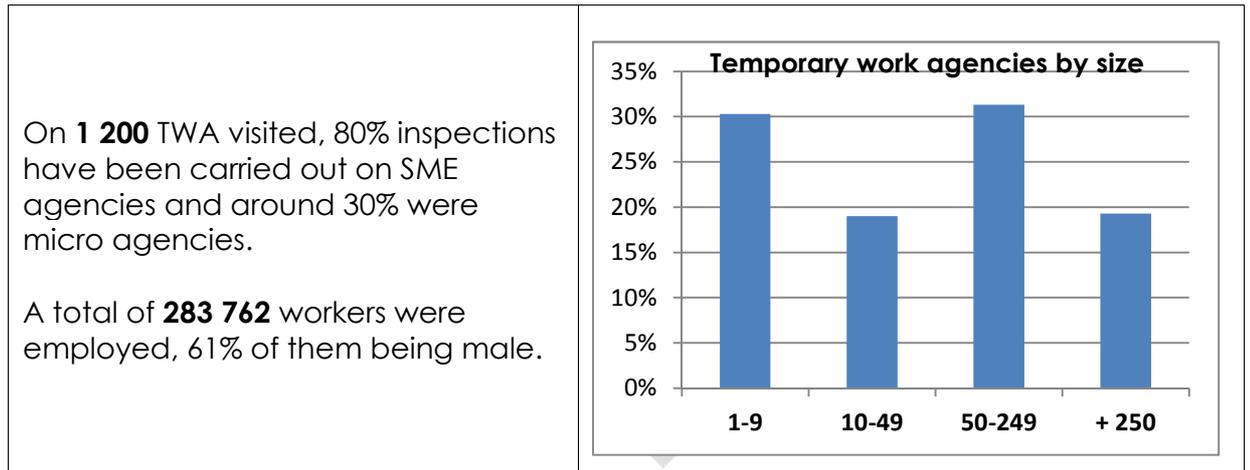
III – CHARACTERISTICS OF THE COMPANIES INSPECTED

The inspection campaign covered **3 715** enterprises and break down as follows:

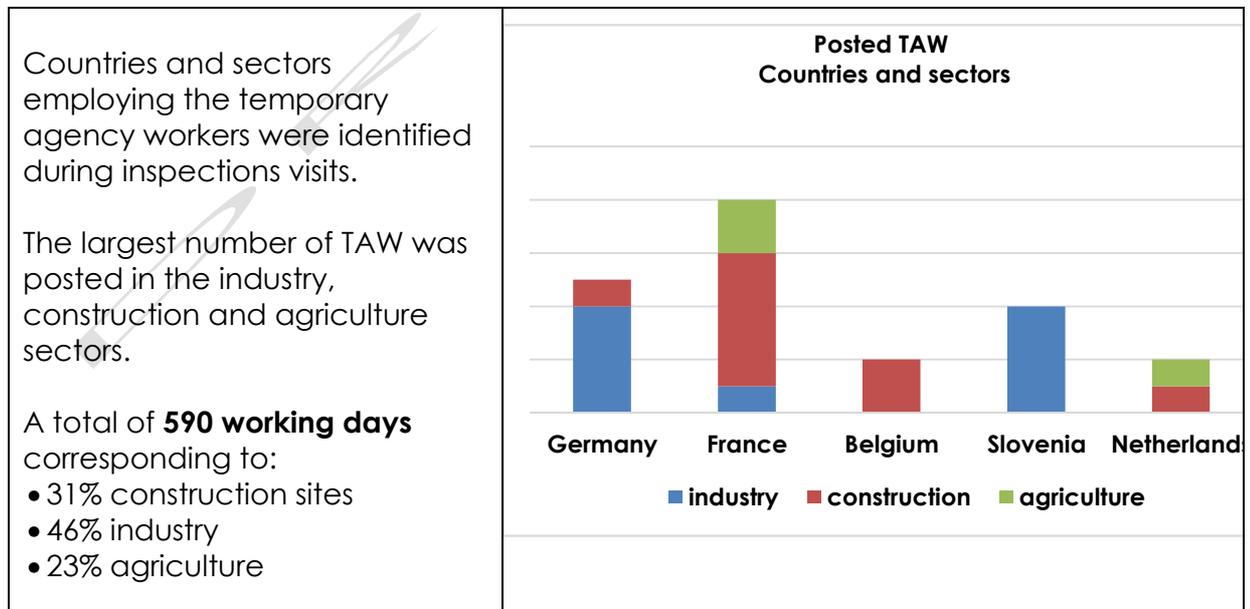
- 1 200 temporary work agencies (TWA),
- 2 515 user-undertakings (UU).

An average of one TWA and two UU has been inspected in 15 different sectors.

3.1 Temporary work agencies (TWA)



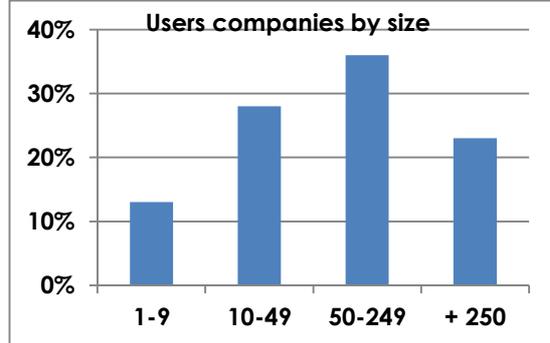
Among these TWA around 16% are posting temporary workers to other Member States, corresponding to 4% of temporary agency workers, 85% being male.



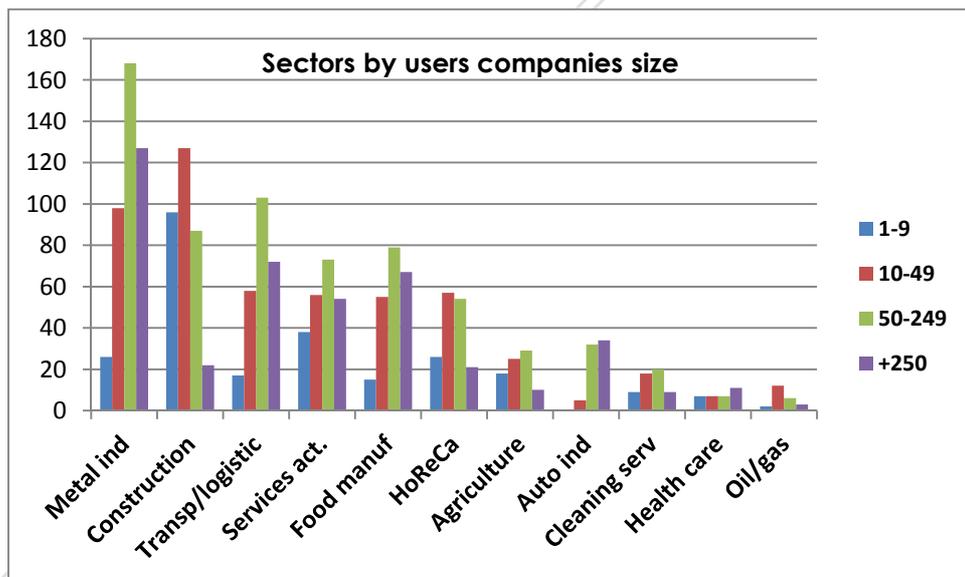
3.2 User-undertakings (UU)

On **2 515** UU visited, 75% were from SME.

This is a classical picture of the economic structure of the companies that usually employed the temporary agencies workers.



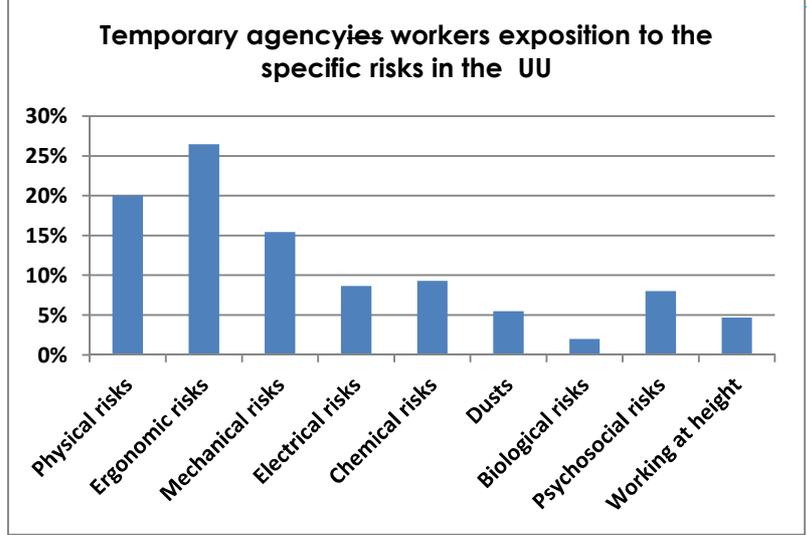
Most inspections have been concentrated in sectors such as metal industry 22,5%, construction 18%, transports and logistics 13,5%, followed by services activities and food manufacturing 12%, HoReCa 8,5% then 1% to 5% in agriculture, health care and cleaning services, as shown in the graphic:



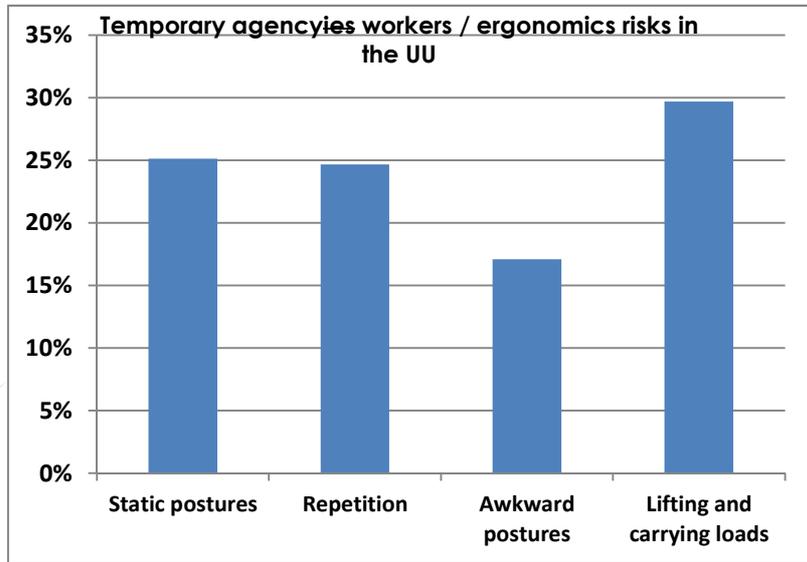
In addition, other sectors like slaughterhouse, forester and shipyards for instance have been chosen.

In regard to the large number of sectors inspected during the campaign, this graphic shows a picture of the different kind of risks that have been identified in the workplaces where the temporary workers were assigned. As it is known, each sector is characterized by specific risks and the workers are exposed, in many cases, to multiple risks.

Physical, ergonomic and mechanical risks have been most frequently identified. For instance, physical risks (noise) combined with ergonomic risks (carrying load charge), plus working at height level are characteristic of the construction sector. Physical, mechanic, thermic, electrical, dust risks are often related to metal industry. The consequences on health are also known as MSD and physical injuries.



Mostly ergonomic risks have been identified specifically in the works involving lifting and carrying loads, static postures and repetitive movements.



3.3 Occupational accidents

One of the inspection targets of proceedings at the TWAs and the employer-user companies was to analyze occupational accidents of temporary agency workers and permanent workers at users companies. It was related to the division between fatal and non-fatal accidents during the three-year period 2015-2017.

These data must be cautiously interpreted because:

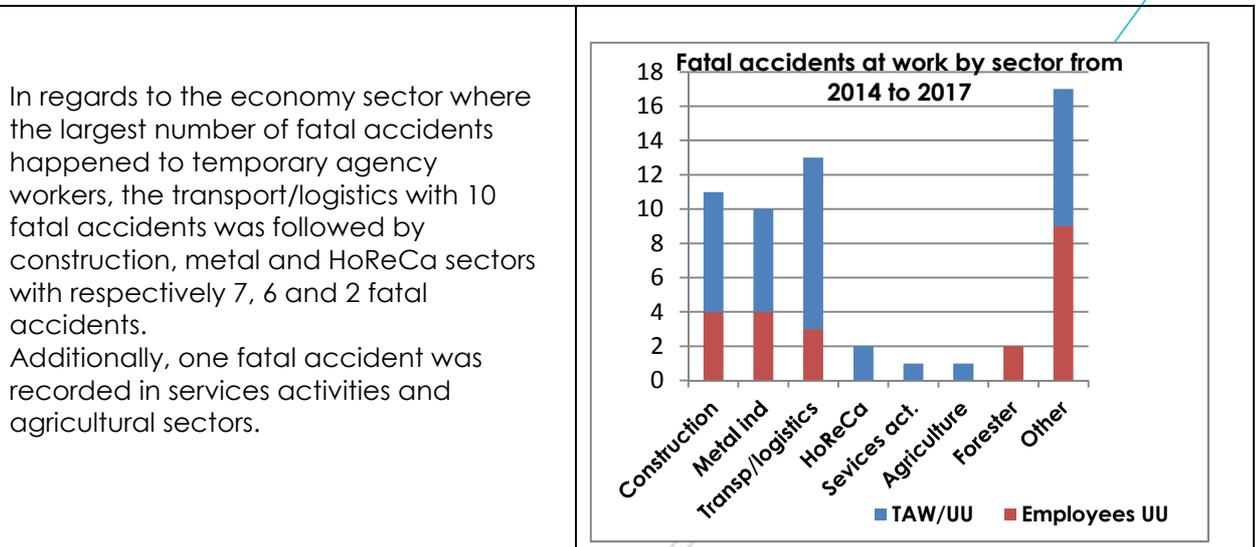
- The number of control is very limited by sector.
- The data have been collected during the inspections visits of the companies.

Consequently, they do not cover the total information of the National Social Insurance system.

- Only part of the Member States answered this question.

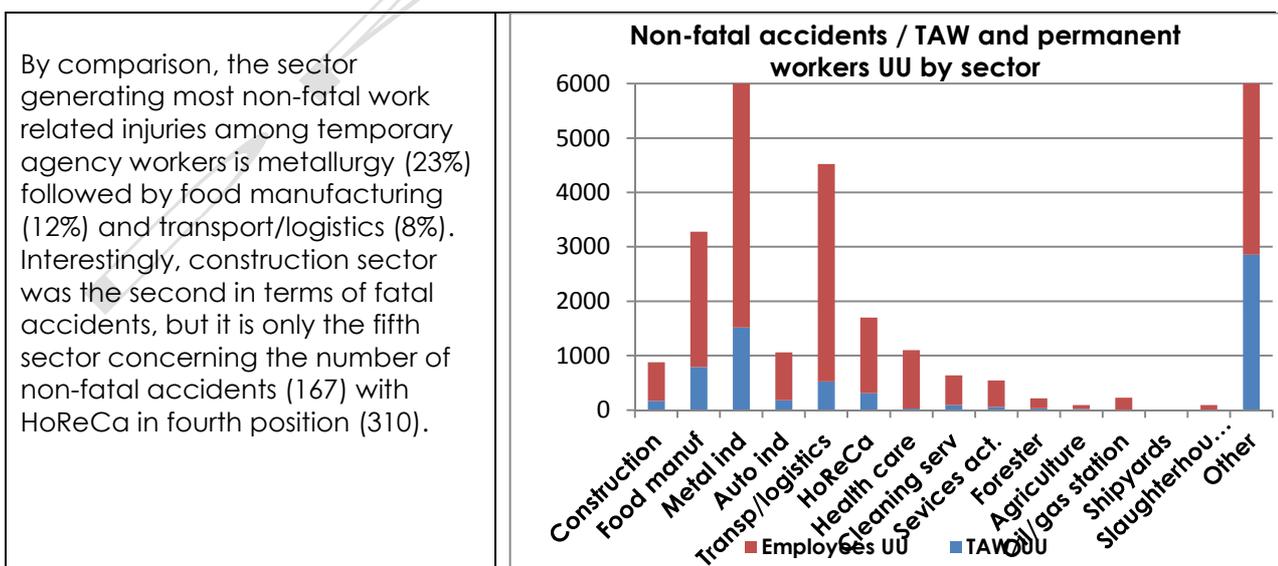
□ **Fatal accidents at work**

In terms of fatal accidents the available data shows that during the reference period **35** temporary agency workers and **22** permanent workers of user companies suffered from accidents which ended by their death.



□ **Non-fatal accidents at work**

Out of **42 675** non-fatal accidents recorded during workplace visits, 15% have concerned the temporary agencies workers. 85% permanent workers of user companies were victims of accidents.



In the industries sectors, the accidents happen rather in medium and large companies while in construction and HoReCa happen in micro and small companies.

Another question was to know when the accidents happened and involved the temporary workers, if the user-undertakings investigated them. In 88% of the cases the users companies did it.

The data show that almost the totality of the accidents in the industries and transport/logistic sectors has been investigated. Industries have more internal resources on security. In transport/logistic it is rather related to road accidents with police intervention. However, construction and Horeca are the sectors that analyzed this less (1 on 3 accidents) and are usually SME.

In general those differences can be explained by lack or insufficient knowledge of the working environment and the existing hazards among temporary workers. Being new to the workplace, they may remain unaware of the less conspicuous hazards related, e.g. to technological processes that permanent workers.



IV – INSPECTIONS OUTCOMES ON OSH OBLIGATIONS OF THE TEMPORARY WORK AGENCIES AND USER-UNDERTAKINGS

The common juridical bases on OSH of the temporary agencies workers are fixed by the Directives below and have oriented the regulations to be controlled during the campaign:

- **Directive 1989/391/EEC**, OSH "Framework Directive" of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work.
- **Directive 1991/383/EEC** of 25 June 1991, supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship.
- **Directive 2008/104/EC** of 19 November 2008, on temporary agency work.

Concerning the posted workers, the following Directives are applied:

- **Directive 1996/71/EEC** of 16 December 1996 concerning the posting of workers in the framework of the provision of services.
- **Directive 2014/67/EU** of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation').

However, their transposition in the Member States national law might be different regarding the responsibility and the specific obligations in order to protect the health and safety workers conditions as show the analysis below.

4.1 Coordination and exchange information between temporary work agencies and user-undertakings

Inspections have shown the importance of an adequate coordination and exchange of information between temporary work agency (TWA) and user undertaking (UU). It is extremely necessary to improve better OSH conditions. This requirement is especially important when the labour relationship involves not just two stakeholders - employer and employees - but three - TWA, UU and workers -. It makes it essential to define and organize a proper flow of information between those actors. The exchange of information is structured in three levels:

- Information from UU to TWA,
- Information from TWA to UU,
- Information from TWA and UU to workers.

This labour relationship is regulated by Directive 91/383/EEC, supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship.

This exchange of information has to take place always before the worker starts the provision of services in the user undertaking. Nevertheless, the kind of information exchanged between TWA and UU differs among Member States, according to their national legislations transposing Directive 91/383/EEC.

Nevertheless, the Directive 91/383/EEC is very general when regulating this labour relationship, establishing the rights of temporary agency workers but not specifying in some cases which actor, TWA or UU, is responsible in each case for bringing those rights to workers.

This Directive specifies in articles 3 to 7 OSH obligations, however it should be pointed out that for some legal duties of the TWA and UU, their transposition differs among Member States, as allowed by Directive. In annex, the charter I present the OSH obligations among the different European Member States. It concerns:

- Information on OSH,
- OSH training,
- Health surveillance,
- Prevention and protection services,
- Risk assessment,
- Provision of personal protective equipment.

As a result, in some Member States, the TWA is responsible to provide temporary agency workers with a proper OSH training, as it occurs in countries such as Spain, but in other Member States that obligation resides on the UU, as occurs in Austria, Hungary, Italy, Portugal, Poland and Romania. In other cases, national legislation establishes the obligation for both actors, TWA and UU, to write in the future agreement between companies the specification of which of them is going to be responsible for each OSH obligation.

Almost all Member States, regardless the way they have transposed the European Directive to their national legislation, concur to conclude the importance of communication and the establishment of a proper information flow between TWA and UU to further improve the OSH protection of temporary work agency workers.

For instance, Austria points out a deficient level of coordination between TWA and UU. Spain highlighted how coordination in some companies is limited to a mere exchange of documents with not real verification of OSH conditions.

For those reasons, several countries, as France or Spain, suggested that it would be useful to reinforce communication between TWA and UU before the temporary agency worker starts his services in the user undertaking.

Other countries, as Finland, also highlighted that it would be useful to focus on communicating practices in order to increase awareness of occupational safety and health matters in sectors frequently using temporary workers.

Austria suggested also that one possible solution might be to include occupational safety and health aspects in temporary work agency contracts of employment and other related agreements.

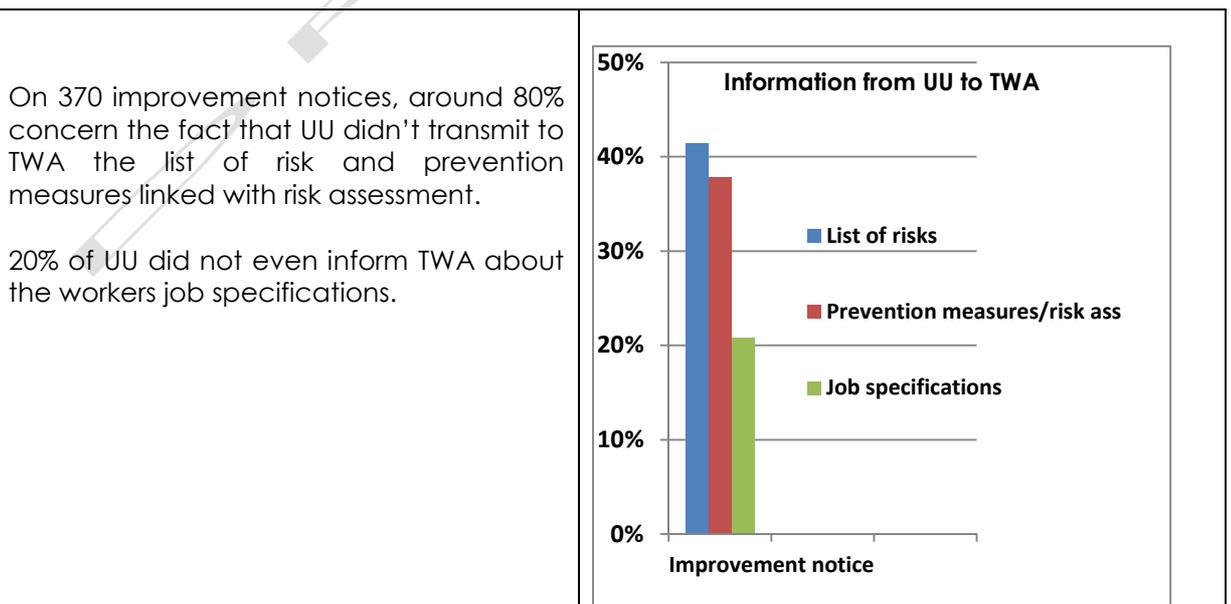
As some countries have also highlighted when national legislation do not indicate which actor, TWA or UU, is responsible to guaranty each OSH obligation, essential in agreements/contracts, it is important to be perfectly clear at any time on who has the responsibility. It also contributes to establish a proper level of coordination.

Finally, a great majority of the Member States agrees to this triangular labour relationship in which the coordination and communication between TWA and UU plays a really important role. It guarantees to the temporary agency workers the same level of OSH protection than the workers in the UU.

4.1.1 Information from user-undertakings (UU) to temporary work agencies (TWA)

The Directive 91/383/EEC (section 1, article 7) establish that "before workers have an employment relationship, a user undertaking and/or establishment shall specify to the temporary employment business, inter alia, the occupational qualifications required and the specific features of the job to be filled".

The inspections campaign, as is reflected in charter below, shows that in some cases users undertakings did not fully provide the temporary work agency with all the required information. In many cases TWA were only informed about the works to be provided to the UU without covering all the specific features and tasks of the job and the risks related to the specific workstation to be covered. Countries as Poland highlighted that a frequent situation found was UU failing to inform TWA of the risks involved in a specific work and the measures taken as a result of the OSH assessment.



Among the information that UU has to provide to TWA, one of the main deficiencies was the failure to provide the list of risks of the work to be done

by temporary workers. It was followed by the lack to provide the risk assessment and prevention measures to be taken and to a lesser extent the lack to provide the TWA with the specifications of the job.

In the relation between TWA and UU, one particular form of communication was found in France, where communication between both companies was done by a digital platform, introducing a new way of distant relationship between both companies. The need to be vigilant about the fulfillment of OSH obligations, such as visits in the UU before workers' mission in this new form of coordination between TWA and UU, was pointed out by the French Inspectorate.

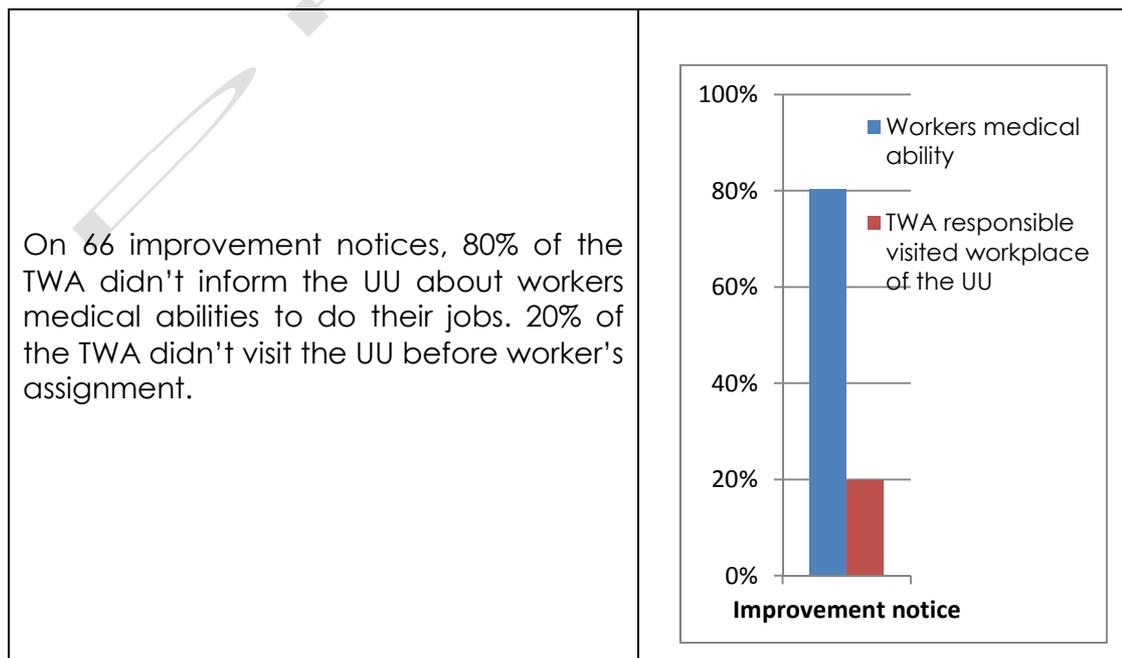
Some other countries highlighted that management tasks relating temporary work were mostly performed by UU human resources department. They were not always in close cooperation with the companies OSH organization, being common that an external contractor was engaged in OSH activities, which makes more difficult the flow of information between companies.

Poland highlighted good practices found to improve coordination between UU and TWA, in particular, the case where UU provided to TWA copies of documentation on OSH risk assessment.

4.1.2 Information from temporary work agencies (TWA) to user-undertakings (UU)

In regard to the TWA obligation to communicate the medical ability of the temporary worker to the UU, in many cases it didn't comply.

In Member States whose national legislation does not specify whether the TWA or the UU is responsible to provide the temporary worker the medical surveillance, it was often pointed out that it was provided by TWA with their own contracted OSH provider on basis of information delivered by UU.

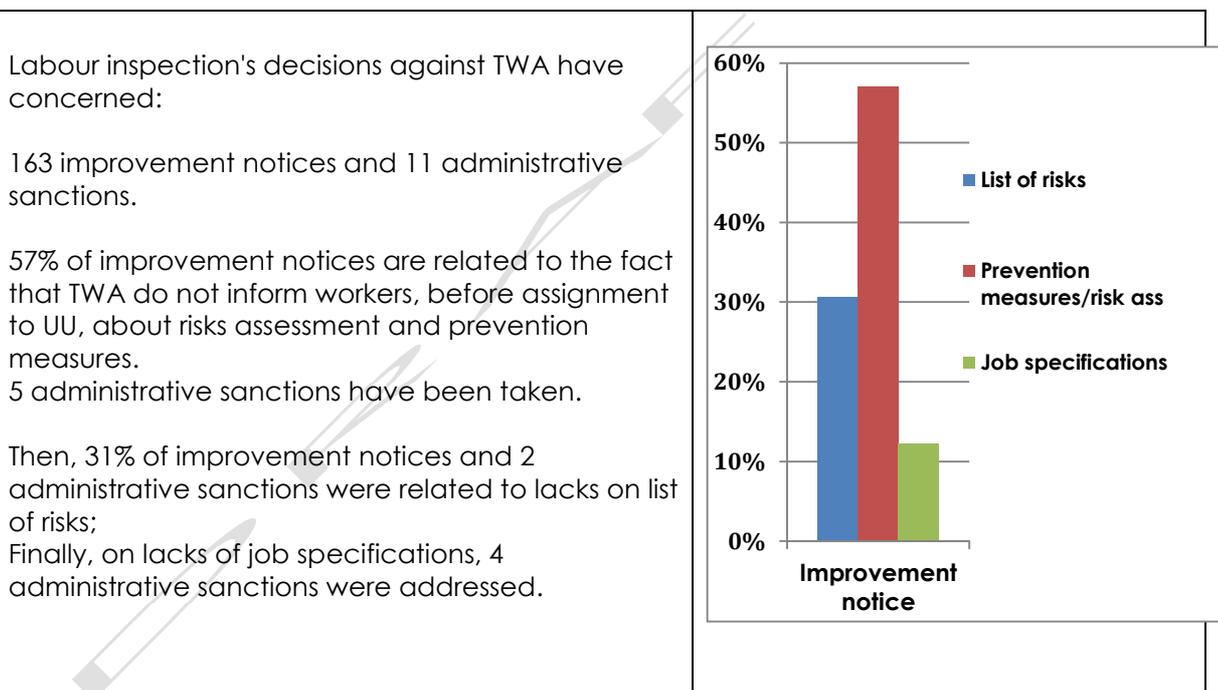


Another deficiency found in some cases was the non-compliance to the TWA obligation to visit the workplace of the UU before the temporary worker is assigned.

4.2 Specific obligations from temporary work agencies (TWA) to temporary workers

Article 7 of the Directive 91/383/EEC, section 2, establishes that “the temporary employment business shall bring all these facts to the attention of the workers concerned”.

During the campaign, it was highlighted by many member states how TWA do not comply with the obligation to provide the OSH information to temporary workers before being assigned to the UU. In particular, it was found that in many cases the TWA do not inform workers about the risk assessment and prevention measures of the UU working place. Some countries, as Hungary, highlighted that this was partly due to the lack of information, partly to the transfer of the OSH responsibility to UU, as they take care of the OSH obligations during the temporary agency workers assignment.



In smaller proportion, it was also found that they do not communicate the list of risks to the workers, Countries as Bulgaria highlighted how TWA fail to provide information to the workers on the nature of the work and the risks for their safety and health.

And last, it was also found, that in some cases they do not comply with the obligation to inform workers about the specific features of the job they are going to perform in the UU. In particular, Croatia pointed out how inspectors could verify that temporary agency workers were poorly informed about their rights.

For these reasons, countries as Croatia, recommended that campaigns should be conducted so that temporary agency workers, TWA and UU could be better informed of their rights and obligations. One way to conduct this campaign would be by using the web sites of existing organizations such as employer's organizations, trade unions or Chambers of Commerce.

VI - INFRINGEMENTS RECORDED BY INSPECTORS

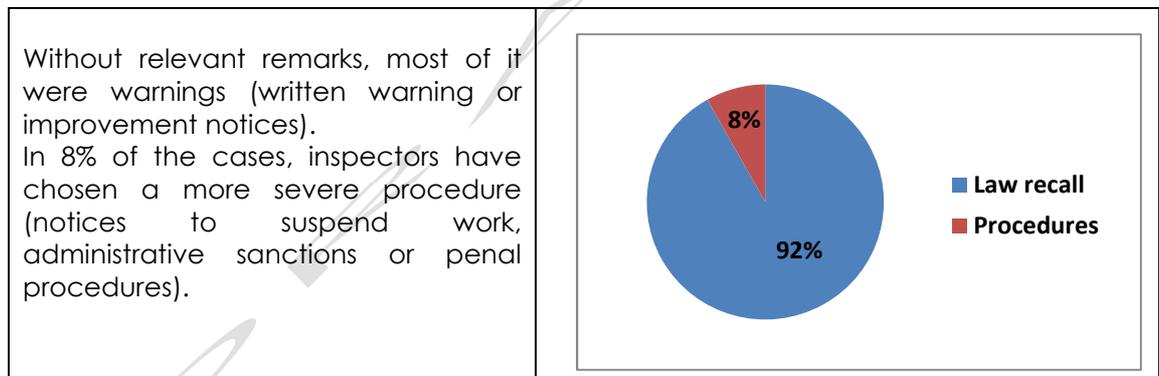
6.1 Infringements in the temporary work agencies

1 200 labor inspection visits in temporary work agencies have been conducted during the campaign.

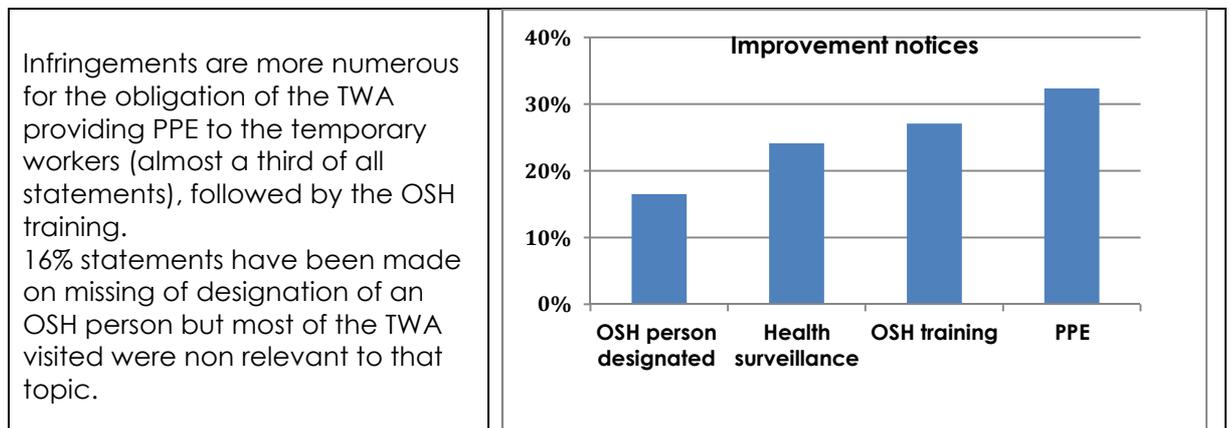
The temporary work agency has a responsibility to organize OSH prevention and assure health surveillance, training and PPE to workers.

882 infringements have been established during the inspections in the TWA and break down as follows:

- 53% of improvement notices,
- 2% of notices to suspend works,
- 3% procedures that could be administrative sanctions or penal procedures;
- 42% not relevant could mean that the companies were in conformity or that the national regulation doesn't apply.



A total of **156 infringements** corresponding to the theme break down as shown in the graphic:



Here below are noted some specific features by countries.

60% of infringements about missing OSH person were raised in France and Austria, 65% about non appropriate health surveillance in three member states only (Hungary, Belgium and Spain), 56% about OSH training in Spain and Portugal and 59% about PPE provision in Sweden only.

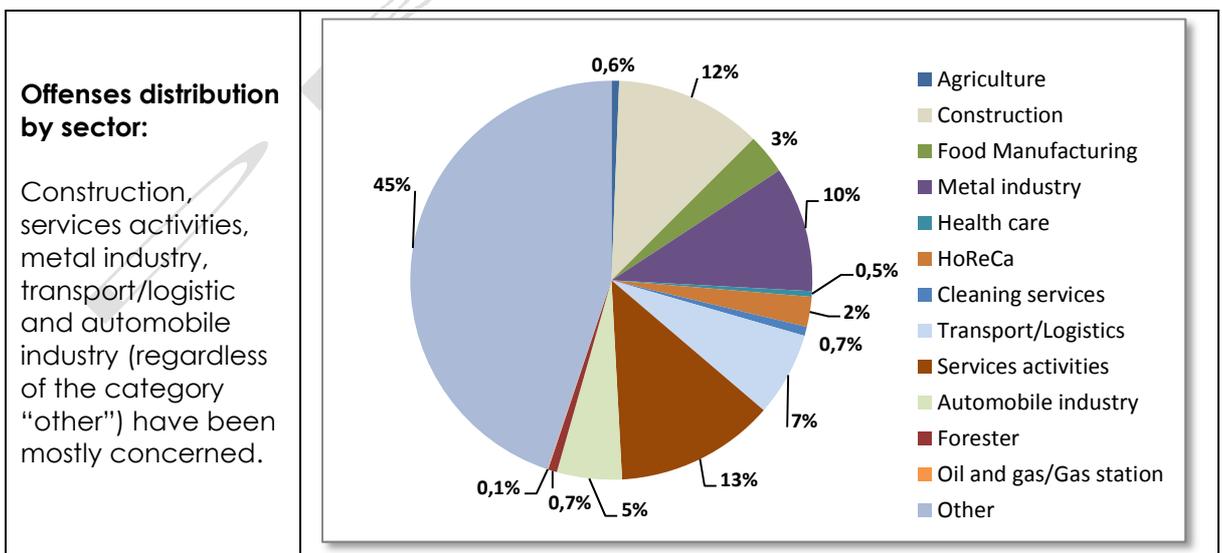
Plus, other decisions:

- 9 (2%) notices to suspend works are related to failure of PPE, 2 situations respectively by lack of health surveillance and OSH person in charge of prevention and last case on OSH training;
- 28 (3%) cases of procedures that could be administrative sanctions or penal procedures; 15 cases on OSH training, 10 situations on health surveillance, 2 cases on OSH person designated and one by lack of PPE.

6.2 Infringements in the users undertaking

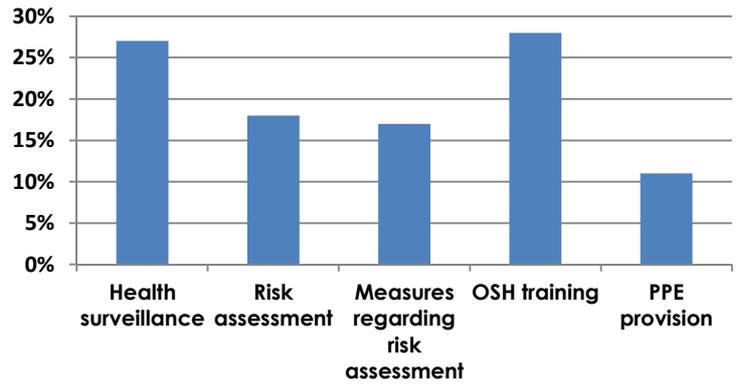
2 515 users undertaking have been visited during the campaign.

Following up after inspections, inspectors have notified **1 933 infringements**.

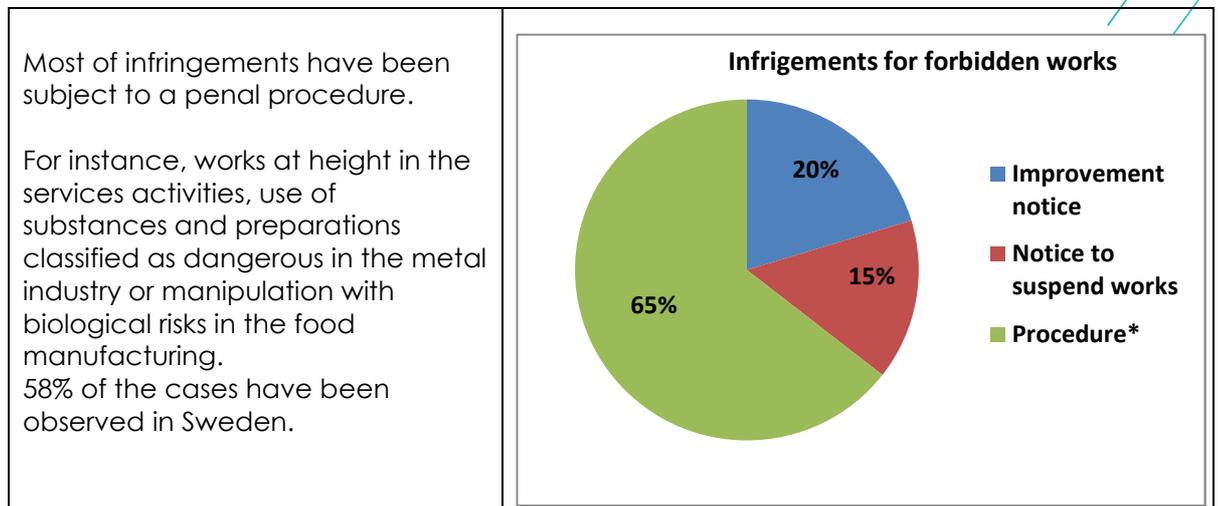


Offenses distribution by theme:

OSH training and health surveillance are the most prosecuted, respectively 28% and 27% of infringements total carried out by inspectors.

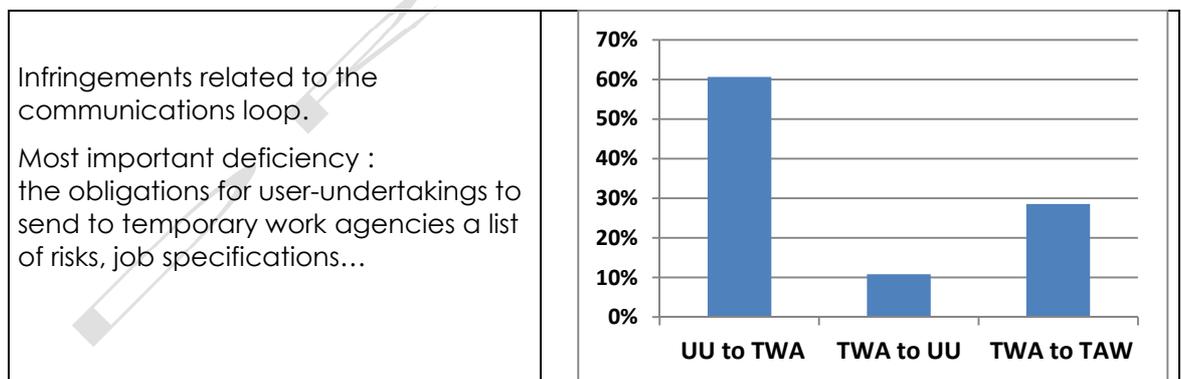


Forbidden works: 197 infringements have been pronounced because the companies visited were employing temporary agency workers to perform forbidden works.



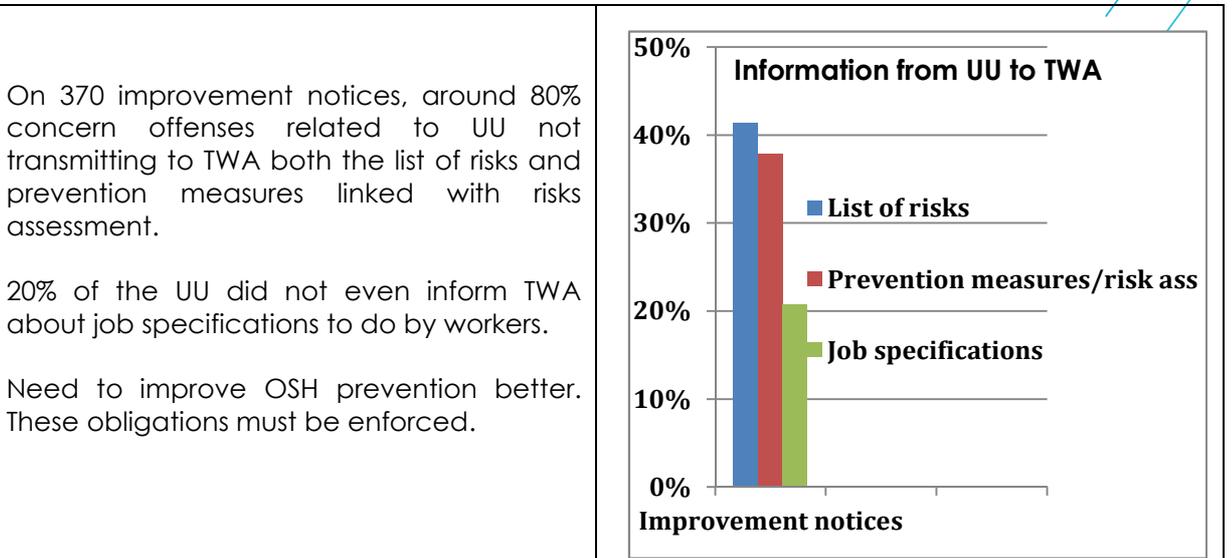
6.1 Infringements related to the fail to comply with the obligation to exchange information previous to assignment of workers in the users-undertakings

In this triangular relation, each actor has to provide information to the others to ensure the OSH efficiency for temporary workers (TAW). Most of the missing information is observed between the user undertaking (UU) and the temporary work agency (TWA).



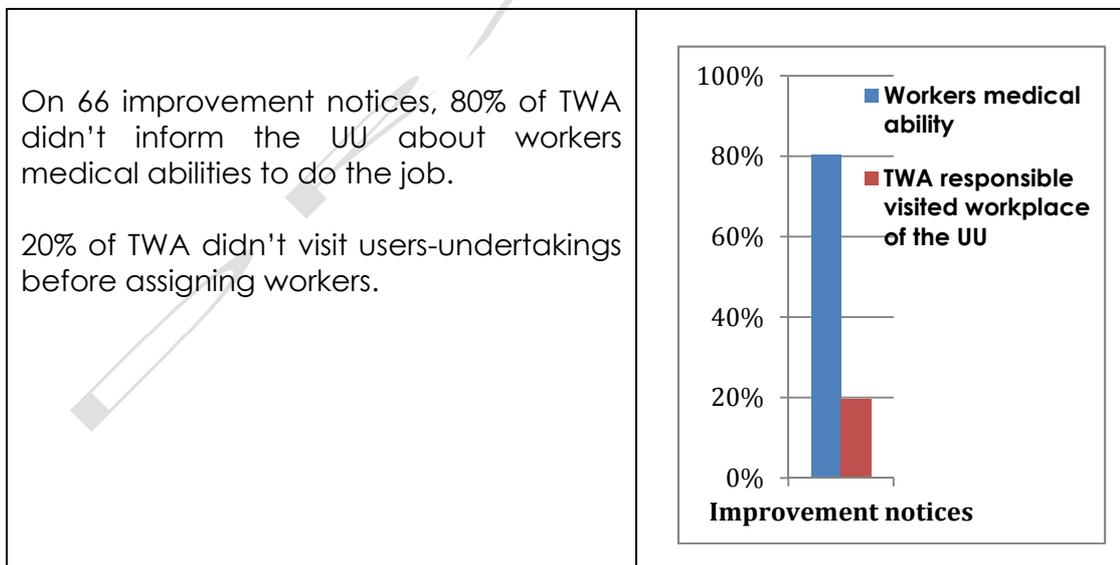
❑ Information from user-undertaking to temporary work agency

The user undertaking has to provide to TWA information about the list of risks likely to be met by the workers in the workplaces, the measures regarding risks assessment and jobs specifications.



❑ Information from temporary work agency to user-undertaking

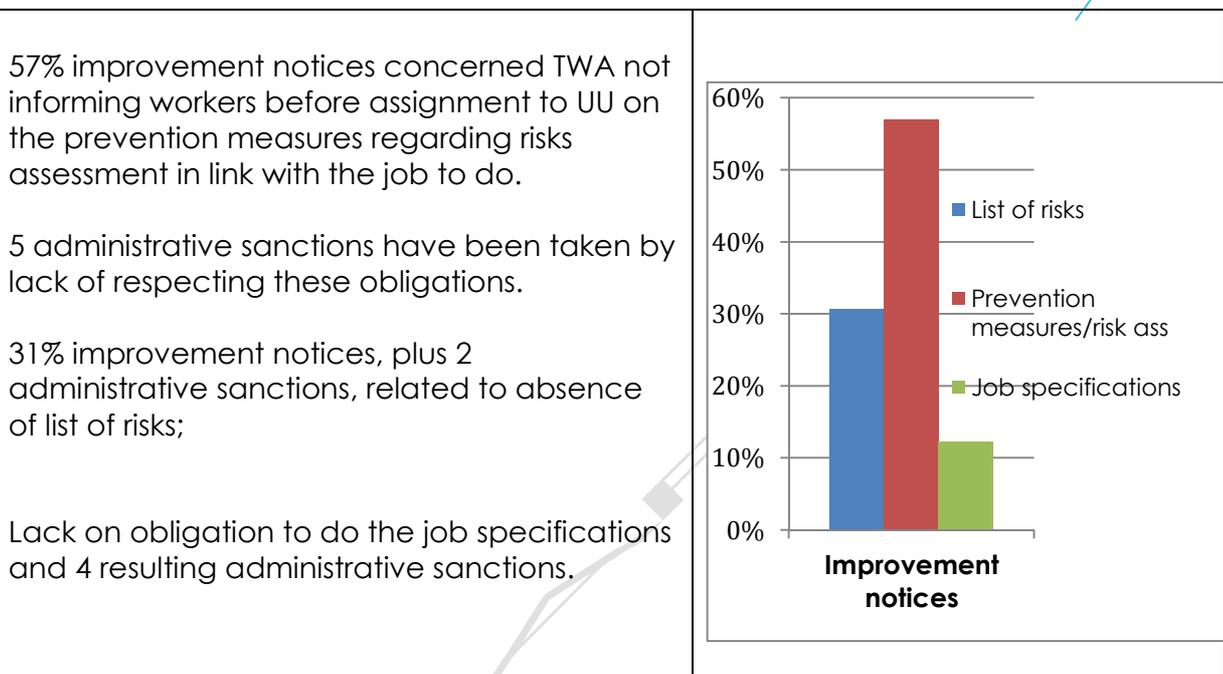
The TWA must provide to UU information about workers medical ability to do the job. The TWA has also responsibility, previously to assign workers, to visit the workplace.



❑ Information from temporary work agency to workers

The temporary workers have to be informed about job specifications and the risks they could be exposed to at the workplace.

174 infringements have been counted and distributed on 163 improvement notices notified and 11 procedures (administrative sanctions or penal).



VII - IMPACT OF THE CAMPAIGN FOR LABOUR INSPECTIONS

The campaign topic has revealed a combination of convergent interests both for labour inspections, companies and social partners with a common goal to protect OSH conditions of the temporary agencies workers.

As noted previously, it was the first time that most of the labour inspections have decided to control the OSH temporary agencies workers matters in the workplaces as national priority action.

Some Member States highlighted the positive impact of this action. The campaign was very useful and a timely opportunity to check this very widespread form of work, especially in an economic context where the temporary work is growing.

This national labour inspection action has been a useful opportunity:

- To promote an increase of the awareness in the OSH protection to the temporary agencies workers.

It was also identified that it is necessary to raise more awareness and more targeted information to companies dealing with temporary workers. In order to get better access to the temporary workers themselves, it is important to

establish a strategy with social partners of some sectors. It would also be better to respond more specifically to the needs of user undertakings.

The new forms of working linked to the digital society are also creating new risks. It is crucial to continue to focus on the safety and health prevention of vulnerable workers in these sectors.

- To reveal the importance of the communication and information exchanges between temporary work agencies (TWA) and user undertakings (UU). It is clear from the results of this campaign that there is a lack of knowledge and information. For example, it was found that some companies could not do anything with the information they had. Overall, the campaign shows that some user-undertakings do not yet have a prevention culture, in particular when they employ the temporary agencies workers.
- Hired workers situation were not really identified as targets by the inspections, particularly in the user undertakings (UU). As the use of temporary agencies workers is an established and continuously increasing practice on workplaces, communication on these issues will continue to be important.

For instance, Greece labour inspection reported that TWA's and also UU were not fully implementing the legislation, but after inspection and recommendations (improvement notices) they are now providing the required OSH protection to their employees.

The campaign also led the OSH Departments, to propose some necessary changes on the legislation.

Some labour inspections also report that deficiencies identified have not been seriously and immediately treated (Austria and Luxembourg). It is obvious that the fluctuating employees, respectively those who often change jobs, are somewhat dissatisfied and are the most vulnerable groups in terms of occupational accidents (new habits, environment factors, new risks). The level of working conditions has improved in general, due to the fact that the labour inspections are continuously controlling larger user companies, which use in most cases the TWA services.

Finally, the companies' feedback (UU and TWA) of labour inspection action, indicate that the majority have a positive impression and welcome this kind of campaign.

VII – INSPECTION'S OUTCOMES, FINDINGS AND PROPOSALS ON CROSS-BORDER WORKERS - PILOT EXPERIENCE

This field of the campaign on OSH conditions of the posted workers by temporary work agencies had for purpose to improve better cooperation and mutual assistance between Labour Inspectorates to insure their labour rights. This part is called "Pilot Experience" on cross-border enforcement.

Seventeen Member States pointed out initially their willingness to participate in the pilot experience setting-up joint teams or making exchanges via IML. However, difficulties to find data and the limited activity of these companies in the posting workers has made difficult to get their full participation. Notwithstanding, eleven Inspectorates have been able to set up seven Joint Teams of Inspection in the campaign and other Inspectorates have made exchanges via IML.

All efforts deployed have been fruitful to demonstrate the difficulties to face currently to carry out this type of campaigns and also to show some relevant findings on cross-border enforcement in OSH matters carried out by Labour Inspectorates.

The figure below shows an overall picture of the Pilot Experience activities:

Countries involved	Ways of cooperation	Sectors	Information resources	Main findings
Estonia Finland	Joint team Bilateral agreement	Construction	Posting declarations A1 Forms Tax data	Difficulties to find posting companies Under-reporting of work-related accidents
Estonia Norway	Joint team Bilateral agreement	Construction	A1 forms Tax data	Difficulties to find posting companies Working Time
Bulgaria France	Joint team Bilateral agreement	Agriculture	Posting declarations A1 Forms	Difficulties to find posting companies Language barriers Deficiencies in information exchange between companies Reporting of work-related accidents Health surveillance Working time
Romania Belgium	Joint team Bilateral agreement	Construction Food Industry	Posting Declarations	Difficulties to find posting companies Training Deficiencies in information exchange between companies Lack of knowledge of national legislation
Portugal France	Joint Team Bilateral agreement	Carpentry	Posting declarations A1 Forms	Difficulties to find posting companies Language barriers

				OSH Training Exposure to dangerous agent
Cyprus Greece	Joint team	Construction	Posting declarations	Difficulties to find posting companies Lack of information
Spain Portugal	Joint team Bilateral agreement	Metallurgical industry	Posting declarations A1 Forms	Difficulties to find posting companies
Sweden Poland	IMI	Construction Manufacture of Petroleum Products	Posting declarations	Difficulties to find posting companies Under-reporting of work-related accidents

7.1 Planning actions on occupational safety and health in temporary agency posted workers

7.1.1 Findings

All the Inspectorates involved in the Pilot Experience have reported difficulties for planning actions on Posting Temporary-work Agency Workers in OSH matters. These are the main reasons:

❑ Difficulties in the use of posting declarations by Labour Inspectorates

Most of the countries involved in the Pilot Experience have provided to service providers from other Member States the obligation to send a prior posting declaration (Art. 9.1(a) Directive 2014/67). However, we have ascertained some difficulties for Labour Inspectorates in the use of declarations at a national level:

- **Insufficient data in declarations about occupational safety and health conditions**

Posting declarations usually do not allow to know either if the activities are hazardous or the vulnerability of certain groups of workers in order to prioritise or planning inspections on OSH.

- **Lack of IT Systems to notify and store posting declarations in all Labour Inspectorates**

In some countries, posting declarations are not submitted to Authorities by IT systems and/or a database of posting companies is not available, hindering labour inspection activity.

- **Incorrect or imprecise data in declarations**

There have also been repeated cases of a very long foreseen posting period scheduled for the works to achieve the service provided, in the posting declarations motivating failed inspection visits during the campaign.

❑ In the access to Social Security A1 forms and other data resources

Another source of information on posting is Social Security data relating to A1 form, a statement of applicable Social Security legislation, which normally includes data on posting workers. In some countries Labour Inspectors do not have access to the A1 forms.

In any event, A1 forms sent to and from Member States to others are not available by electronic means, because ESSI (European Social Security Information System) has not come into force yet. This also contributes to hampering labour inspection activity.

Only in a few countries, labour Inspectors had access to data on posting of workers related to tax obligations.

7.1.2 Proposals

❑ **At a national level**, it would be necessary to improve the posting declaration.

- They should include relevant information on OSH issues.
- They should be registered and stored using IT Systems in order to facilitate the planning of inspection activities.
- Regulations on posting declaration should ensure the most possible accuracy of data with regard to the foreseen posting period scheduled.

❑ **At European level**, it would be necessary the start-up of ESSI to transmit A1 forms and ensuring the access of Labour Inspectorates to this information. To this end, Social Security Regulations at European level should include the collaboration of Social Security Institutions with Labour Inspectorates and their access to information systems.

It would be also desirable a harmonization of the current posting declarations, existing in some Member States, in order to include OSH matters revising Article 9 of Directive 2014/67. This harmonization will mean a great improvement in the OSH conditions of posted workers and the enforcement of the OSH Directives at EU level.

❑ **At National and European level**, a coordination of data between declarations of posting to national Authorities and the A1 forms delivered by the Social Security bodies would result in a relevant improvement for labour inspectorates' activities and the rights of posted workers.

7.2 Occupational safety and health conditions of posting temporary-work agency workers

7.2.1 Findings

In addition to the findings already reported in the campaign about the lack of cooperation between the TWA and User Undertakings, these are the specific findings of the Pilot Experience in occupational safety and health relating to posted workers:

❑ **Lack of information on applicable legislation in the host country and language barriers**

Inspection actions have shown a lack of information of posting companies on legal requirements in occupational safety and health in host countries, especially on aspects related to specific training and medical surveillance. An easy access to this information by employers and workers is a key feature to achieve good results.

In some cases of posting companies, the language barrier aggravates these shortcomings in the lack of information. This is a relevant problem when posting occurs between non-neighbouring countries with significant cultural and language differences.

❑ Working time

Breaches in working time limits are usual in posting companies because they want to finish their tasks as soon as possible in order to return sooner to their country of origin. Some Labour Inspectors have ascertained legal infringements related to working time in the pilot experience on Cross – Border Enforcement.

❑ Investigation of work-related accidents

Work-related accidents suffered by posted workers have also appeared in the campaign. Work-related accidents are two-fold aspects:

- On the one hand, work-related accidents are an issue that affect social security insurance. A case found with the occasion of the pilot experience, has motivated a conflict about Social Security benefits due to the lack of the A1 form.
- On the other hand, accidents are also an occupational safety and health issue with regard to the possible lack of preventive measures that have caused them.

The majority of work-related accidents of posted workers are not usually notified to host country labour authorities. The level of notification depends on the seriousness of the accident (the more severe the more probable to be notified). This is a relevant obstacle for the work related accidents investigation tasks of Labour Inspectorates.

Legislation on this issue has not been harmonized by Directives and varies from one country to another. In some countries, It is only required to declare the seriousness meanwhile in others this notification is not even required.

7.2.2 Proposals

❑ Improve the access to information on applicable OSH legal requirements in host countries removing language barriers

❑ Providing information at national level

The development of information campaigns in some of the countries involved in the campaign had a beneficial and preventive effect. It is particularly recommended to provide information about OSH conditions on a specific country when a high proportion of workers are posting there.

❑ Providing information at European level

Strong efforts should be made to facilitate information on legal duties on OSH to TWA posting companies and workers in the host countries, especially with regard to training and health surveillance requirements available in all European languages.

The European Agency for Occupational Safety and Health (EU-OSHA) in coordination with the SLIC and other EU committees could organise a network to inform service providers posting companies and workers about

those OSH legal requirements in each country, available in all EU official languages.

❑ Reinforce the monitoring of working time on posted workers

Inspectorates should reinforce the control on working time, especially in short postings in order to avoid abuses.

❑ Ensuring notification of work-related accidents and professional diseases to the host country labour authorities

Accident and disease notification not only concerns Social Security insurance institutions of the country of origin but also the host country labour authorities with competence to investigate OSH conditions in them.

A harmonization at EU level in the notification of work-related accidents and professional diseases of posted workers to Labour Authorities should be included in the Enforcement Directive 2014/67 in order to ensure its effective implementation in all Member States.

7.3 The need to improve cooperation between labour inspectorates on occupational safety and health issues

7.3.1 Findings

On the one hand, the Pilot Experience has shown that finding out where companies with troubles and breaches are working, requires more time and efforts than a single campaign.

For that reason, cross-border enforcement activities should not be considered an exceptional or casual action for Labour Inspectorates but a permanent activity where all labour inspectors, without any exception, could participate and cooperation might be activated whenever circumstances so require.

On the other hand, Pilot Experience has also demonstrated that bilateral agreements facilitate a direct contact between labour inspectorates and a fast exchange of information.

The experience of Joint Teams of Inspection has also been fruitful in all cases since they provide a better understanding of real situations and a fast feedback between inspectors.

7.3.2 Proposals

❑ Availability of cooperation mechanisms for all inspectors, of any kind, when circumstances require so

All labour inspectors, without any exception, should have access to cooperation mechanisms. Labour Inspectors should have a basic knowledge on these issues. SLIC should set up guidelines or a handbook on how Labour Inspectors could act on posted workers and use cooperation tools such as IMI, bilateral agreements and KSS.

❑ Regulation of Bilateral Agreements and Joint Teams of Inspection

Bilateral agreements and joint teams of inspection should be included in Directive 2014/67 in order to ensure their legal certainty and secure the value of findings made by labour inspectors in other Member State.

VIII - MAIN FINDINGS AND PROPOSALS ON THE NATIONAL INSPECTIONS OF THE TEMPORARY WORK AGENCIES AND USER-UNDERTAKINGS

The main findings resulting of the companies' inspections have been completed with the contributions of the workshops and discussions that have been hold during the final conference at the National Institute for Labour, Employment and Vocational Training (INTEFP), May 6th–7th 2019 at Marcy-l'Étoile, France.

□ Dual responsibility calls for reinforcing the exchange information between temporary work agencies and users-undertakings before assigning workers in the workplaces.

With differences among the infringements concerning fundamental on OSH obligations, it is necessary to continue improving them all: information and OSH training, health surveillance, prevention measures regarding risks assessment and provision of personal protective equipment.

The results show that the responsibility sharing to enforce OSH obligations between temporary work agencies and users-undertakings could be quite various in the Member States.

The dual responsibility was not pointed by most countries like a real difficulty, however it creates a "gray area" where each actor (TWA and UU) wait to see the other one applying the OSH obligations. To resolve this ambiguity it is necessary to previously integrate OHS issues in the contractual obligations agreed between temporary work agencies and users undertakings.

□ Increase efficiency of the flow of information between the temporary work agencies and users-undertakings

Inspections show that the deficiencies observed are coming first from users-undertakings which are not informing the temporary work agencies about the fundamental issues to implement OHS preventives measures in their sector (list of risk, risks assessment, jobs specifications).

On the other hand, the temporary work agencies have obligations, as employers of the workers, to deliver adequate OSH information and training, health surveillance and PPE.

Protecting temporary workers health is deeply dependent from the quality of the previous information exchange and the working conditions existing in the users-undertakings.

Finally, the campaign has pointed out how important it is to improve and to maintain permanent vigilance on the OSH conditions of the temporary agencies' workers. These results from multiple reasons related to the nature of this evolving workforce: precarious employment, vulnerability (first

employment for young people often without experience) and assignment to various working conditions existing in users' companies.

Proposals:

- Temporary Work Agencies and User-Undertakings should define clearly between them the OSH responsibilities by commercial contract or agreement and also by branch sectors level agreements when employing temporary workers recurrently.
- Temporary Work Agencies should visit the workplaces of the User-Undertakings before starting the assignments (e.g. role of the "Ambassadors" in Portuguese agencies).
- Try to overcome language barriers in order to improve better flow of information between agencies, user-undertakings and workers.
- Go beyond documents sharing: ensure the effective communication between agencies, user-undertakings and workers (improve exchange of knowledge, especially OSH knowledge).
- Focus on practical training in the user-undertakings, especially when there are language barriers.
- User-undertakings, prior to the assignments, should define the job specifications to achieve and the list of risks.
- Strengthen information on OSH obligations to temporary work agencies and user-undertakings and how to fulfil them, special focus on SME's.

□ Develop technical tools for temporary work agencies and user-undertakings

- **Increase efficiency of the flow of information between the temporary work agencies and users-undertakings** is a crucial issue. It is suggested to create "OSH workstation sheet" that should include the risks description and preventive measures (information, training, machinery used and legal requirements to use it, dangerous substances and safety sheets, necessary PPE's, health surveillance, maternity protection, breast feeding protection...).

This OSH sheet should also be used with some additional administrative information (country of Registry, labour authorities...) for the posting workers declarations.

This OSH sheet should be a major outcome of the risk assessment. Those documents could be done both, on line and on paper sheets. The access to these documents must be ensured to labour inspectorates.

• **Develop risk assessment for better OSH protection of temporary agency workers.** It is suggested to adapt and promote OiRA for temporary work agencies sector and for specialized activities. This needs a technical support from the EU OSH-Agency.

□ **To improve Directives enforcement, labour inspections need more information and technical support**

• Facing many difficulties to interpret in particular the Directive 1991/383/EEC and Directive 2008/104/EC, it is proposed to write a guideline for inspectors in order to better enforce the OSH obligations.

• To increase efficiency on OSH prevention for the temporary agencies workers, it is necessary to have a set of European statistics data. Nowadays, the Eurostat has insufficient information on this field.

Labour inspections need information about:

- code NACE for temporary work agencies to create
- number and size of the temporary work agencies
- permanent employees and temporary agency workers / full-time equivalent (FTE) number
- user-undertakings by sectors
- gender, age and nationality of the temporary agency workers
- professional skills and qualification (workers qualified and unqualified, clerical status ...)
- occupational accidents number (fatal and grave) by sector
- types and number of the occupational diseases

□ **Improve SLIC campaigns in the future**

• **Exchanging practices between labour inspectors**

One of the major experiences of this campaign is the deep involvement of labor inspectors in this field showed during the final conference. For most of them, it was their first international experience and has been considered as very stimulating:

- First of all, they were very glad to have a feedback on their field action as they spent time and energy carrying the campaign.
- Also, they discovered that the challenges are quite similar all over Europe, even if the contexts are different. This helped them to be more aware of the context in their own country which they never, or at least rarely, questioned before.
- Finally, the event gave them the feeling that the SLIC campaign was not another job only, but a real action on OSH protection strategy at the European level and also on the directive's contents.

Inspectors were very satisfied to be involved till the end of the action and not only during the campaign implementation.

Inspectors input on the campaign outcomes is essential being the core of the discussion. Labor inspectors are privileged witnesses because enforcement of OSH protection is part of their daily job. In consequence, their proposals are really practical.

They can identify difficulties and possible solutions for improving OSH protection for workers and sharing good practices.

- **Facilitating dialogue between labour inspectors and social partners**

Regarding their action, labor inspectorates are working in full autonomy but for reasons mentioned above, it's important to involve the social partners into SLIC European campaigns.

The dialog between social partners and labor inspectors may lead to better regulations and improve their implementation.

In addition, part of the OSH regulation is made by agreement concluded by social partners. The campaign is an inspection campaign but social partners need to be convinced with the outcomes and be fully informed on the methods followed.

Direct meetings and dialogue between labour inspectors and social partners is also useful in the perspective of revision or preparation of future directives.