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Abbreviations

BR	Basic Regulation (EC) No. 883/2004 on the coordination of social security systems
COVRON	Control of foreign enterprises active on Belgian territory
CTIF-CFI	Financial Intelligence Processing Unit
EC	European Commission
ECJ	European Court of Justice
ECOSOC	Investigation team of the NSSO specialised in human trafficking and socio-economic exploitation
EU	European Union
EU-13	Bulgaria (BG), Czechia (CZ), Estonia (EE), Croatia (HR), Cyprus (CY), Latvia (LV), Lithuania (LT), Hungary (HU), Malta (MT), Poland (PL), Romania (RO), Slovenia (SI), and Slovakia (SK)
EU-14	Belgium (BE), Denmark (DK), Germany (DE), Ireland (IE), Greece (EL), Spain (ES), France (FR), Italy (IT), Luxembourg (LU), the Netherlands (NL), Austria (AT), Portugal (PT), Finland (FI), and Sweden (SE)
EU-27	Belgium (BE), Bulgaria (BG), Czechia (CZ), Denmark (DK), Germany (DE), Estonia (EE), Ireland (IE), Greece (EL), Spain (ES), France (FR), Croatia (HR), Italy (IT), Cyprus (CY), Latvia (LV), Lithuania (LT), Luxembourg (LU), Hungary (HU), Malta (MT), the Netherlands (NL), Austria (AT), Poland (PL), Portugal (PT), Romania (RO), Slovenia (SI), Slovakia (SK), Finland (FI), and Sweden (SE)
FPS	Federal Public Service
FTE	Full-time equivalent
GATS	General Agreement on Trade in Services
GOT	Specialised unit of social security inspectors of the NSSO
IMI	Internal Market Information System
IR	Implementation Regulation (EC) No. 987/2009
LIMOSA	Cross-Country Information System for Migration Research at the Social Administration
MOTEM	Multidisciplinary investigation team of the Federal Judicial Police and specialised services
NISSE	National Institute for the Social Security of the Self-employed
NSSO	National Social Security Office
OSH	Occupational Safety and Health
PD A1	Portable Document A1
SIIS	Social Information and Investigation Service
TCN	Third-country national
TFEU	Treaty on the Functioning of the European Union
UNECE	United Nations Economic Commission for Europe
WABRO	Working Abroad

Executive summary

Belgium has an ambivalent relationship with the posting of workers.¹ It is often viewed as a ‘Trojan horse’ in academic and political debate (sometimes labelled as ‘social dumping’²), yet its prevalence and thus use by Belgian companies/clients has grown markedly. Indeed, the posting of workers has become an important form of intra-EU labour mobility and employment in Belgium, especially in the Belgian construction sector. This contradiction shows that further efforts should be made to map out the number, characteristics, and impact of intra-EU posting to Belgium, as well as of the infringements that occur during these activities. Empirical evidence may refute, nuance, or confirm existing perceptions and may support evidence-based policy in Belgium, both at national and regional level. Such mapping should differentiate between the use of intra-EU posting (which is perfectly legal) and the infringements to the wage and working conditions and social security aspects that may arise from posting in specific, often labour-intensive and price-sensitive sectors of activity (such as the construction and transport sector) and for specific groups of posted persons (such as posted third-country nationals (TCNs) and posted bogus self-employed persons).

Moreover, research about this topic is mainly focused on ‘the posted worker’, while many other economic actors are involved and affected when workers are posted to another Member State, such as Belgium. For instance, equally important or even particularly important, there is ‘the posting company’. After all, through the export of services and facilitated in the EU by the free movement of services, companies provide services in another Member State, of which Belgium, by sending out their workers. We also have, of course, the Belgian companies/clients benefiting from these cross-border services. An analysis of these three different economic actors (posted workers, posting companies, and Belgian clients) could provide a more complete picture of the posting phenomenon to Belgium. Nevertheless, there are certainly additional relevant economic actors such as Belgian local workers and the smaller Belgian companies competing with posted workers and foreign service providers, which may be pushed out of the (labour) market. Moreover, there are the competent Belgian and regional public administrations (including their inspection services).

Finally, the discussion of the posting of workers focuses mainly on the inbound perspective (i.e., posting to Belgium) and risks losing sight of the outbound perspective (i.e., posting from Belgium), and its importance for a high number of Belgian companies providing services abroad.

In this country report for Belgium prepared in the frame of the POSTING.STAT 2.0 project,³ the following two research questions are posed:

1. *What are the characteristics, the scale, and the impact of intra-EU posting from and to Belgium?*
2. *What are the characteristics and the scale of infringements related to intra-EU posting to Belgium?*

Unlike some other Member States, Belgium has a wealth of data on intra-EU posting. For instance, ‘Limosa’⁴ is the database *par excellence* for mapping the number and characteristics of posting to Belgium. Indeed, a foreign service provider posting an employee or him/herself to Belgium must complete the mandatory declaration known as ‘the Limosa declaration’.

1 This concerns a situation, in which an employer temporarily sends its employees to another country to work there for a certain period of time. From a social law perspective, by applying Article 12 of Regulation (EC) No 883/2004, self-employed persons can post themselves to another Member State. Though, self-employed persons do not fall within the scope of the Posting of Workers Directive.

2 According to the European Parliament resolution of 14 September 2016 on social dumping in the European Union (2015/2255(INI)), this concept covers “a wide range of intentionally abusive practices and the circumvention of existing European and national legislation (including laws and universally applicable collective agreements), which enable the development of unfair competition by unlawfully minimising labour and operation costs and lead to violations of workers’ rights and exploitation of workers”. Interestingly, this definition was also recently included in the Belgian Social Penal Code ([Book I – Art. 1.1.](#)).

3 The POSTING.STAT 2.0 project brings together a research consortium from the main sending and receiving Member States of posted workers (Austria, Belgium, France, Germany, Italy, the Netherlands, Lithuania, Poland, Slovakia, Slovenia, and Spain). The goal is to increase the level of empirical evidence on intra-EU posting through the collection and analysis of national administrative data. For an overview of the publications of the project, see <https://hiva.kuleuven.be/en/research/theme/welfarestate/p/POSTING-STAT20>

4 See www.limosa.be

To capture the outbound perspective, the main focus is on the data made available through the issuance of a ‘Portable Document A1’ (PD A1) by the National Social Security Office (NSSO)⁵ (to posted workers) and the National Institute for the Social Security of the Self-employed (NISSE)⁶ (to posted self-employed persons). The PD A1 proves that the social security legislation of Belgium applies and confirms that the person concerned has no obligations to pay social security contributions in another Member State. The PD A1 is to be requested by the Belgian employer when workers are posted abroad or by the Belgian self-employed person who posts him/herself to another Member State.

Efforts have also been made to make use of other interesting administrative databases, such as ‘the declaration of works’ and ‘Checkinetwork’ in the immovable property sector.

Finally, inspections statistics on the enforcement of the posting rules, collected by the Social Information and Investigation Service (SIIS) are reported and analysed in this country report for Belgium. These inspection statistics data are supplemented with figures from the Belgian Federal Public Service (FPS) Social Security on the dialogue and conciliation procedure concerning the validity of the PD A1 (i.e., OSIRIS).

However, it should be said that all the data sources mentioned above have their advantages and disadvantages. For instance, it could be argued that the use of Limosa as the data source of choice to monitor and map incoming posting to Belgium is under pressure. Indeed, as of 2 February 2022, the ‘EU Portal for road transport posting declarations’⁷ became the obligatory prior declaration tool that operators must use when posting drivers to another Member State. Consequently, data on the posting of workers in road freight transport are no longer collected at national level, for instance in Limosa. Furthermore, several activities are already exempted from the requirement to file a Limosa declaration and not every person posted to Belgium is reported in Limosa, even though a declaration must be filed for that person. In that respect, data from Limosa and reported in this report only show the size and characteristics of *reported* postings, which may differ (significantly) from the actual size and characteristics of postings to Belgium. Moreover, because of the implementation of the ‘EU portal for road transport posting declarations’, one risks losing track of a sector that accounted for 17% of the number of incoming posted persons in 2021. Finally, the European Commission recently launched a proposal for a Regulation to establish a single digital declaration portal for posting companies.⁸ The objective of the proposal is to provide for a multilingual electronic public interface connected to the Internal Market Information System (IMI) for the declaration of posted workers, as has already been done in the road transport sector, for all other economic sectors. The question thus arises to what extent data on posting to Belgium will continue to be available through Limosa.

Finally, the use of inspection statistics has several limitations of which the reader should be aware. Inspection data bias the real extent of infringements to the posting rules. After all, inspections will mostly take place on the basis of a risk assessment, mainly focused on specific ‘risk sectors’ (e.g., in the construction and transport sector). Such inspections will yield higher infringement rates. In order to estimate the real extent of infringements in case of intra-EU posting, research methodologies other than the analysis of inspection statistics are more suitable. This could involve a survey of the economic actors involved in posting (posted workers, posted self-employed persons, posting companies, clients) as well as inspections of a random selected group of posting companies/posted workers (in a specific sector of activity).

Posting through the freedom to provide services in the EU is one of the main forms of intra-EU labour mobility to Belgium

The notion of ‘intra-EU labour mobility’ reflects the ability to work in another Member State based on the free movement of workers (Article 45 of the Treaty on the Functioning of the European Union, TFEU), the freedom of establishment (Article 49 TFEU) and the freedom to provide services (Article 56 TFEU).

5 See https://www.socialsecurity.be/site_nl/employer/applics/goto1/index.htm

6 See <https://www.rsvz.be/nl/aanvraag-a1-attest-betreffende-de-socialezekerheidswetgeving>

7 See <https://www.postingdeclaration.eu/landing>

8 https://ec.europa.eu/commission/presscorner/detail/en/ip_24_5784 See Proposal for a regulation of the European Parliament and of the Council on a public interface connected to the Internal Market Information System for the declaration of posting of workers and amending Regulation (EU) No 1024/2012 (COM(2024) 531).

Over the past two decades a wide diversity of types of intra-EU labour mobility has emerged. In particular, the importance of short-term (circular) types of intra-EU labour, of which intra-EU posting, seems to have increased significantly.

In 2023, around 232 000 persons were posted to Belgium, of which some 196 600 posted workers and 38 900 posted self-employed persons. This concerns persons for whom a Limosa declaration was made in 2023 or earlier (*broad approach*).⁹ This group of 232 000 posted persons will not have provided services in Belgium at the same moment in 2023, mainly because they are often posted for a relatively short period of time (on average 151 days in 2023). As such, it is important to know the average number of incoming posted persons active in the Belgian economy. In 2023, there were about 113 800 posted persons active in Belgium on average, of which approximately 93 000 were employed and 19 900 self-employed.

The main sending Member States of the posted persons reported in Limosa are Poland (23% of the posted persons) and the Netherlands (19%).

In 2023, roughly 16 000 employers of posted workers were registered in Limosa. This means that each employer posted an average of nearly 11 workers to Belgium.

Finally, there were 24 824 unique Belgian clients registered in the Limosa database.

Third country nationals' access to the Belgian labour market: the backdoor via posting by service providers based in another Member State remains wide open

Concerning TCNs, a distinction should be made between 1) those who are posted to Belgium directly from outside the EU and 2) those who are posted to Belgium via an employer established in another Member State. The number of posted persons from outside the EU is of little importance: some 5% of total number of posted persons registered in Limosa. The reality is completely different if we look at the nationality of the posted persons registered in 2023. In 2023, about one out of four persons posted to Belgium were TCNs. More than one in five of these TCNs are Ukrainians (21% of posted TCNs). Moreover, Brazilians (14%), Belarusians (10%), Indians (7%), and Bosnians and Herzegovinians (5%) are others important groups of TCNs being posted to Belgium.

The two main routes of TCNs being posted to Belgium concern Ukrainians posted from Poland in the Belgian construction sector and Brazilians posted from Portugal in the Belgian construction sector. It is useful to note that in 2021, the posting of Ukrainians and Belarusians from both Poland and Lithuania in the transport sector were equally important routes. However, with the implementation of the 'EU Portal for road transport posting declarations', these routes are no longer visible in Limosa. Which does not mean they no longer exist in practice.

It is certainly useful to have a closer look at the main sending Member States of posted TCNs. For instance, most remarkably, only 10% of the persons posted from Slovenia are Slovenians, while one out of three are Bosnians and Herzegovinians (33%), 13% are Kosovars, and 12% are Serbians. Furthermore, around two out of three persons posted from Poland are Polish (66%), 17% are Ukrainians, and 9% are Belarusians. Finally, more than one in three persons posted from Portugal are Brazilians (35%).

In its recent judgment of 20 June 2024 in the case *SN and Others v Staatssecretaris van Justitie en Veiligheid*, the Court of Justice of the European Union stated that the host Member State may require a residence permit from posted TCNs in cases of a posting of more than 90 days.¹⁰ In 2023, 24% of the notifications in Limosa of TCNs posted by an employer established in another Member State were found to relate to a period of more than 90 days.

The importance of properly monitoring this group of posted persons becomes clear from the inspection statistics. In 2023, 672 investigations were carried out by the Belgian social inspectorates on the posting of TCNs. In almost 6 out of 10 investigations, an infringement was found. These figures confirm what the

⁹ The number of posted persons for whom a Limosa declaration was made in 2023 (narrow approach) amounted to some 214 000 persons in 2023.

¹⁰ See [C-540/22](#) (*SN and Others v Staatssecretaris van Justitie en Veiligheid*). This case concerned Ukrainian employees who were posted to the Netherlands by a Slovak employer to carry out metal work for a Dutch company in the port of Rotterdam. These employees had Schengen visas issued by Slovakia.

Letta Report ‘Much more than a Market’ (2024: 104) notes: “*Third-country nationals are more vulnerable to social fraud*”.

A large and increasing number of incoming posted self-employed persons to whom the Posting of Workers Directive does not apply: a ‘red flag’ regarding risks of a ‘race to the bottom’?

The monitoring of the evolution of the number of posted self-employed persons is of great importance, not least because the Posting of Workers Directive does not apply to posted self-employed persons. About 17% of the persons reported in Limosa are self-employed.

Especially a large group of persons posted from Poland and Slovakia are self-employed. Almost four in ten persons posted from Poland are self-employed (38%) and even almost seven in ten persons posted from Slovakia to Belgium (66%). Given that posted persons from Poland and Slovakia are to a large extent self-employed, it is interesting to see whether there are also differences by status between the main nationalities sent from both Member States. For Poland, it appears that Polish posted persons are mainly self-employed (53%), while posted Ukrainians mostly have an employee status (84%). For Slovakia as well, it can be observed that posted Slovaks (78%) have the self-employed status to a greater extent than posted Ukrainians (73%). This observation is in a certain way a relief since posted self-employed TCNs might be the group of posted persons most vulnerable to labour exploitation, especially when they are bogus self-employed.

The occurrence of self-employed is most remarkable in the Belgian construction sector, where three out of ten are posted self-employed persons. The share of posted self-employed in the Belgian construction sector is especially high for posted persons sent from Slovakia (81%), Czechia (65%), and Poland (51%). Most of the posted self-employed persons active in the Belgian construction sector are Polish (58%). In fact, posted Polish self-employed persons accounts for nearly one in five posted persons active in the Belgian construction sector.

The Belgian construction sector relies heavily on posted workers and self-employed persons

The top sector of employment of posted persons to Belgium is the construction sector. Almost 40% of the posted persons registered in Limosa are active in this sector. Data from Constructiv, based on an analysis of the Limosa database, show that in 2023, the Belgian construction sector received 89 293 posted persons of which 61 404 posted workers and 27 889 posted self-employed. Consequently, posted workers (share of 14.2%) and self-employed persons (share of 7.1%) represent more than one fifth of total employment (excl. white-collar workers) in the Belgian construction sector (21.3%). In full-time equivalents (FTE), the importance of intra-EU posting drops to around one tenth of total employment in the Belgian construction sector (11.4%), as posted workers account for 7.6% of FTE in the construction sector and posted self-employed account for 3.8% of FTE. Furthermore, data from Checkinawork¹¹ show that in 2023, about 1.6 million employees and self-employed were subject to attendance registration, of which 23% were posted workers and self-employed. These figures show how dependent the Belgian construction sector has become on intra-EU posting.

By using data from the ‘declaration of works’¹², it is possible to get an idea of the occurrence of subcontracting chains of works in immovable property. Of all declarations which were active in 2022, a subcontracting chain above the threshold of € 500 000¹³ had on average 17 (sub)contractors in the chain. Furthermore, 30% of these declarations above the threshold had 20 or more (sub)contractors. Of the

¹¹ Checkinawork is the attendance registration for works in immovable property exceeding a certain threshold. This requirement started from 1 April 2014. The threshold amounted to € 800 000 for works which commenced from 1 April 2014 until 29 February 2016, and € 500 000 for works which commenced after 29 February 2016. This attendance registration should be done at the start of the works or during the works.

¹² The declaration of works is obligatory for works in immovable property, of which the construction sector is a large part. The declaration of works is an electronic declaration submitted by the main contractor to the National Social Security Office (NSSO) before the start of the work. The contractor must declare all information associated with the construction site, contractors, and subcontractors to the NSSO.

¹³ This threshold signifies works in immovable property valued at € 500 000 or more, excluding VAT. Although arbitrarily chosen by the researchers, it allows for an analysis of larger works in immovable property. It also targets the same group of works where attendance registration (Checkinawork) is mandatory (see above).

subcontracting chains above the threshold, 39% have two tiers of subcontractors, and 20% have 3 or more tiers of subcontractors. The longest chain reported in the declarations of work consisted of 7 tiers of subcontractors. Furthermore, of all subcontractors active in chains above the threshold, 22% is established in another country. They are those who send posted workers to Belgium or they are posted self-employed persons. Interestingly, whereas non-Belgian companies at the top levels in the chain (clients and contractors) are mainly established in neighbouring countries (the Netherlands, Germany, France, and Luxembourg), non-Belgian companies at the bottom levels in the chain are mainly Polish, as well as Slovakian and Slovenian to a lesser extent. Finally, it can be noticed that the further down the contracting chain, the higher the share of foreign subcontractors.

The size and characteristics of outgoing postings differ markedly from that of incoming postings

In 2023, around 43 500 persons were posted from Belgium to another Member State on average 2 times per year. This is markedly lower than the number of incoming posted persons to Belgium of around 232 000 persons. There were 4 233 Belgian employers in 2023 which posted workers abroad to other Member States. On average, a Belgian employer posting workers to another Member State received 46 PDs A1 in 2023. In total, roughly 2% of the Belgian employers have posted workers abroad in 2023. In the period 2019 to 2023, more than one in ten employers in the arts, entertainment, and recreation sector posted workers abroad (12%), and in the construction sector, some 8% of the Belgian employers is a posting company.

While 84% of posted persons from Belgium are posted to a neighbouring country (France, the Netherlands, Luxembourg, or Germany), only 39% of posted workers to Belgium have a neighbouring country as their sending Member State. The sector of activity diverges as well. While most posted persons from Belgium are active in education, health and social work, arts and other services (excl. human health and social work activities) (24%), temporary employment agencies (20%), and construction (19%), the main sectors of activity of incoming posted workers to Belgium are construction (38%) and metalwork and pipefitting (11%). Finally, about 7% of the posted persons are issued to posted self-employed persons.

On average, a PD A1 granted by the NSSO to a posted worker was issued for 25 days in 2023. A breakdown by duration shows that more than one in four PDs A1 are issued for one day (28%). Furthermore, half of the PDs A1 were issued for one to three days (50%), and seven in ten for a duration of one week or less (71%). It is remarkable to see that in the arts, entertainment, and recreation sector, almost four in ten PDs A1 were issued for one day. In contrast, PDs A1 issued to posted workers active in the construction sector were issued for a longer period.

Finally, a posting may take place without the Belgian competent institutions (NSSO and NISSE) being informed and thus without a PD A1, since a request for a PD A1 might be made during or after the posting activities took place. On average, between 2021 and 2023, about 28% of PDs A1 issued by the NSSO to workers posted to another Member State were granted retroactively.

Safeguarding fair wages and working conditions goes hand in hand with fair competition: the efforts regarding the enforcement of the posting rules seem to go in the right direction

Inspections on the labour and social security aspects of posting are in principle carried out, solely or jointly, by the social inspection services of the Belgian FPS Employment, Labour and Social Dialogue (i.e., both by the Directorate-General for Supervision of Social Law and the Directorate-General Control on well-being at work), the National Social Security Office (NSSO), and the National Institute for the Social Security of the Self-employed (NISSE). Specialised units are created within the Directorate-General for Supervision of Social Law (i.e., 'Posted Workers' and 'Transport'), the NSSO inspectorate (i.e., 'GOT'), and the NISSE inspectorate (i.e., 'the Fair Competition Directorate'), that focus on the enforcement of the posting rules.

In 2023, there were 80.7 FTEi¹⁴ involved in the enforcement of the posting rules. This means there is one FTEi for 3 270 incoming posted persons registered in Limosa. Hence, the benchmark of one social inspector per 10 000 workers, as defined by the ILO, is reached. Nonetheless, the question is whether this is a useful benchmark for determining the number of FTEi needed in the enforcement of posting rules. Furthermore, seeing that in total there were 568 FTEi employed by the three Belgian social inspection services concerned (NSSO, NISSE, and the Directorate General for Supervision of Social Laws), roughly 14% of their FTEi in 2023 were involved in the enforcement of the posting rules. In the preface to the 2023-2024 action plan in the fight against social fraud of SISS (2023), it is stated that *“Central to this action plan is the strengthening of the inspectorates [...]. The fight against social fraud and social dumping can only be won if sufficient resources are made available. That is why we have committed ourselves to providing the necessary strengthening of the social inspection services. Specifically, 168 inspectors are being recruited to the various social inspection services.”* The question of course arises how many of these inspectors will be additionally deployed to enforce the posting rules.

Furthermore, in 2023, 7 759 investigations took place regarding compliance with the posting rules. This means that around 13% of all investigations by the three Belgian social inspection services are aimed at combating infringements to the posting rules. Out of the 7 759 investigations related to the compliance of the posting rules, 3 429 were positive investigations in which an infringement was found, or an infringement rate of 44.2%.

In 2023, around € 7.4 million was reported for recovery of unpaid social security contributions (including additional imposed social security contributions). The rectification of rights/duties of citizens because of the non-compliance with the minimum wages and conditions amounted to € 14.8 million in the same year. However, it is important to stress that these amounts concern the *claimed* amounts. These amounts are mentioned at the end of an investigation when the actual recovery still needs to take place. Hence, the actual share of recovered amounts in the total amount claimed is not known, although it is assumed that the recovery rate is on the low side in reality.

Finally, to advance the dialogue and conciliation procedure with other Member States concerning the validity of the PD A1, the FPS Social Security initiated the OSIRIS platform in June 2015, in partnership with the other competent Belgian institutions. From its inception until 1 July 2024, around 2 600 files have been processed through OSIRIS. Eight out of ten files were already settled in the first phase of the dialogue and conciliation procedure (i.e., between the competent institutions). Most of the files concern PDs A1 issued by Poland (32% of files), Portugal (13%), and Romania (11%). New data available since 1 September 2023 reveal other interesting characteristics of the files handled through OSIRIS. The majority of files concern a request of information (71%), and a quarter concern a review of legislation with a withdrawal of a PD A1 (25%). The main legal motive for a request is the lack of substantial activities of the employer in the sending country. Furthermore, the nationality of employees in the files processed through OSIRIS is mostly Romanian (29%) and Portuguese (12%). Finally, 46% of the files opened since 1 September 2023 concern the construction of buildings and 35% of files concern specialised construction activities.

¹⁴ This notion corresponds to the part of an FTE which is available for the core task related activities (i.e., investigations and audits, and the administrative tasks necessary to complete these investigations successfully).

Samenvatting

België heeft een ambivalente relatie met intra-Europese detachering.¹⁵ Het wordt in het academische en politieke debat vaak gezien als het ‘paard van Troje’ (en soms gelijkgesteld aan ‘sociale dumping’¹⁶), maar toch is de prevalentie en dus het gebruik ervan door Belgische bedrijven/klanten aanzienlijk toegenomen gedurende de voorbije twee decennia. Hierdoor is intra-Europese detachering een belangrijke vorm van intra-Europese arbeidsmobiliteit¹⁷ en tewerkstelling in België geworden, vooral dan in de Belgische bouwsector. Deze tegenstelling toont aan dat verdere inspanningen moeten worden geleverd om het aantal, de kenmerken en de impact van inkomende detachering van werknemers en zelfstandigen in België in kaart te brengen, evenals de inbreuken die tijdens deze activiteiten plaatsvinden. Empirische evidentie kan bestaande percepties weerleggen, nuanceren of bevestigen en kan een empirisch onderbouwd beleid in België ondersteunen, zowel op nationaal als regionaal niveau. Bij het in kaart brengen moet een onderscheid worden gemaakt tussen het gebruik van intra-EU-detachering (hetgeen volkomen legaal is) en de inbreuken op de loon- en arbeidsvoorwaarden en socialezekerheidsaspecten die hiermee soms gepaard gaan in veelal arbeidsintensieve en prijsgevoelige sectoren (zoals de bouw- en transportsector) en bij specifieke groepen van gedetacheerde personen (zoals gedetacheerde derdelanders en gedetacheerde schijnzelfstandigen).

Bovendien is het wetenschappelijk onderzoek over dit onderwerp voornamelijk gericht op ‘de gedetacheerde werknemer’, terwijl er veel andere economische actoren betrokken zijn en beïnvloed worden wanneer werknemers gedetacheerd worden naar een andere lidstaat, zoals België. Zo is er bijvoorbeeld ‘de detacherende onderneming’. Via de export van diensten, die in de EU vergemakkelijkt wordt door het vrij verrichten van diensten, verlenen bedrijven immers diensten in een andere lidstaat, waaronder België, door hun werknemers uit te zenden. Daarnaast zijn er natuurlijk de Belgische bedrijven/klanten die van deze diensten gebruikmaken. Een analyse van deze drie verschillende economische actoren (gedetacheerden, detacherende ondernemingen en de Belgische klanten) zorgt voor een vollediger beeld van het fenomeen detachering in België. Er zijn evenwel nog andere relevante economische actoren. Zoals Belgische lokale werknemers en de kleinere Belgische bedrijven die moeten concurreren met gedetacheerde werknemers en buitenlandse dienstverleners, en die mogelijk uit de (arbeids)markt worden geconcurrerd. Tenslotte zijn er natuurlijk ook nog de bevoegde Belgische en regionale overheidsdiensten (met inbegrip van hun inspectiediensten).

Tot slot richt de discussie over intra-Europese detachering zich voornamelijk op het inkomende perspectief (d.w.z. detachering naar België) en dreigt men het uitgaande perspectief (d.w.z. detachering vanuit België) soms uit het oog te verliezen en dus het belang ervan voor een groot aantal Belgische bedrijven die diensten verlenen in het buitenland.

15 Dit betreft de situatie waarbij een buitenlandse onderneming (dienstverlener) werknemers tijdelijk naar België stuurt om daar gedurende een bepaalde periode te werken. Vanuit een sociaalrechtelijk perspectief, door toepassing van Artikel 12 van Verordening 883/2004, kunnen ook zelfstandigen zichzelf detacheren naar een ander land. Zelfstandigen vallen evenwel niet onder de Detacheringsrichtlijn.

16 Volgens een Resolutie van het Europees Parlement van 14 september 2016 over sociale dumping in de Europese Unie (2015/2255(INI)), omvat dit begrip “een brede waaier aan opzettelijke misbruikpraktijken en de omzeiling van bestaande Europese en nationale wetgeving (met inbegrip van wetten en algemeen toepasselijke collectieve overeenkomsten), die oneerlijke concurrentie mogelijk maken door de arbeids- en werkingskosten op illegale wijze te minimaliseren, en resulteren in de schending van de rechten en de uitbuiting van werknemers”. Deze definitie werd onlangs ook opgenomen in het Belgische Sociaal Strafwetboek ([Boek 1 - Art. 1.1.1.](#)).

17 Het is aangewezen om zeker binnen een EU-context een onderscheid te maken tussen de noties ‘arbeidsmigratie’ en ‘arbeidsmobiliteit’. Europese beleidsmakers alsook juristen benadrukken immers dat EU-burgers die zich van de ene naar de andere lidstaat verplaatsen geen ‘migranten’ maar wel ‘mobiele EU-burgers’ zijn. Hierbij weerspiegelt de notie ‘arbeidsmobiliteit’ de mogelijkheid van EU-burgers om in een andere lidstaat te werken op basis van het vrij verkeer van werknemers, de vrijheid van vestiging en het vrij verrichten van diensten. Dergelijke vrijheid bestaat niet bij ‘arbeidsmigratie’ van derdelanders naar de EU.

In dit landenrapport voor België, opgesteld in het kader van het POSTING.STAT 2.0 project,¹⁸ worden volgende twee onderzoeksvragen gesteld:

- 1) *Wat is de omvang, het profiel en de impact van intra-EU detachering van en naar België?*
- 2) *Wat is de omvang en het profiel van de sociaalrechtelijke inbreuken bij intra-EU detachering naar België?*

In tegenstelling tot sommige andere lidstaten beschikt België over een schat aan gegevens over intra-EU detachering. Zo is Limosa¹⁹ de informatiebron bij uitstek om het aantal en de kenmerken van detacheringen naar België in kaart te brengen. Er bestaat immers een Limosa-meldingsplicht voor buitenlandse dienstverleners die hun werknemers of zichzelf naar België detacheren om er een tijdelijke opdracht uit te voeren. Om het uitgaande perspectief vast te leggen, ligt de focus vooral op de gegevens die beschikbaar worden gesteld via de uitgifte van het A1-attest door de Rijksdienst voor Sociale Zekerheid (RSZ)²⁰ (aan gedetacheerde werknemers) en het Rijksinstituut voor de Sociale Verzekeringen der Zelfstandigen (RSVZ)²¹ (aan gedetacheerde zelfstandigen). Het A1-attest bewijst dat de Belgische socialezekerheidswetgeving van toepassing is en bevestigt dat de betrokkene geen verplichtingen heeft om socialezekerheidsbijdragen te betalen in een andere lidstaat. Het A1-attest moet worden aangevraagd door de Belgische werkgever wanneer werknemers naar het buitenland worden gedetacheerd of door de Belgische zelfstandige die zichzelf naar een andere lidstaat detacheert. Er zijn ook inspanningen gedaan om toegang te krijgen tot data uit andere interessante administratieve databanken, zoals ‘de aangifte van werken’ en ‘Checkinetwork’ bij werken in onroerende staat. Tenslotte worden in dit landenrapport voor België inspectiestatistieken over de handhaving van de detacheringsregels, verzameld door de Sociale Inlichtingen- en Opsporingsdienst (SIOD), gerapporteerd en geanalyseerd. Deze inspectiestatistieken zijn verder aangevuld met cijfers van de FOD Sociale Zekerheid uit het OSIRIS-platform over de dialoog- en bemiddelingsprocedure omtrent de geldigheid van een A1-attest uitgeven door een bevoegde publieke administratie in een andere lidstaat.

Het dient gezegd dat alle bovengenoemde databronnen hun voor- en nadelen hebben. Zo lijkt het gebruik van Limosa als de bron bij uitstek om inkomende detachering naar België te monitoren en in kaart te brengen steeds meer onder druk te staan. Sinds februari 2022 is het ‘EU-portaal voor detacheringaangiften in het wegvervoer’²² immers het verplichte aangifteportaal voor transportondernemingen die hun vrachtwagenchauffeurs naar een andere lidstaat detacheren. Bijgevolg worden gegevens over de detachering van werknemers en zelfstandigen in het goederenvervoer over de weg niet langer op nationaal niveau verzameld, bijvoorbeeld in Limosa. Bovendien zijn ook verschillende activiteiten vrijgesteld van de Limosa-meldingsplicht en wordt niet elke naar België gedetacheerde persoon gemeld in Limosa, ook al moet voor die persoon een aangifte worden ingediend. In dat opzicht tonen de data uit Limosa die in dit landenrapport worden gerapporteerd alleen de omvang en de kenmerken van de *gerapporteerde* detacheringen. Dit kan/zal (aanzienlijk) verschillen van de werkelijke omvang en kenmerken van detachering naar België. Bovendien dreigt men door de implementatie van het ‘EU-portaal voor detacheringverklaringen voor het wegvervoer’ het zicht op een sector te verliezen die in 2021 nog goed was voor 17% van het aantal inkomende gedetacheerde personen in België. Tot slot heeft de Europese Commissie onlangs een voorstel ingediend voor een Verordening tot oprichting van een centraal digitaal aangifteportaal voor de aangifte van gedetacheerde werknemers, zoals nu reeds gebeurt voor het wegvervoer, en dus zou uitgebreid worden naar alle economische sectoren.²³ De vraag stelt zich bijgevolg in hoeverre (alle) gegevens over detacheringen naar België nog in de (nabije) toekomst beschikbaar zullen zijn in Limosa.

18 POSTING.STAT 2.0 brengt een onderzoeksconsortium samen uit de belangrijkste zendende en ontvangende lidstaten van gedetacheerde werknemers in de EU (Oostenrijk, België, Frankrijk, Duitsland, Italië, Nederland, Litouwen, Polen, Slowakije, Slovenië en Spanje). Het doel van het project is om bijkomende statistische evidentie over intra-EU detachering te rapporteren, dit door middel van het verzamelen en analyseren van nationale administratieve data. Voor een overzicht van de publicaties van het POSTING.STAT 2.0 project, zie <https://hiva.kuleuven.be/nl/onderzoek/thema/verzorgingsstaat/p/POSTING-STAT20>

19 Zie www.limosa.be

20 Zie https://www.socialsecurity.be/site_nl/employer/applics/gotot/index.htm

21 Zie <https://www.rsvz.be/nl/aanvraag-a1-attest-betreffende-de-socialezekerheidswetgeving>

22 Zie <https://www.postingdeclaration.eu/landing>

23 https://ec.europa.eu/commission/presscorner/detail/nl/ip_24_5784 Zie Voorstel voor een verordening van het Europees Parlement en de Raad betreffende een met het Informatiesysteem interne markt verbonden openbare interface voor de verklaring van detachering van werknemers, en tot wijziging van Verordening (EU) nr. 1024/2012 (COM(2024) 531).

Tot slot heeft het gebruik van inspectiestatistieken een aantal beperkingen waar de lezer zich bewust van moet zijn. Zo geven inspectiestatistieken een vertekend beeld van de werkelijke omvang van inbreuken op de detachingsregels. Inspecties vinden immers meestal plaats op basis van een risicobeoordeling, bovendien vooral in specifieke risicosectoren zoals bijvoorbeeld in de bouw- en transportsector. Zulke inspecties zullen leiden tot hogere inbreukpercentages. Om de werkelijke omvang van inbreuken bij detachering in te schatten, zijn andere onderzoeksmethoden beter geschikt. Zo zouden de economische actoren (gedetacheerde werknemers, gedetacheerde zelfstandigen, ondernemingen die werknemers detacheren, opdrachtgevers) betrokken bij detachering bevestigd kunnen worden. Evenzeer zouden inspecties bij een willekeurig geselecteerde groep detachende ondernemingen/gedetacheerde werknemers (in een specifieke sector) georganiseerd kunnen worden.

Detachering via het vrij verrichten van diensten in de EU is één van de belangrijkste vormen van intra-Europese arbeidsmobiliteit naar België

Het begrip ‘intra-Europese arbeidsmobiliteit’ weerspiegelt de mogelijkheid om in een andere lidstaat te werken op basis van het vrij verkeer van werknemers (Artikel 45 van het Verdrag betreffende de werking van de Europese Unie - VWEU), de vrijheid van vestiging (Artikel 49 VWEU) en het vrij verrichten van diensten (Artikel 56 VWEU). In de afgelopen twee decennia is een grote verscheidenheid aan vormen van intra-Europese arbeidsmobiliteit ontstaan. Vooral het belang van tijdelijke (circulaire) vormen van intra-Europese arbeidsmobiliteit, waaronder detachering, lijkt aanzienlijk te zijn toegenomen.²⁴

In 2023 werden ongeveer 232 000 personen naar België gedetacheerd, waarvan ongeveer 196 600 gedetacheerde werknemers en 38 900 gedetacheerde zelfstandigen. Dit betreft personen waarvoor in 2023 of eerder een Limosa-aangifte werd gedaan (*ruime benadering*).²⁵ Deze groep van 232 000 gedetacheerde personen zal evenwel niet op hetzelfde moment diensten hebben verricht in België, voornamelijk omdat zij veelal voor een relatief korte periode gedetacheerd worden (gemiddeld 151 dagen in 2023). Daarom is het ook interessant om het gemiddeld aantal inkomende gedetacheerden te kennen die in 2023 één of meerdere dagen actief waren in de Belgische economie. In 2023 waren er gemiddeld ongeveer 113 800 gedetacheerde personen actief in België, waarvan ongeveer 93 000 werknemers en 19 900 zelfstandigen.

De belangrijkste zendende lidstaten van de in Limosa geregistreerde gedetacheerde personen zijn Polen (23% van de gedetacheerde personen) en Nederland (19%).

In 2023 werden ongeveer 16 000 werkgevers van gedetacheerde werknemers geregistreerd in Limosa. Dit betekent dat elke werkgever gemiddeld bijna 11 werknemers naar België detacheerde.

Tot slot waren er 24 824 unieke Belgische klanten geregistreerd in Limosa.

Toegang van derdelanders tot de Belgische arbeidsmarkt: de achterdeur via detachering door dienstverleners gevestigd in een andere lidstaat blijft wijd openstaan

Wat derdelanders betreft, moet een onderscheid worden gemaakt tussen 1) diegenen die rechtstreeks door een werkgever gevestigd buiten de EU naar België worden gestuurd om er diensten te verlenen (veelal op basis van een bilaterale overeenkomst) en 2) diegenen die naar België worden gedetacheerd via een werkgever die in een andere lidstaat binnen de EU is gevestigd. Het aantal ‘gedetacheerden’ van buiten de EU is relatief beperkt indien gekeken wordt naar het zendende land van de gedetacheerden naar België. Het gaat om ongeveer 5% van het totale aantal gedetacheerde personen geregistreerd in Limosa. De realiteit ziet er echter helemaal anders uit indien we kijken naar de nationaliteit van de gedetacheerden die in 2023 geregistreerd waren in Limosa.

²⁴ Tijdelijke Intra-Europese arbeidsmobiliteit kan immers zowel kortstondig als langdurig van aard zijn. Bovendien is er de vaststelling dat niets permanenter is dan tijdelijke intra-Europese arbeidsmobiliteit. Dit omwille van de aanvoer van telkens nieuwe tijdelijke buitenlandse arbeidskrachten maar evenzeer omwille van het circulaire karakter van tijdelijke intra-Europese arbeidsmobiliteit waarbij de buitenlandse arbeidskracht herhaaldelijk voor een korte periode in het gastland werkt en daartussen telkens terugkeert naar het land van herkomst.

²⁵ Het aantal gedetacheerden waarvoor in 2023 een Limosa-aangifte werd gedaan (enge benadering), bedroeg in 2023 ongeveer 214 000 personen.

In 2023 was ongeveer één op vier van de gedetacheerde personen naar België een derdelander. Meer dan één op vijf van deze derdelanders betroffen Oekraïners (21% van de gedetacheerde derdelanders). Daarnaast zijn Brazilianen (14%), Wit-Russen (10%), Indiërs (7%) en Bosniërs (5%) belangrijke groepen van derdelanders die naar België gedetacheerd worden.

De twee belangrijkste routes van de naar België gedetacheerde derdelanders zijn Oekraïners die vanuit Polen naar de Belgische bouwsector worden gedetacheerd alsook Brazilianen die vanuit Portugal evenzeer naar de Belgische bouwsector worden gedetacheerd. Het is evenwel nuttig om op te merken dat in 2021 de detachering van Oekraïners en Wit-Russen uit Polen en Litouwen in de transportsector evenzeer belangrijke routes waren. Met de implementatie van het 'EU-portaal voor detachingsverklaringen in het wegvervoer' zijn deze routes niet langer zichtbaar in Limosa. Dat betekent niet dat ze in de praktijk niet meer bestaan.

Het is zeker interessant om het profiel van de belangrijkste zendende lidstaten van gedetacheerde derdelanders naderbij te bekijken. Zo is het bijvoorbeeld opmerkelijk om vast te stellen dat slechts 10% van de uit Slovenië gedetacheerde personen naar België de Sloveense nationaliteit hebben. Eén op drie gedetacheerde personen vanuit Slovenië naar België betreffen immers Bosniërs (33%) alsook 13% Kosovaren en 12% Serviërs. Verder hebben ongeveer twee op de drie personen die vanuit Polen naar België worden gedetacheerd effectief de Poolse nationaliteit. Het gaat immers ook veelal om Oekraïners (17%) en Wit-Russen (9%). Ten slotte blijkt 35% van de gedetacheerde personen uit Portugal de Braziliaanse nationaliteit te hebben.

In een recent arrest van 20 juni 2024 in de zaak *SN e.a. tegen Staatssecretaris van Justitie en Veiligheid* verklaarde het Hof van Justitie van de Europese Unie dat de ontvangende lidstaat van gedetacheerde derdelanders een verblijfsvergunning mag eisen in geval van een detachering van meer dan 90 dagen.²⁶ In 2023 bleek 24% van de Limosa-meldingen van gedetacheerde derdelanders door een in een andere lidstaat gevestigde werkgever betrekking te hebben op een periode van meer dan 90 dagen.

Hoe belangrijk het is om gedetacheerde derdelanders goed te monitoren, wordt duidelijk uit de inspectiestatistieken. In 2023 werden 672 onderzoeken uitgevoerd door de Belgische sociale inspectiediensten omtrent de detachering van derdelanders naar België. In bijna 6 op 10 onderzoeken werd een inbreuk op de detachingsregels vastgesteld. Deze cijfers bevestigen ook wat in het recente Letta rapport 'Much more than a Market' (2024: 104) te lezen staat: "*Derdelanders zijn kwetsbaarder voor sociale fraude*".

Een hoog en toenemend aantal inkomende gedetacheerde zelfstandigen: een indicatie voor een toenemend risico op een 'race to the bottom'?

Het monitoren van de evolutie van het aantal gedetacheerde zelfstandigen is van groot belang. Niet in het minst omdat gedetacheerde zelfstandigen niet onder de toepassing van de Detachingsrichtlijn vallen, en dus ook niet onder de loon- en arbeidsvoorwaarden die hierin worden gedefinieerd.

Ongeveer 17% van de in Limosa gemelde gedetacheerde personen zijn zelfstandige. Vooral een grote groep gedetacheerden uit Polen en Slowakije zijn zelfstandige. Bijna vier op de tien gedetacheerde personen vanuit Polen naar België zijn zelfstandige (38%) en ongeveer twee op de drie (66%) vanuit Slowakije. Gezien het feit dat gedetacheerde personen uit Polen en Slowakije voor een groot deel zelfstandigen betreffen, is het interessant om te bekijken of er ook verschillen naar statuut zijn (werknemer versus zelfstandige) tussen de belangrijkste nationaliteiten die vanuit beide lidstaten naar België worden gedetacheerd. Voor Polen blijkt dat Poolse gedetacheerden voornamelijk zelfstandigen betreffen (53%), terwijl gedetacheerde Oekraïners vanuit Polen meestal eens werknemersstatuut hebben (84%). Ook voor Slowakije kan worden vastgesteld dat gedetacheerde Slowaken (78%) in grotere mate het zelfstandigenstatuut hebben dan gedetacheerde Oekraïners (73%). Deze vaststelling is in zekere zin een opluchting, aangezien gedetacheerde zelfstandige derdelanders wellicht de groep van gedetacheerde personen zij die het meest kwetsbaar is voor arbeidsuitbuiting, vooral wanneer het gaat om schijnzelfstandigen.

²⁶ Zie [C-540/22](#) (*SN e.a. tegen Staatssecretaris van Justitie en Veiligheid*). In deze zaak ging het om Oekraïense werknemers die door een Slowaakse werkgever naar Nederland waren gedetacheerd om metaalwerkzaamheden uit te voeren voor een Nederlands bedrijf in de haven van Rotterdam. Deze werknemers hadden een Schengenvisum dat was afgegeven door Slowakije.

De aanwezigheid van gedetacheerde zelfstandigen is het opmerkelijkst in de Belgische bouwsector, waar drie op de tien gedetacheerde personen het zelfstandigenstatuut hebben. Het aandeel gedetacheerde zelfstandigen in de Belgische bouwsector is vooral hoog voor gedetacheerden uit Slowakije (81%), Tsjechië (65%) en Polen (51%). De meeste gedetacheerde zelfstandigen die actief zijn in de Belgische bouwsector zijn Pools (58%). Het aantal gedetacheerde Poolse zelfstandigen vertegenwoordigen zelfs bijna één op vijf van de gedetacheerde personen die actief zijn in de Belgische bouwsector.

De Belgische bouwsector is sterk afhankelijk van gedetacheerde werknemers en zelfstandigen

De bouwsector is veruit de belangrijkste sector van tewerkstelling van gedetacheerde personen naar België. Bijna 40% van de in Limosa geregistreerde gedetacheerden is namelijk actief in deze sector. Uit gegevens van Constructiv, gebaseerd op een analyse van data uit Limosa, blijkt dat de Belgische bouwsector 89 293 gedetacheerde personen ontving in 2023, waarvan 61 404 gedetacheerde werknemers en 27 889 gedetacheerde zelfstandigen. Bijgevolg vertegenwoordigen gedetacheerde werknemers (aandeel van 14,2%) en zelfstandigen (aandeel van 7,1%) meer dan één vijfde van de totale tewerkstelling (excl. bedienden) in de Belgische bouwsector (21,3%).²⁷ In voltijdsequivalenten (VTE) daalt het belang van intra-EU-detachering tot ongeveer een tiende van de totale werkgelegenheid (excl. bedienden) in de Belgische bouwsector (11,4%), aangezien gedetacheerde werknemers 7,6% van de VTE in de bouwsector uitmaken en gedetacheerde zelfstandigen 3,8% van de VTE. Bovendien blijkt uit gegevens van Checkinawork²⁸ dat in 2023 ongeveer 1,6 miljoen werknemers en zelfstandigen onderworpen waren aan de aanwezigheidsregistratie bij werken in onroerende staat van € 500 000 en meer (exclusief BTW), waarvan 23% gedetacheerde werknemers en zelfstandigen. Deze cijfers tonen aan hoe afhankelijk de Belgische bouwsector is geworden van gedetacheerde werknemers en zelfstandigen.

Door gebruik te maken van gegevens uit de ‘aangifte van werken’²⁹ is het mogelijk om een beeld te krijgen van de omvang en het profiel van de onderaannemingsketens bij werken in onroerende staat. Een onderaannemingsketen bij een aangifte van werken van € 500 000³⁰ of meer telt gemiddeld 1,6 hoofdaannemers en 16,5 onderaannemers. Ongeveer 30% van de onderaannemingsketens op deze grote bouwwerven heeft zelfs 20 of meer onderaannemers in de keten. De grootste keten die in de aangiften van werken werd gemeld, bestaat uit 188 onderaannemers in totaal. De lengte van een onderaannemingsketen bij een aangifte van werken van € 500 000 of meer telt gemiddeld 1 niveau van hoofdaannemers en 2 niveaus van onderaannemers. Eén op vijf onderaannemingsketens op grote bouwwerven telt zelfs 3 of meer niveaus van onderaannemers. De langste keten die in de aangiften van werken werd gemeld, bestaat uit 7 niveaus van onderaannemers. Tenslotte werd een analyse gemaakt van het land van vestiging van de hoofd/onderaannemers gerapporteerd in de aangiften van werken. Bijna alle hoofdaannemers zijn gevestigd in België (97% bij aangiften van werken waarbij een bedrag van € 500 000 of meer van toepassing is). Bij de onderaannemers is het aandeel van buitenlandse ondernemingen veel groter. Ongeveer 22% van de onderaannemers gerapporteerd in de aangiften van werken van € 500 000 en meer zijn in het buitenland gevestigd, voornamelijk in Polen. Het gaat dus om onderaannemers die gedetacheerde werknemers naar België sturen of om gedetacheerde zelfstandigen. Buitenlandse onderaannemers zijn niet meer weg te

²⁷ Bij de berekening van de binnenlandse werkgelegenheid in een land wordt gekeken naar de vestigingsplaats van de werkgever of zelfstandige. Evenwel zou best ook met de groep van arbeidskrachten tewerkgesteld door een werkgever die niet gevestigd is in het gastland rekening gehouden worden bij de berekening van de totale binnenlandse werkgelegenheid. Tewerkstellingsstatistieken moeten immers een gedegen monitoring van de arbeidsmarkt maar ook van de economie toelaten. Voor een aantal sectoren in België met een groot aantal inkomende gedetacheerde werknemers, zoals de bouwsector en het vrachtovervoer over de weg, is het twijfelachtig of deze doelstelling verwezenlijkt wordt. Tewerkstellingscijfers gepubliceerd voor de bouwsector in België onderschatten immers de werkelijke omvang van het aantal arbeidskrachten die dagdagelijks op de Belgische bouwwerven terug te vinden zijn.

²⁸ Checkinawork is de aanwezigheidsregistratie voor werken in onroerende staat van € 500 000 en meer (excl. BTW).

²⁹ De aangifte van werken is verplicht voor werken in onroerende staat, waarvan de bouwsector een groot deel uitmaakt. De aangifte van werken is een elektronische verklaring die door de hoofdaannemer wordt ingediend bij de RSZ vóór aanvang van de werken. De aannemer moet alle informatie met betrekking tot de bouwplaats, aannemers en onderaannemers aangeven bij de RSZ.

³⁰ Deze drempel heeft betrekking op werken in onroerend goed met een waarde van € 500 000 of meer, exclusief BTW. Hoewel deze drempel arbitrair is gekozen door de onderzoekers, maakt hij een analyse van grotere werken in onroerend goed mogelijk. Het is ook gericht op dezelfde groep werken waar aanwezigheidsregistratie (Checkinawork) verplicht is (zie hierboven).

denken uit de Belgische bouwverven. Onze analyse toont immers aan dat 55% van de onderaannemingsketens op grote bouwverven ten minste 1 buitenlandse onderaannemer telt. Een laatste vaststelling is dat hoe lager men gaat in de onderaannemingsketen, hoe hoger het aandeel buitenlandse onderaannemers. Op het vierde niveau van onderaanneming is zelfs 40% van de onderaannemers gevestigd in het buitenland, waarvan 24% in Polen.

De omvang en kenmerken van uitgaande detachering verschilt aanzienlijk van dat van inkomende detachering

In 2023 werden ongeveer 43 500 personen gemiddeld 2 keer per jaar vanuit België naar een andere lidstaat gedetacheerd. Dit aantal is beduidend lager dan het aantal gedetacheerde personen naar België (ongeveer 232 000 in 2023).

In 2023 hebben 4 233 Belgische werkgevers één of meerdere A1-attesten van de RSZ ontvangen voor de detachering van hun werknemers. In totaal heeft ongeveer 2% van de Belgische werkgevers in 2023 werknemers naar het buitenland gedetacheerd. In de periode 2019 tot 2023 heeft zelfs meer dan één op de tien werkgevers (12%) in de sector ‘kunst, amusement en recreatie’ werknemers naar het buitenland gedetacheerd, en in de bouwsector ging het om ongeveer 8% van de Belgische werkgevers.

Terwijl 84% van de gedetacheerde personen vanuit België naar een buurland (Frankrijk, Nederland, Luxemburg of Duitsland) wordt gezonden, is slechts 39% van de gedetacheerde werknemers naar België afkomstig uit een buurland. Ook wat betreft de sector van tewerkstelling doen zich duidelijke verschillen voor tussen inkomende en uitgaande gedetacheerde personen. Hoewel de meeste gedetacheerde personen uit België werkzaam zijn in het onderwijs, de gezondheidszorg en maatschappelijke dienstverlening, kunst en overige diensten (24%), de interimsector (20%) en de bouwnijverheid (19%), zijn de belangrijkste sectoren van tewerkstelling van inkomende gedetacheerde personen naar België de bouwnijverheid (38%) en de metaalnijverheid (11%). Tot slot hebben ongeveer 7% van de gedetacheerde personen vanuit België het zelfstandigenstatuut, terwijl dit gaat om 16% van de gedetacheerde personen naar België.

Een door de RSZ aan een gedetacheerde werknemer toegekend A1-attest slaat gemiddeld op een detachingsduur van 25 dagen. Dit is beduidend lager dan de gemiddelde detachingsduur naar België van 151 dagen. Een uitsplitsing naar duur laat zien dat meer dan één op de vier A1-attesten voor één dag wordt afgegeven (28%). Verder werd de helft van de A1-attesten toegekend voor één tot drie dagen (50%), en zeven op de tien voor een duur van één week of minder (71%). Opvallend is dat in de kunst-, amusement- en recreatiesector bijna vier op de tien A1-attesten voor één dag werden afgegeven. Daarentegen werden A1-attesten aan gedetacheerde werknemers actief in de bouwsector voor een langere periode afgegeven.

Ten slotte kan een detachering plaatsvinden zonder dat de Belgische bevoegde instellingen (RSZ en RSVZ) hiervan vooraf op de hoogte worden gebracht, aangezien een aanvraag voor een A1-attest ook tijdens of zelfs na de detachingsactiviteiten kan worden ingediend. Gemiddeld werd tussen 2021 en 2023 ongeveer 28% van de door de RSZ afgegeven A1-attesten met terugwerkende kracht toegekend.

Het garanderen van eerlijke loon- en arbeidsvoorwaarden gaat hand in hand met eerlijke concurrentie: de inspanningen met betrekking tot de handhaving van de detachingsregels lijken in de goede richting te evolueren

Inspecties op de correcte toepassing van de loon- en arbeidsvoorwaarden alsook op de toepassing van de socialezekerheidsaspecten bij inkomende detachering worden op federaal niveau grotendeels uitgevoerd door de sociale inspectiediensten van de Belgische FOD Werkgelegenheid, Arbeid en Sociaal Overleg (Toezicht op de Sociale Wetten (TSW) en Toezicht op het Welzijn op het Werk (TWW)), van de Rijksdienst voor Sociale Zekerheid (RSZ) en van het Rijksinstituut voor de Sociale Zekerheid der Zelfstandigen (RSVZ). Zowel binnen TSW (team ‘Posted Workers’ en ‘Transport’), de RSZ-inspectie (team ‘Grensoverschrijdende Tewerkstelling’ (GOT)) en de RSZ-inspectie (Directie Eerlijke Concurrentie (ECL)) zijn gespecialiseerde teams opgericht die zich richten op de handhaving van de detachingsregels.

In 2023 waren 80,7 VTEi³¹ betrokken bij de handhaving van de detachingsregels.³² Dit betekent dat er één VTEi is voor 3 270 inkomende gedetacheerde personen geregistreerd in Limosa. De benchmark van één sociaal inspecteur per 10 000 werknemers, zoals bepaald door de International Arbeidsorganisatie, wordt dus ruimschoots bereikt. Het is echter de vraag of dit een nuttige benchmark is om het aantal VTEi te bepalen nodig voor de handhaving van de detachingsregels. Aangezien de drie betrokken Belgische sociale inspectiediensten (RSZ, RSVZ en TSW) 568 VTEi in totaal tewerkstellen, was in 2023 ongeveer 14% van hun VTEi betrokken bij de handhaving van de detachingsregels. In het voorwoord van het SIOD Actieplan Sociale fraudebestrijding 2023-2024 (2023: 6) staat het volgende te lezen: *“Centraal in dit actieplan staat de versterking van de inspectiediensten [...]. De strijd tegen sociale fraude en sociale dumping kan maar gestreden worden indien er voldoende middelen voor worden vrijgemaakt. Daarom hebben wij ons geëngageerd om in de nodige versterking van de sociale inspectiediensten te voorzien. Concreet worden er 168 inspecteurs aangeworven bij de verschillende sociale inspectiediensten.”* De vraag stelt zich hoeveel van deze inspecteurs bijkomend zullen worden ingezet om de detachingsregels te handhaven.

Verder vonden 7 759 onderzoeken³³ plaats omtrent de naleving van de detachingsregels. Dit betekent dat ongeveer 13% van alle onderzoeken uitgevoerd door TSW, RSZ, en RSVZ gericht zijn op het bestrijden van ‘sociale dumping’ door te controleren op inbreuken op de detachingsregels. Er deden zich 3 429 ‘positieve onderzoeken’³⁴ voor waarbij dus één of meerdere inbreuken werden vastgesteld. Hierdoor wordt een inbreukpercentage van 44,2% op de naleving van de detachingsregels bekomen.

In 2023 werd ongeveer € 7,4 miljoen aan terugvorderingen van onbetaalde socialezekerheidsbijdragen (inclusief extra opgelegde socialezekerheidsbijdragen) opgesteld. De correctie van de rechten voor gedetacheerde werknemers wegens de niet-naleving van de loon- en arbeidsvoorwaarden bedroeg in hetzelfde jaar € 14,8 miljoen. Het is echter belangrijk om te benadrukken dat deze bedragen de *gevorderde* bedragen betreffen. Deze bedragen worden berekend aan het einde van een onderzoek, wanneer de daadwerkelijke terugvordering van deze bedragen nog moet plaatsvinden. Het werkelijke aandeel van de teruggevorderde bedragen in het totale gevorderde bedrag is dus niet bekend. Bovendien wordt algemeen aangenomen dat het terugvorderingspercentage in werkelijkheid aan de lage kant ligt.

Ten slotte heeft de FOD Sociale Zekerheid in juni 2015 het OSIRIS-platform opgestart om de dialoog- en bemiddelingsprocedure met andere lidstaten over de geldigheid van het A1-attest te bevorderen. Sinds de start t.e.m. 1 juli 2024 werden ongeveer 2 600 dossiers via het OSIRIS-platform verwerkt. Acht van de tien dossiers werd reeds afgehandeld in de eerste fase van de dialoog- en bemiddelingsprocedure (namelijk tussen de bevoegde instellingen). De meeste daarvan hebben betrekking op A1-attesten die zijn afgegeven door Polen (32% van de dossiers), Portugal (13%) en Roemenië (11%). Nieuwe gegevens die sinds 1 september 2023 beschikbaar zijn, onthullen andere interessante kenmerken van de dossiers die via OSIRIS zijn behandeld. Zo is de nationaliteit van de werknemers in de dossiers die via OSIRIS worden behandeld, meestal Roemeens (29%) en Portugees (12%). Ook betreft de meerderheid van de dossiers een verzoek om informatie (71%), en een kwart betreft een verzoek tot herziening met intrekking van een A1-attest als gevolg (25%). Het belangrijkste juridisch motief voor een verzoek is het ontbreken van substantiële activiteiten van de werkgever in het zendende land. Ten slotte heeft 46% van de sinds 1 september 2023 geopende dossiers betrekking op de bouw van gebouwen en 35% van de dossiers op gespecialiseerde bouwactiviteiten.

31 Een VTEi is dat deel van een VTE dat beschikbaar is voor de kerntaak gebonden activiteiten (i.e., onderzoeken en controles, en de administratieve taken die nodig zijn om deze tot een goed einde te brengen).

32 Eigenlijk ‘in de strijd tegen sociale dumping’ wat op zich een bredere benadering is.

33 Een onderzoek is een evaluatie door een of meerdere actor(en) (i.e., een sociaal inspecteur, of administratief personeel) binnen één dienst over het al dan niet compliant gedrag van het voorwerp van het onderzoek (i.e., een werkgever, een werknemer, een zelfstandige). Een onderzoek kan gevoerd worden met betrekking tot verschillende onderwerpen (materies), en kan aanleiding geven tot één of meerdere resultaten. Binnen één onderzoek kunnen er één of meerdere controles uitgevoerd worden, die verschillende vormen kunnen aannemen.

34 Een positief onderzoek is een onderzoek waarvan het resultaat, gedeeltelijk of geheel, bestaat uit (voorstellen voor) één of meerdere volgende stappen, ten gevolge van het vastgesteld hebben van één of meerdere inbreuken tijdens één of meerdere positieve controles die plaatsvonden binnen het kader van dit onderzoek.

1. Introduction

‘Intra-EU labour mobility’ is a notion with many different faces.³⁵ Indeed, not only long-term intra-EU labour mobility by ‘EU movers of working age’³⁶ and frontier workers³⁷, either as worker or self-employed person, but also short-term intra-EU labour mobility by seasonal workers³⁸ may take place.³⁹ However, intra-EU labour mobility should not be narrowed down to movements that take place under the free movement of workers (Article 45 of the Treaty on the Functioning of the European Union (TFEU)) or the freedom of establishment (Article 49 TFEU). It may also take place in the framework of the freedom to provide services (Article 56 TFEU). This form of intra-EU labour mobility, called ‘posting of workers’, concerns the activity of a company sending (i.e., ‘posting’) workers for a limited period from one Member State (i.e., the sending or home Member State) to another Member State (i.e., the receiving or host Member State) to provide a service. It concerns a group of (non-resident) foreign workers, or so-called ‘posted workers’⁴⁰, whose employment relation is with a non-resident entity (i.e., company). It differs from other types of intra-EU labour mobility in that it is employer-driven (unlike the ‘worker-driven’ types of intra-EU labour mobility under the free movement of workers), and that it has a strong link to the trade in services as this may require the physical presence of workers.⁴¹

Belgium has a somewhat ambivalent relationship with intra-EU posting. It is often viewed as a ‘Trojan horse’ in academic and public debate,⁴² yet its prevalence and use by Belgian companies/clients has grown markedly. The posting of workers has become an important form of intra-EU labour mobility and employment in Belgium, especially in the Belgian construction sector. This reality shows that further efforts should be made to map out the number, characteristics, and impact of intra-EU posting to Belgium, as well as of the infringements that occur during these activities. Empirical evidence may refute, nuance, or confirm existing perceptions and may support evidence-based policy in Belgium, both at national and regional level. Such mapping should differentiate between the use of intra-EU posting (which is perfectly legal) and the infringements in some specific sectors of activity that may arise from it.⁴³ Moreover, the discussion of intra-EU posting focuses mainly on the inbound perspective (i.e., to Belgium) and loses sight of the outbound perspective (i.e., from Belgium), and its importance for a high number of Belgian companies providing services abroad.

35 To grasp this notion in its entirety, the use of a comprehensive definition is needed. One such definition is provided by the United Nations Economic Commission for Europe (UNECE 2018: 3), which states that ‘international labour mobility’ includes “*all movements of natural persons from one country to another for the purpose of employment or the provision of services*”.

36 i.e., EU citizens of working age who reside in a Member State other than their Member State of citizenship.

37 i.e., EU citizens who work in a Member State other than their Member State of residence.

38 i.e., EU citizens who carry out seasonal work in another Member State for a limited period of time without changing their habitual place of residence.

39 However, the different types of long-term and short-term intra-EU labour mobility are often difficult to demarcate and can sometimes overlap. A boundary of 12 months is commonly used. Moreover, the question arises how both terms relate to ‘permanent’ and ‘temporary’ intra-EU labour mobility (e.g. temporary intra-EU labour mobility may also be long-term in nature).

40 From a social law perspective, by applying Article 12 of [Regulation \(EC\) No 883/2004](#), self-employed persons can post themselves to another Member State. However, self-employed persons do not fall within the scope of the Posting of Workers Directive.

41 See also Bottero (2021: 27): “*Interestingly, from the perspective of the posted workers, their temporary cross-border mobility is construed as an expression of their employer’s freedom to provide services. In other words, the posted workers are not providers of services themselves, as they move to another Member State under their employer’s freedom to provide services*”.

42 Further cultivated by some recent dramatic cases. For instance, in June 2022, victims of human trafficking were discovered on a large construction site of Borealis in the port of Antwerp and there was the deadly accident of five construction workers that occurred on 18 June 2021 at a school building site in Antwerp.

43 However, it cannot be denied that the data available for this mapping exercise also have their limitations and only portray part of reality (see section 1.2.2).

1.1 Research questions

Statistical evidence provided at EU level⁴⁴ reveals only a fraction of the administrative data available in Belgium on the posting of workers which, in turn, reveals only a fraction of reality. This leaves several questions as well as country-specific phenomena understudied and even unanswered.

The POSTING.STAT 2.0 project has two main objectives which are reflected in this Belgian country report. First, it wants to make a descriptive analysis of the administrative data on intra-EU posting from and to Belgium for the most recent years (mainly 2023 figures) (see *Chapter 2*). Unlike some other Member States, Belgium has a wealth of data on intra-EU posting that has already been used in the past to map out the phenomenon.⁴⁵ In that respect, this report concerns an update of earlier research, including the country report for Belgium (De Wispelaere et al., 2022)⁴⁶ prepared in the frame of the POSTING.STAT 1.0 project⁴⁷. However, this country report does not merely update the figures which were reported two years ago. Efforts have been made to make use of other interesting administrative databases, such as *'the declaration of works'* and *'Checkin@work'* in the immovable property sector. Moreover, whereas the focus in the previous country report for Belgium was primarily on the number and characteristics of the incoming and outgoing posted persons (both workers and self-employed persons), the perspective has now broadened to include other economic actors involved as well. Indeed, research about this topic is mainly focused on 'the posted worker', while many other economic actors are involved and affected when workers are posted to another Member State. For instance, the posting company is of equal or even particular importance. After all, through the export of services and facilitated in the EU by the free movement of services, companies provide services in another Member State, of which Belgium, by sending out their workers. Additionally, we must consider the users (i.e., clients) of these cross-border services. Therefore, data on the Belgian clients using cross-border services through the posting of workers and on the companies posting workers to or from Belgium have been collected and reported. The analysis of these three different economic actors (posted persons (workers and self-employed), posting companies, and clients) provides a more complete picture of the posting phenomenon from and to Belgium.⁴⁸

Second, the aim is to get a better view on the enforcement of the posting rules⁴⁹ in Belgium, by reporting data collected from the competent Belgian social inspection services (see *Chapter 3*). Posting of workers is often associated with risks of 'social dumping'⁵⁰. The objective is to provide data on the number of inspections carried out by the competent Belgian social inspection services on the compliance with the posting rules and the outcome of these inspections. The collection of such data should allow a (tentative) evaluation of the extent to which posting to Belgium is subject to all kinds of infringements, and in which

44 Mainly by two reports: [the report that provides data on the Portable Documents A1](#) (De Wispelaere et al., 2024a) and [the report that provides data on the prior declaration tools](#) (De Wispelaere et al., 2024b). Furthermore, [evidence is collected and reported on infringements related to the issuance of the Portable Document A1](#) (Jorens et al. 2024).

45 See, for instance, De Wispelaere, Chakkar, & Struyven, 2020; De Wispelaere & Pacolet, 2017; De Wispelaere et al., 2022; FOD Werkgelegenheid, Arbeid en Sociaal Overleg & Unia, 2022; Lens, Mussche, & Marx, 2021a; 2021b; Lens, Marx, & Mussche, 2021; Myria, 2024.

46 See https://hiva.kuleuven.be/nl/nieuws/docs/ZKD9978_POSTING_STAT_Belgium_Posted_workers_from_and_to_belgium_facts_and_figures

47 The POSTING.STAT 1.0 project ran from February 2021 until July 2022 and had as main aim to promote the evidence basis through the collection and analysis of national micro-data. The project's goal was to provide more accurate figures on the scale, characteristic, and impact of intra-EU posting, both in the main receiving and sending Member states. See <https://hiva.kuleuven.be/en/news/newsitems/posting-stat-enhancing-collection-and-analysis-national-data-on-intra-eu-posting>

48 Although there are certainly other relevant economic actors. Such as local workers and companies (which may be pushed out of the (labour) market by posted workers and posting companies). Then, of course, there are the competent public administrations (including their inspection services).

49 More specifically of [Basic Regulation \(EC\) No 883/2004](#) and [Implementing Regulation \(EC\) No 987/2009](#) (the Regulations on the coordination of social security systems) (and [Regulation \(EU\) No 1231/2010](#) extending Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 to nationals of third countries who are not already covered by these Regulations solely on the ground of their nationality), [Directive 96/71/EC](#) (the 'Posting of Workers Directive') (and thus [Directive \(EU\) 2018/957](#) of the European Parliament and of the Council of 28 June 2018 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services), [Directive 2014/67/EU](#) (the 'Enforcement Directive'), and finally of [Directive \(EU\) 2020/1057](#) (the Directive on posting drivers in the road transport sector).

50 According to the European Parliament resolution of 14 September 2016 on social dumping in the European Union (2015/2255(INI)), this concept covers "a wide range of intentionally abusive practices and the circumvention of existing European and national legislation (including laws and universally applicable collective agreements), which enable the development of unfair competition by unlawfully minimising labour and operation costs and lead to violations of workers' rights and exploitation of workers". Interestingly, this definition was also recently included in the Belgian Social Penal Code ([Book 1 – Art. 1.1.](#)).

sectors of activity. The focus is only on infringements that occur in the case of intra-EU posting *to* Belgium. However, this does not mean that there are no infringements in the case of intra-EU posting *from* Belgium. The two main research questions are:

1. What are the characteristics, the scale, and the impact of intra-EU posting from and to Belgium? (*Chapter 2*)
2. What are the characteristics and the scale of infringements related to intra-EU posting to Belgium? (*Chapter 3*)

1.2 Research methodology

To answer these two research questions, data from the competent public authorities and the competent social inspection services in Belgium are used. The data sources (*section 1.2.1*) and their limitations (*section 1.2.2*) are discussed below.

1.2.1 Administrative data sources

The availability of relevant and reliable data is a crucial condition to be able to formulate an answer to the research questions. This is not self-evident since data collection on posting is still in its infancy in many Member States.

To analyse the scale, characteristics, and impact of intra-EU posting to and from Belgium in *Chapter 2*, we mainly used the *Limosa* and *WABRO* databases. At Belgian level, data on the number of incoming postings to Belgium are collected via the Limosa declaration.^{51,52} The obligation to file a Limosa declaration has been in force since 1 April 2007 for incoming posted workers and self-employed persons. For outgoing postings, in particular the WABRO database (Working Abroad) has been analysed. This database contains data on the Portable Documents A1 (PD A1) issued to workers by the National Social Security Office (NSSO) (i.e., the competent administration in Belgium).⁵³ The PD A1 proves that the social security legislation of Belgium applies and confirms that the person concerned has no obligations to pay social security contributions in another Member State. The PD A1 is to be requested by the employer when workers are posted abroad (or by the self-employed person). Due to the wealth of data both in the Limosa and WABRO database, it was possible to formulate an answer to the first research question.⁵⁴ For both data sources, data for 2023 are used as much as possible. Data from Limosa for the construction sector, which are analysed and reported by Constructiv, the social welfare fund for the construction sector, are used in this country report as well.⁵⁵

Additionally, data have been received regarding the *'declaration of works'* and *'Checkinatwork'*,⁵⁶ which are specific to the works in immovable property.⁵⁷ A declaration of works is an electronic declaration submitted by the main contractor to the NSSO before the start of the works. The contractor must declare all information associated with the construction site, contractors, and subcontractors to the NSSO. Works in

51 www.limosq.be

52 Article 9(1)(a) of [Directive 2014/67/EU](#) (i.e., the 'Enforcement Directive') allows Member States to require a service provider established in another Member State to make a 'simple declaration' containing the relevant information necessary in order to allow factual controls at the workplace.

53 Please note that in Belgium, the National Institute for the Social Security of the Self-employed (NISSE) is the competent public institution to issue a Portable Document A1 to self-employed persons. To the extent possible, the country report for Belgium also refers to the PDs A1 issued by NISSE.

54 We would like to thank Lode Van Steenkiste, Bruno De Pauw, and Maria Kacheeva (NSSO).

55 We would like to thank Nathalie Hoste and Stef Nimmegeers (Constructiv).

56 We would like to thank Annelies Borghgraef (NSSO), Isaia Jennart (NSSO), and Tom Van Dijck (Smals).

57 'Works in immovable property' are defined as follows by Belgian law "Being all works relating to the building, remodelling, finishing, furnishing, repairing, maintaining, cleaning and demolishing, in whole or in part, of an immovable property 1 in its nature, as well as any act which consists both in supplying a movable property and immediately attaching it to an immovable property in such a way as to make it immovable in its nature" (RSZ, 2023).

immovable property should be declared in certain instances.⁵⁸ Sanctions are in place for non-reporting or late reporting of the declaration of works.⁵⁹ These data allow us to get an idea of the size and profile of subcontracting chains in construction works (or ‘works in immovable property’) (see *section 2.1.1.6* and De Smedt & De Wispelaere, 2024). Moreover, from 1 April 2014, for works in immovable property attendance registration is mandatory (Checkinatwork)⁶⁰ for sites where works are carried out, under certain conditions (Sociale Zekerheid, 2024c).⁶¹ This attendance registration should be done at the start of the works or during the works (NSSO, 2024). When this is not done, sanctions will follow.⁶²

Finally, Eurostat data⁶³ are used as well, particularly regarding tourism and transport statistics. Regulation 692/2011⁶⁴ concerns European statistics on tourism. Data which should be collected concern accommodation establishments, nights spent by (non-)residents, and characteristics of tourism trips and visitors/same-day visits, for both international and national tourism. In the current study, the data on tourism statistics are used to provide a proxy for measuring the inflow of posted workers. Data that should be provided to Eurostat by Member States on road freight transport measurement are set out in Regulation (EU) No 70/2012.⁶⁵ Data must be provided on three areas: vehicle, journey, and goods. The required data for road freight transport are micro-data and their collection happens through questionnaires. These questionnaires are sent out to a sample of hauliers registered in the reporting Member State. The data collection is carried out by National Statistical Institutes or other Competent National Authorities (e.g., Ministries of Transport) in charge of data collection for road freight transport statistics; in Belgium it concerns Statbel (Eurostat, n.d.-a). These Eurostat data on transport statistics give an idea about the share of transport operations which could fall under the Posting of Workers Directive.⁶⁶ This proxy is particularly important, knowing that posted workers active in road transport no longer have to be reported in Limosa since the beginning of 2022 (see *section 1.2.2*).

In order to obtain a (partial) view on the characteristics and the scale of infringements related to intra-EU posting in *Chapter 3*, reference is made to data collected and reported by the Social Information and Investigation Service (SIIS).⁶⁷ These data provide a view on the number of inspections and inspectors involved in the enforcement of the posting rules. Moreover, information is available on the infringements

58 The declaration for works in immovable property depends on the size of the subcontracting chain, as it is only obligatory for any agreement starting from € 5 000 (excluding VAT) with at least 1 subcontractor, or any agreement starting from € 30 000 (excluding VAT) with or without subcontractors (Sociale Zekerheid, 2024a). However, these special conditions do not apply to cleaning activities. As of 1 January 2024 (Program Law of 26 December 2022), all cleaning activities must be declared.

59 A contractor who fails to comply with the obligation to declare works owes the NSSO a sum equal to 5% of the total amount of the works, excluding VAT, that were not declared. A subcontractor who fails to signal in writing to the contractor that he is using one or more other subcontractors shall himself owe to the NSSO a sum equal to 5% of the total amount of the works, excluding VAT, which he has entrusted to his subcontractor or to his subcontractors. If the sum claimed from the contractor was caused by a fault of a subcontractor, this sum will be reduced by the amount actually paid to the NSSO by the subcontractor concerned for this fault (RSZ, 2023).

60 For more information see https://www.international.socialsecurity.be/working_in_belgium/en/checkinatwork.html

61 Checkinatwork is obligatory provided that the total amount excluding VAT equals or exceeds a specific threshold amount depending on the start date of the work. This threshold amounted to € 800 000 for works which commenced from 1 April 2014 until 29 February 2016, and € 500 000 for works which commenced after 29 February 2016 (Sociale Zekerheid, 2024c).

62 See for the responsibilities and sanctions per role: https://www.socialsecurity.be/site_nl/employer/applies/checkinatwork/documents/pdf/sancties_N.pdf

63 Another possible data source in this regard is the Balance of Payments (BoP), which provides data on international trade in services (Eurostat, n.d.-b). This is a statistical statement that summarises, over a given period of time, all the transactions of an economy with the rest of the world. The balance of payments records all economic transactions undertaken between the residents and non-residents of an economy during a given period. Therefore, it provides information on the total value of credits (or exports) and debits (or imports) for each BoP item and on the net result or ‘balance’ (credits minus debits) of the transactions with each partner. More specifically, the BoP makes it possible to analyse the import of services in sectors with a high number of posted workers. In the previous POSTING.STAT report on Belgium, these data were used to give a more detailed view on the construction sector. However, seeing that BoP does not give any indication on the number of persons involved, and other data sources for this sector are currently available (e.g., declaration of works and Checkinatwork), this data source is disregarded in the current report.

64 Regulation (EU) No 692/2011 of the European Parliament and of the Council of 6 July 2011 concerning European statistics on tourism and repealing Council Directive 95/57/EC.

65 Regulation (EU) No 70/2012 of the European Parliament and of the Council of 18 January 2012 on statistical returns in respect of the carriage of goods by road.

66 Directive (EU) 2018/957 of the European Parliament and of the Council of 28 June 2018 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services.

67 We would like to thank Dominique Boels and Pieter-Jan Vandromme (SIIS).

found, the sanctions which follow and possible recovery afterwards. In particular, this concerns inspections carried out by the following Belgian social inspection services: the Directorate-General ‘Supervision of Social Laws’^{68,69}, the National Social Security Office (NSSO), and the National Institute for the Social Security of the Self-employed (NISSE)^{70,71}. Furthermore, figures from the Belgian Federal Public Service Social Security are reported on the dialogue and conciliation procedure concerning the validity of the PD A1.⁷²

1.2.2 Data quality and limitations

All the data sources mentioned above in *section 1.2.1* have their advantages and disadvantages. Their limitations are important to keep in mind when analysing the data and drawing conclusions from them. The availability of data on intra-EU posting and its completeness largely depend on the extent to which companies are obliged to declare, both in the Member State of establishment and in the host Member State, that they intend to provide services in another Member State.

Before looking into the limitations of Limosa and WABRO, it should be pointed out that these data sources are extremely valuable. Given the wealth of data present in the Limosa database, and to a lesser extent in the WABRO database, it was possible to formulate an answer to the first research question. Nevertheless, the limitations of data collected via Limosa and WABRO cannot be ignored (*Table 1*).

Table 1. Overview of the limitations of the Limosa and WABRO databases

Limosa (posting to Belgium)	WABRO (posting from Belgium)
Underestimates the extent of incoming posting since certain categories are exempted from the obligation to make a Limosa declaration. Moreover, as of 2 February 2022, the ‘EU Portal for road transport posting declarations’ became the only obligatory prior declaration tool that operators must use when posting drivers to another Member State.	Only contains data about employees and therefore not about outgoing self-employed persons.
Not every person sent to Belgium, for which there is no exemption, is actually reported in Limosa. The volume of the number of unreported postings is a ‘dark number’.	The employer or the self-employed person concerned must inform the competent public institution about their planned transnational activities (incl. business trips), whenever possible before these activities take place in practice. However, authorities are not always informed about these transnational activities.
A notification in Limosa does not necessarily equate to being employed in Belgium. Only the <i>intention</i> to post persons to Belgium is reported.	Having a PD A1 does not necessarily equate to being employed abroad.
The year of notification in Limosa does not necessarily correspond to the year of employment.	
Self-reporting on the employment sector may differ from the actual situation.	
Incomplete picture of the number of posted self-employed persons because there is only a notification requirement for three ‘high-risk’ sectors: construction, meat, and cleaning.	

Let us first discuss the main limitations of the data collected by Limosa. A Limosa declaration should be made for employees sent to work on a temporary or part-time basis in Belgium. In other words, workers who have been hired in a country other than Belgium and habitually work in a country other than Belgium.

68 Compliance with the labour law aspects of posting as defined in the Posting of Workers Directive is mainly monitored by Directorate-General ‘Supervision of Social Laws’.

69 See <https://employment.belgium.be/en/themes/international/posting/liason-offices-and-labour-inspectorate/supervision-social-legislation>

70 Compliance with the social security aspects of posting as defined by Regulations 883/2004 and 987/2009 is mainly monitored by the inspection departments of NSSO (workers) and NISSE (self-employed persons).

71 However, other enforcement bodies at national and regional level also play an important role in enforcing the posting rules in Belgium. For example, it seems legitimate to certainly add ‘Directorate General Control on well-being at work’ to this list. In a broad approach, the following services, among others, seem to be involved in the fight against social dumping in Belgium: NSSO, NISSE, Directorate-General Supervision of Social Laws, Directorate General Control on well-being at work, the regional inspection services (also including housing inspection), FPS Social Security, Police, FPS Mobility.

72 We would like to thank Marc Morsa (FPS Social Security).

Furthermore, a declaration is required for every self-employed who comes to Belgium to pursue a temporal or partial self-employed activity in a high-risk sector (construction, meat processing industry, and cleaning industry),⁷³ but who neither resides permanently nor is settled in Belgium. However, there are several exemptions.⁷⁴ These exemptions depend on the reasons for coming to Belgium and the duration of the stay. The following activities are exempt from the obligation to make a Limosa declaration:

- International transport: employees in the international transport for passengers and goods are exempted, apart from cabotage activities in Belgium in a sector other than road transport.
- Academic conferences: workers and self-employed people attending academic conferences in Belgium are exempt.
- Small-group meetings: workers and self-employed people attending meetings with a closed attendee list (strategic negotiations, contract negotiations with clients, performance reviews, etc.) are exempt. To be covered by this exemption, they may not be present at such meetings for more than 60 days per year in Belgium. Each meeting should not continue for more than 20 successive calendar days.
- Installation and assembly: workers and self-employed people sent to Belgium for the initial assembly and/or installation of goods are exempt. This only applies to qualified and/or specialised workers in the business supplying the goods, or the self-employed supplier. The work may not exceed 8 days. This exemption does not apply to the construction sector.
- Urgent repair and maintenance work: specialised technicians from foreign companies and self-employed people are exempt if they come to Belgium to carry out urgent maintenance or repair work on machines or equipment. Machines or equipment must have been delivered by their employer or by the self-employed people themselves to the business where the repair/maintenance took place. Such technicians may not stay on Belgian soil for more than 5 days per month.
- Self-employed businesspeople: self-employed businesspeople are exempt if they stay on Belgian soil for business purposes for not more than 5 days per month. Independent business managers and agents are also exempt from the declaration requirement if they are participating in company staff committees and company general meetings in Belgium. They cannot stay in Belgium more than 5 days per month for business purposes either.
- Athletes: workers in foreign companies are exempt from the requirement to make a declaration if travelling to Belgium for an international sports competition. They may only stay in Belgium for the duration of the competition, and a maximum of three months per calendar year. This exemption also applies to:
 - Referees
 - Support staff
 - Official representatives, members of staff and any other person recognised by the international or national sporting federations.
- Artists: artists with an international reputation are exempt on the condition that their stay on Belgian soil for such purposes does not exceed 21 days per quarter. This exemption also applies to the support staff needed for the performance and who come to Belgium as workers.
- Scientists: they are exempt if they participate in a scientific programme at a host university or scientific institute on Belgian territory. They may not stay for more than 3 months per calendar year.
- Public administration staff
- Staff at international institutions: insofar as the institution's status is governed by an international treaty that has been ratified.
- Diplomats

Postings that fall under the above activities should not be reported in Limosa. This means that the total number of postings to Belgium as well as the number of postings in certain sectors is underestimated. Especially short-term postings do not have to be reported. For instance, the number of postings in the Belgian metal industry (as 'installation and assembly' and 'urgent repair and maintenance work' are exempt

⁷³ In 2012, the European Court of Justice ruled that the Limosa declaration for self-employed persons was in contradiction to the free movement of services (see [judgment C-577/10](#)).

⁷⁴ See also <https://www.workinginbelgium.be/en/limosa.html> - See 'who is exempt from Limosa?'.

from reporting in Limosa), in the Belgian live performance sector, and in academia is (strongly) underestimated. In addition, ‘business trips’ are exempt. This reality creates a risk of underestimating the number of postings in knowledge-driven sectors and the number of ‘project-driven’ postings. Moreover, because of these exemptions, certain activities and sectors will be overrepresented in Limosa compared to their actual share in the number of incoming postings in Belgium.

Loss of data in Limosa concerning the number of posted workers in road freight transport

As of 2 February 2022, the ‘EU Portal for road transport posting declarations’^{75,76} became the only obligatory prior declaration tool that operators must use when posting drivers to another Member State.⁷⁷ Consequently, data on the posting of workers in the road freight transport are not collected at national level anymore, for instance in the Limosa database.

It should be noted, however, that drivers posted under Art. 1(3)(b) of the Posting of Workers Directive (intra-group posting) and (c) (hiring out through a temporary agency), fall outside the scope of the EU portal. These posted drivers should still be declared in the prior declaration tool of the receiving Member State if they are not exempted.⁷⁸

Considering that many one-or two-year notifications took place in this sector, the effect has now truly become visible in the data for reference year 2023 (NSSO, personal communication, 25 June 2024). A drop in the number of postings/posted workers will often be seen from 2022 to 2023, which can be attributed to the loss of the transport sector data. Therefore, it is important that data on the posting of workers in road freight transport are collected and reported at EU-level. Otherwise, there is a risk losing sight of one of the main sectors of activity of posted workers.

Proposal of the European Commission to establish a single digital declaration portal for companies providing cross-border services

Very recently, the Commission launched a proposal for a Regulation to establish a single digital declaration portal for posting companies.⁷⁹ The objective of the proposal is to provide for a multilingual electronic public interface connected to IMI for the declaration of posted workers, as has already been done in the road transport sector, for all other economic sectors. The question thus arises to what extent data on posting to Belgium will continue to be available through Limosa.

Furthermore, not every person posted to Belgium will be reported in Limosa, even if a declaration must be made for this person. In that respect, the data in this report only show the scale and profile of the *reported* postings. Unfortunately, the number of unreported postings is a ‘dark number’. A positive point here is that the Limosa declaration is a legal obligation under penalty of administrative or criminal sanctions.⁸⁰ National legislation obliges the foreign service provider to notify the posted worker. Moreover, all those for whom

75 See <https://www.postingdeclaration.eu/landing>

76 [Directive \(EU\) 2020/1057 of the European Parliament and of the Council of 15 July 2020 laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector and amending Directive 2006/22/EC as regards enforcement requirements and Regulation \(EU\) No 1024/2012](#). See Recital 23: "... the Commission should develop a multilingual public interface, to which operators have access and via which they can submit and update posting information and submit other relevant documents to IMI, as necessary."

77 For the road transport sector, the notion of a ‘posted worker’ as defined by the Posting of Workers Directive is applied only to certain types of transnational operations. Indeed, Recital 15 to Directive (EU) 2018/957 states that the implementation of the Posting of Workers Directive raises legal questions and difficulties in the highly mobile road transport sector and that these issues should be addressed through specific rules for road transport. Article 1 of Directive (EU) 2020/1057 defines the operations of international road freight transport to which the Posting of Workers Directive is (not) applicable. For instance, truck drivers involved in cross-trade and cabotage operations will be considered as ‘posted’. However, in practice, it remains a challenge to determine which transnational activities are (not) covered by the Posting of Workers Directive.

78 However, as mentioned above, international transport is exempted from making a declaration in Limosa, more specifically “employees in the international transport for passengers and goods are exempted, with the exception of cabotage activities in Belgium in a sector other than road transport.” Hence, the road freight transport sector will totally disappear from Limosa.

79 https://ec.europa.eu/commission/presscorner/detail/en/ip_24_5784 See [Proposal for a regulation of the European Parliament and of the Council on a public interface connected to the Internal Market Information System for the declaration of posting of workers and amending Regulation \(EU\) No 1024/2012 \(COM\(2024\) 531\)](#).

80 An employer who has not made a Limosa declaration may be subject to a level 4 sanction, namely an administrative fine of between € 2 400 and € 24 000 or a criminal fine of between € 4 800 and € 48 000, multiplied by the number of workers involved. In addition, this can lead to imprisonment of between 6 months and 3 years (see Article 182 of the Belgian Social Criminal Code) (Elias & Van de Perre, 2021: 275). See also Chapter 3 for more detailed figures.

work is carried out in Belgium may also be sued if they fail to report to the authorities that proof of a Limosa declaration has not been presented.

Limosa only reports the *intention* to send persons to Belgium. Even though notifications can be cancelled, it cannot be excluded that no services will be provided in Belgium. Therefore, a notification does not necessarily equate to actual employment, which is another limitation of the data. Especially for estimating the duration of posting we consider this as a relevant remark. After all, the reported duration in Limosa is not necessarily the same as the actual duration of posting. Especially for postings reported in Limosa for road freight transport, this seemed to be a reality. International truck drivers were mostly reported in Limosa for a long period without actually being active in Belgium.

Since October 2017, more detailed figures by sector of activity are available for the group of incoming posted workers. In the past, only the scale of postings in the construction sector and postings through temporary employment agencies were known. Despite the possibility to report activities in 17 specific sectors of activity,⁸¹ it appears that a large group of the posted workers (some 32% in 2023) are still reported under the category ‘other sector’. In addition, we observe that the number of ‘declared’ posted persons in the construction sector decreased over the past years. This seems to be a statistical artefact rather than a real decline in postings in the Belgian construction sector. Since the end of 2017, for activities in the construction sector (Joint Committee No. 124) it is requested whether the employer pays a premium, which is comparable to the applicable ‘fidelity stamps’ in Belgium. There is a real chance that companies avoid this question by reporting their activities under the category ‘other sector’, even though they are active in the construction sector. Consequently, there are doubts about the reliability of the figures by sector of activity which may lead to premature conclusions.

Furthermore, since the end of 2017, the ‘accreditation number’ of the foreign temporary employment agency is requested in Limosa.⁸² The introduction of this question has led to a sharp decline in the number of reported agency workers in Limosa. It was mentioned that there was a loss of around 70% of temporary employment agencies from this moment on (NSSO, personal communication, 25 June 2024). After all, only agency workers posted by a foreign temporary employment agency with an authorisation are still reported under this category. The fact that the number of reported posted agency workers was much higher before 2018 seems to indicate that many of these persons were posted by foreign temporary employment agencies without an authorisation.

In 2012, the European Court of Justice ruled that the Limosa declaration for self-employed persons was in contradiction to the free movement of services (see Judgment C-577/10). It was therefore agreed to transform the general Limosa declaration obligation for self-employed persons into a declaration obligation for specific ‘high risk’ sectors (the construction sector, the meat processing industry, and the cleaning industry). As a result, the Limosa reporting obligation for self-employed persons is limited to these three sectors as of 1 January 2019. Consequently, a good view is available on the number of incoming reported posted self-employed persons until 2018, but from 2019 onward, only the number of posted self-employed persons active in the construction, meat, or cleaning sectors are known. This is regrettable for several reasons, not in the least because monitoring the evolution of the number of posted self-employed persons is of great importance as self-employed persons do not fall within the scope of the Posting of Workers Directive.

81 Construction; meat processing; agricultural sector; cleaning; security; ICT, financial institutions and insurance; production and distribution of electricity, gas and water; health care and social services; accommodation and catering; private households; metalwork; electrical installation and assembly works; petrochemical industry; transport and distribution; wood and furniture industry; trade in other consumer goods.

82 To be able to post agency workers to Belgium, a foreign temporary employment agency should have accreditation from the Belgian region in which the work is performed. The rules relating to authorisation conditions and procedures exclusively fall within the competence of the different Regions and Communities concerned (Flemish Region, Walloon Region, Brussels Capital Region, and German-speaking Community). See also <https://employment.belgium.be/en/themes/international/posting/working-conditions-be-respected-case-posting-belgium/temporary-agency>

Narrow versus broad approach

It is important to distinguish between two categories of data: the number of posted persons reported in Limosa and working in Belgium for at least one day during 2023 (including those declared in 2023 or earlier) (*broad approach*) and the number of posted persons for whom a Limosa declaration was specifically made in 2023 (*narrow approach*). The analysis in this country report focuses on the first group (some 231 800 persons in 2023). However, data are not always available for this group (reported in the 'business data' of the NSSO), which implies that in that case the 'narrow' group should be analysed (some 214 000 persons in 2023). As a result, different numbers may circulate for the same year.

The data from the WABRO database, which are used to outline the profile of outgoing postings, also have their limitations (*Table 1*). This mainly concerns the question to what extent a PD A1 is a good indicator to measure posting. PDs A1 are used for various cases: pursuing activities in another Member State on the basis of Article 12 of the Basic Regulation (BR) (i.e., posting); pursuing activities in two or more Member States on the basis of Article 13 BR; 'Article 16 agreements'; civil servants; mariners; flight or cabin crew members; contract staff of the EU. For the analysis of intra-EU posting, PDs A1 issued according to Article 12 BR are considered in particular. Nonetheless, workers who pursue an activity in two or more Member States (Article 13 BR) may fall under the terms and conditions of the Posting of Workers Directive as well.

To prove that a worker or a self-employed person remains subject to the social security system of the Member State of origin, a PD A1 can be requested by the posting company or the self-employed person. The current legal framework provides that the employer or the self-employed person must inform the competent authorities about their planned transnational activities (including 'business trips'), whenever possible *before* these activities take place.⁸³ In practice, authorities are not always informed about these transnational activities. This is also the case seeing that, as opposed to not making a Limosa declaration, not requesting a PD A1 does not lead to administrative or criminal sanctions. In that regard, there might be a discrepancy between the number of PDs A1 issued under Article 12 BR and the actual number of persons being sent abroad.

A source tapped into more regularly compared to the previous country report for Belgium is Eurostat, for both tourism statistics and road freight transport statistics.

Regarding the tourism statistics, as a proxy for the number of incoming posted workers, there are some important limitations to keep in mind. For instance, as stated by the United Nations Economic Commission for Europe – UNECE (2011: 170) "*It would be necessary to refine these figures to identify the persons actually involved in the trading of services, since the tourism definition covers other types of business visitors. It is not clear how well the category of business and professional purposes is identified (i.e., to what extent it does not in practice cover people with an employment contract – thus in many countries entry-exit cards refer to 'work', without distinguishing clearly between an employment and a service contract).*" Furthermore, trips for business and professional purposes can include a wide range of trips, including training and conferences. These data do not include same-day visits, but only trips with overnight stays. Moreover, it should be noted that one person can make several business trips per year.

Road freight transport statistics from Eurostat are used to compensate for the data loss in the Limosa database (see above). Although Eurostat has a broad scope of data and it is the only source that provides complete statistical data on the European road transport sector (Sternberg et al., 2015), it has shortcomings as well. For instance, several variables are only defined as 'optional' in the Regulation covering data on the transport sector, causing these data to be incomplete and therefore making the average less reliable. For

⁸³ This obligation is defined by Article 15 (1) of the Implementing Regulation (IR). As stated by the European Commission in the Practical Guide on Posting: "as far as the coordination of social security is concerned, Regulations (EC) No 883/2004 and 987/2009 provide that, for every cross-border work-related activity (including 'business trips') the employer, or any self-employed person concerned, is under the obligation to notify the competent (home) Member State, whenever possible in advance, and obtain a Portable Document A1 (PD A1). That obligation covers any economic activity, even if only of short duration. These Regulations do not provide for any exceptions for business trips either."

instance, although Eurostat reports a cabotage rate⁸⁴ of 3.8%, other sources estimate the rate to be above 5.5% or even as much as 12.5% (Sternberg et al., 2015). This problem is also noted by Eurostat itself, mentioning that “*the accuracy of data on cabotage is lower than the accuracy of other variables and the percentage standard error of cabotage transport varies significantly from country to country*” (Vitols & Voss, 2019: 16). These critiques should always be kept in mind when using these data to analyse the European road transport sector.

Specific data which are used for the first time regarding the construction sector are the declaration of works and Checkinawork. It should be kept in mind that these data are *reported* declarations of works and attendance registrations, while in reality, there could also be undeclared subcontracting chains or workers present. Although sanctions are in place for non-reporting or late reporting of the declaration of works⁸⁵ and for not registering attendances via Checkinawork,⁸⁶ the numbers provided should be understood as an estimate of the size and characteristics of subcontracting chains in the Belgian immovable property and the number of registered workers at sites of immovable property.

Finally, the limitations of the mapping exercise concerning the infringements related to intra-EU posting discussed in *Chapter 3* should be highlighted as well. (Legal) concepts such as ‘inspector’, ‘inspection’, and ‘infringement’ are difficult to define and quantify. Their qualification often differs between the different Belgian social inspection services. As a result, there is a risk of comparing apples to oranges when trying to make a comparative analysis. Every year, SIIS publishes a report on the fight against social fraud (SIIS, 2024a) and a report on the fight against social dumping (SIIS, 2024b). Both reports aggregate data reported by the social inspection services involved in the fight against social fraud and social dumping on the number of inspectors involved, the number of inspections, the outcome of the inspections, the sanctions imposed in case of an infringement, etc. However, the scope of these different notions is not uniformly defined between the different Belgian social inspection services.

Moreover, the question arises whether the findings regarding the extent and profile of the infringements in case of posting based on data from the Belgian social inspection services are biased or not. After all, inspections will mostly take place based on a risk assessment (by the inspector, by data matching or data mining, or based on a complaint⁸⁷), mostly in ‘risk sectors’ (e.g., the construction sector). Non-randomized inspections will yield higher infringement rates and may therefore give a distorted view of the actual scale of infringements related to intra-EU posting. To estimate the real extent of infringements in case of intra-EU posting, research methodologies other than the analysis of inspection results are more suitable. This could involve a survey of the economic actors involved in posting (workers, self-employed, posting company, clients) as well as inspections of a random selected group of posting companies/posted workers in all sectors of activity.

84 Cabotage is national transport undertaken by hauliers from another Member State. The cabotage rate is the share of cabotage transport in total national transport, where total national transport is the sum of national transport (for hire and reward) and cabotage transport (in that country).

85 A contractor who fails to comply with the obligation to declare works owes the NSSO a sum equal to 5% of the total amount of the works, excluding VAT, that were not declared. A subcontractor who fails to signal in writing to the contractor that he is using one or more other subcontractors shall himself owe to the NSSO a sum equal to 5% of the total amount of the works, excluding VAT, which he has entrusted to his subcontractor or to his subcontractors. If the sum claimed from the contractor was caused by a fault of a subcontractor, this sum will be reduced by the amount actually paid to the NSSO by the subcontractor concerned for this fault (RSZ, 2023).

86 See https://www.socialsecurity.be/site_nl/employer/applies/checkinawork/documents/pdf/sancties_N.pdf for an overview of the responsibilities and sanctions for each actor involved.

87 For instance, the Point of Contact for Fair Competition received 160 reports on social dumping in 2023 compared to 95 in 2022 (SIIS, 2024b).

2. Scale, characteristics, and impact of intra-EU posting

This chapter does not only report data on persons posted to Belgium (*section 2.1*) but also on persons sent from Belgium to another Member State (*section 2.2*). The latter flow of outgoing posted persons is sometimes forgotten when the topic is discussed in Belgium. By analysing both perspectives, it can be discovered whether both flows differ significantly in size and in profile. For both perspectives, the focus is not only put on the persons posted to/from Belgium, but also on the posting companies and the clients (only for the incoming perspective). These economic actors are often disregarded and deserve some attention as well.

2.1 To Belgium

This section focuses on quantifying the number of persons posted to Belgium and describes their profile in detail (by sending country, nationality, and status)⁸⁸ mainly based on data from the Limosa declaration. As already stated in *section 1.2.2*, these data have some important limitations. The Limosa data do not provide an exhaustive view on the extent and profile of intra-EU posting to Belgium. Nevertheless, it is by far the best data source that can be used to obtain a picture of both dimensions.

Two drivers of intra-EU posting are often distinguished when discussing the phenomenon. On the one hand, posting of workers can be cost-driven, with flows going from Member States with lower labour costs to Member States with higher labour costs, often to provide services in labour-intensive and price-sensitive sectors of activity (for instance, in the construction sector (mostly at large construction sites), in transnational road freight transport, in the meat processing industry, in agriculture and horticulture, etc.). On the other hand, however, intra-EU posting should not be narrowed down to this driver, as posting of workers can be ‘skills-driven’ as well. This usually concerns the provision of cross-border services because of qualitative or quantitative labour shortages^{89,90} or because a specific expertise is needed. The figures below show that both drivers (‘cost-driven’ and ‘skills-driven’) are present in postings to Belgium.

2.1.1 Number and characteristics of persons posted to Belgium

2.1.1.1 Measuring the flow of persons posted to Belgium

Posting of workers has become an important form of intra-EU labour mobility to Belgium as well as an important type of employment in various sectors of the Belgium economy. The phenomenon showed a very strong growth until 2015. In recent years, the growth has levelled off, with 2016 even showing a slight decrease compared to 2015 (-0.6%) (*Figure 1 – broad approach*⁹¹). Therefore, it seems that the phenomenon of posting has reached ‘maturity’, with a stable number of persons performing temporary services in Belgium every year.

88 Characteristics which are not discussed in detail but are interesting as well are the sex of the posted workers and the region to which they are posted in Belgium. It was found that in 2023, only 5% of posted workers received by Belgium were women, while this share is 18% of posted TCNs posted to Belgium from a third country (Myria, 2024). Furthermore, 57% of persons are posted to the Flemish region, 22% to the Walloon region, 11% to the Brussels Capital region, and 10% is posted to multiple regions (Myria, 2024).

89 See the recent report on labour shortages and surpluses (ELA, 2024). It was found that around 84% of occupations were in shortage in one or more country and employed 37.9 million workers in the EU-27 in 2022, approximately 20% of the total employed population in the EU in the same year. At least 11 countries identified ‘widespread shortages’ in 38 occupations. They belonged to the construction and engineering crafts, healthcare professionals and ICT professional occupations.

90 The Belgian construction sector, which is said to be mainly cost-driven, is also facing labour shortages. Roughly 20 000 additional construction workers are needed. About seven out of ten of the (large) Belgian construction companies have one or more vacancies. Furthermore, almost nine out of ten Belgian construction companies signal having difficulties with hiring workers.

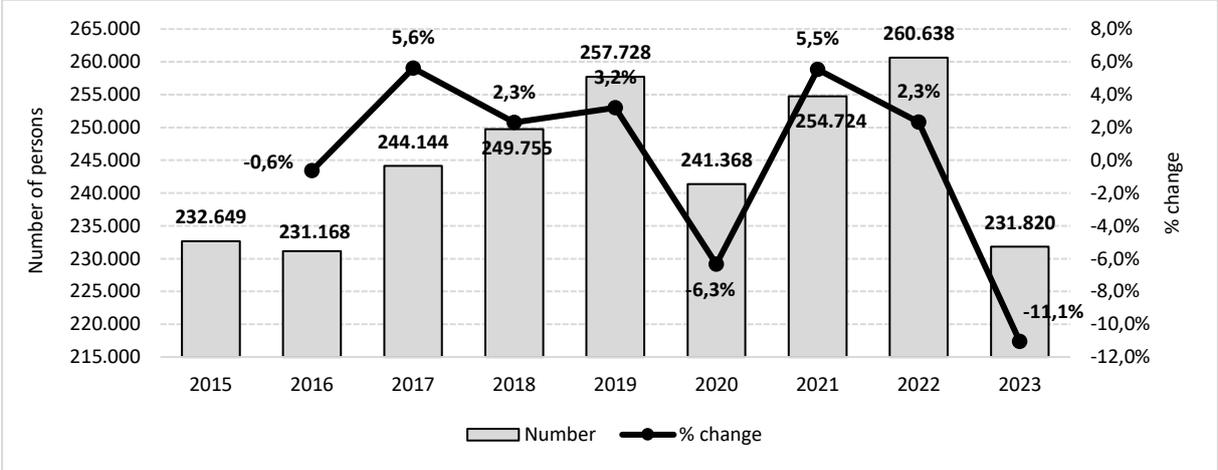
<https://www.hln.be/economie/20-000-bouwvakkers-per-jaar-nodig-sector-eist-dat-werklozen-worden-ingezet-a1d39a5c/>;

<https://confederationconstruction.be/p%C3%A9nurie-de-main-d%E2%80%99%C5%93uvre-dans-la-construction-tous-ceux-qui-veulent-travailler-sont-les-bienvenus>; <https://www.embuildvlaanderen.be/press-room/bouwarbeiders-moeilijk-te-vinden/>

91 The number of posted persons reported in Limosa and working in Belgium for at least one day during 2023, including those declared in 2023 or earlier.

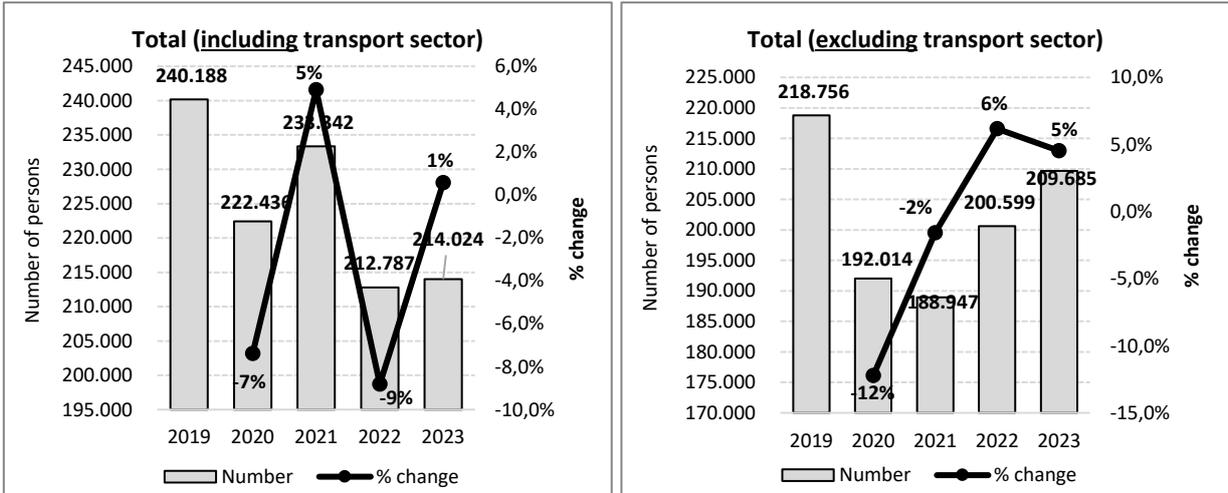
The drop from 2019 to 2020 (-6.3%) can be explained by the COVID-19 pandemic. The number of posted persons was almost at the same level in 2021 as in 2019 and increased even further from 2021 to 2022 (+2.3%). However, the most remarkable drop can be seen from 2022 to 2023, namely from around 261 000 persons (workers and self-employed) towards approximately 231 800 respectively, or a decrease of 11.1%. This evolution can entirely be explained by the disappearance of the posted persons active in road freight transport due to the implementation of the EU Portal for road transport posting declarations in February 2022. To illustrate the impact, *Figure 2* shows the evolution of posted persons including and excluding the transport sector (*narrow approach*)⁹². Data excluding the transport sector show an almost continuous growth, especially from 2021 to 2022 (+6%) and from 2022 to 2023 to a lesser extent (+5%). Hence, it can be concluded that the number of posted persons to Belgium is still (slightly) growing from 2022 to 2023, and the picture shown by *Figure 1* is misleading as the drop represents the disappearance of posted international truck drivers in the Limosa data. Moreover, just because the group of posted international truck drivers is no longer visible in the Limosa data does not mean that this group is no longer active in the Belgian economy.

Figure 1. Evolution of the number of persons reported in Limosa, 2015 – 2023



Source Limosa database (business info applicable to broad group)

Figure 2. Evolution of the number of persons reported in Limosa, total group including versus excluding transport sector, 2019 – 2023



* Numbers for the total group differ from those mentioned in *Figure 1* as data in *Figure 2* concern the narrow group while data in *Figure 1* concern the broad group.

Source Limosa database (business info applicable to narrow group)

⁹² The number of posted persons for whom a Limosa declaration was specifically made in 2023.

In 2023, around 232 000 persons (workers and self-employed persons) were posted to Belgium, of which some 196 600 posted workers and 38 900 posted self-employed persons (Table 2).⁹³ This concerns persons for whom a Limosa declaration was made in 2023 or earlier (*broad approach*).

This group of 232 000 posted persons will not have provided services in Belgium at the same moment in 2023, mainly because they are often posted for a relatively short period of time.⁹⁴ As such, it is important to know the average number of incoming posted persons active in the Belgian economy. In 2023, there were about 113 800 posted persons active in Belgium on average, of which approximately 93 000 were employed and 19 900 self-employed (Table 2).

The number of posted persons does not necessarily follow a stable evolution over the year. In 2023, the greatest peak in posted persons was visible in the months of September, October, and November (namely more than 120 000), while the level was significantly lower in January (less than 100 000). A similar evolution occurred during the reference year 2021.⁹⁵

Table 2. Average number of persons reported in Limosa, by month, 2023

	Workers	Self-employed	Total
January	82 947	17 471	99 929
February	85 063	19 132	103 579
March	89 296	20 635	109 196
April	89 068	21 070	109 367
May	92 069	22 284	113 461
June	95 525	22 925	117 436
July	94 455	2 096	115 667
August	92 813	21 377	113 381
September	98 618	22 655	120 352
October	101 329	23 270	123 594
November	99 926	23 416	122 289
December	95 871	22 910	117 744
Average	93 082	19 937	113 833
Total	196 607	38 875	231 820

Source Limosa database (business info applicable to broad group)

Other data sources may also give an indication of the inflow of persons posted to Belgium. Below we briefly discuss some possible data sources and their (dis)advantages.

Firstly, the number of persons who have received a PD A1 for activities in Belgium can be counted. Nevertheless, there will be a discrepancy between the number of incoming posted persons with a PD A1 and the number of persons notified in Limosa. Indeed, persons with a PD A1 for Belgium may not have been reported in Limosa. For instance, workers who are sent to Belgium for a very short period (for example, workers on ‘business trips’, attending conferences and meetings) may have a PD A1 under Article 12 BR while being exempt from notification in Limosa. In addition, international truck drivers may have a PD A1 under Article 13 BR, but their activities will not be reported in Limosa. The overlap between Limosa declarations and PDs A1 granted under Article 12 BR and under Article 13 BR is difficult to determine. It seems appropriate to look especially at PDs A1 issued under Article 12 BR if a comparison is to be made with Limosa data. In 2022,⁹⁶ approximately 215 000 PDs A1 were issued under Article 12 BR by other EU/EFTA countries and the UK to posted workers and self-employed persons who were temporarily sent to Belgium (De Wispelaere et al., 2024). Several PDs A1 may have been granted to the same person during 2022. However, it is not known how many posted workers and self-employed workers are involved. The main reason why the number of PDs A1 received under Article 12 BR by Belgium (around

93 For some 214 000 persons a Limosa declaration was made in 2023 (*narrow approach*).

94 The average duration of the posting period per person amounted to 151 days in 2023 (see section 2.1.1.7).

95 In reference year 2022, the evolution was slightly different. Peaks were reported in March, April, May, and June with over 140 000 posted persons, and a bottom was reached in December with less than 130 000 posted persons. However, this might be related to the disappearance of the transport sector from the data, starting from February 2022.

96 Data for 2023 are not yet available.

215 000) is (much) lower than the number of posted persons notified in Limosa (around 260 600 in the broad group in 2022) is probably due to the compulsory nature of a Limosa declaration.⁹⁷ A Limosa declaration is a legal obligation under penalty of administrative or criminal sanctions, while having a PD A1 is not a precondition for posting as it can also be issued retroactively. Consequently, in practice, a posting towards Belgium may take place without the institutions in the sending Member State being informed of it.

Secondly, another data source that might be used as a proxy for measuring the inflow of posted workers are tourism statistics on persons travelling abroad for business or professional purposes. Such data are collected and reported by Eurostat.⁹⁸ However, as mentioned in *section 1.2.2*, these data have some important limitations, such as a (too) broad definition of the category of business and professional purposes and the exclusion of same day visits. In 2022, around 1.2 million trips for business and professional purposes were carried out from another Member State (mainly from France and the Netherlands) to Belgium.⁹⁹ This figure seems to indicate that the number of incoming posted persons to Belgium based on the Limosa declarations is a strong underestimation of reality, especially because various activities and sectors are exempt from making a declaration in Limosa (e.g., small group meetings, academic conferences, self-employed business people, etc.). Nonetheless, it should be acknowledged that the figure of ‘1.2 million’ needs to be nuanced as well (see above and *section 1.2.2*). Moreover, it should be noted that one person can make several business trips per year.

2.1.1.2 By sending country: mainly from Poland and the Netherlands

The main sending countries of posted persons to Belgium in 2023 are Poland and the Netherlands (*Table 3*). Whereas the number of posted persons from Poland has remained rather stable over the last few years, the number of posted persons from the Netherlands is declining. In 2021 it still amounted to around 53 300 while it diminished to around 43 500 in 2023. The share of posted persons sent from Poland amounts to more than 20% in the period 2021-2023, while the share of posted persons from the Netherlands has slightly decreased from 21% in 2021 to 19% in 2022 and 2023.

Table 3. Number of persons reported in Limosa, by sending country, 2021 – 2023

2021			2022			2023		
Top 10	Number	% share in total	Top 10	Number	% share in total	Top 10	Number	% share in total
The Netherlands	53 313	20.9%	Poland	54 981	21.1%	Poland	53 796	23.2%
Poland	51 342	20.2%	The Netherlands	50 323	19.3%	The Netherlands	43 505	18.8%
Lithuania	27 376	10.7%	Lithuania	26 758	10.3%	Portugal	21 278	9.2%
Portugal	19 454	7.6%	Portugal	21 090	8.1%	France	19 352	8.3%
Germany	18 291	7.2%	Germany	18 994	7.3%	Germany	18 738	8.1%
France	17 159	6.7%	France	18 046	6.9%	Romania	10 548	4.6%
Romania	14 843	5.8%	Romania	13 954	5.4%	Lithuania	9 623	4.2%
Luxembourg	7 569	3.0%	Luxembourg	7 429	2.9%	Luxembourg	7 740	3.3%
Slovenia	5 749	2.3%	Slovenia	6 032	2.3%	Slovenia	5 593	2.4%
Slovakia	5 435	2.1%	Italy	5 504	2.1%	Slovakia	5 393	2.3%
Other	34 193	13.4%	Other	37 527	14.4%	Other	36 254	15.6%
Total	254 724	100%	Total	260 638	100%	Total	231 820	100%

Source Limosa database (business info applicable to broad group)

A possible explanation for the decrease in the number of posted persons from the Netherlands is the fact that postings to Belgium in the transport sector are no longer registered in Limosa, which certainly also explains the strong decline in the number of posted persons sent from Lithuania to Belgium. In 2021 and 2022, Lithuania was still the third most important sending country of posted persons to Belgium with over 26 700 persons, accounting for over one in ten posted persons received by Belgium. In 2023, however,

⁹⁷ Moreover, workers who pursue an activity in two or more Member States (Article 13 BR) might be reported in Limosa.

⁹⁸ <https://ec.europa.eu/eurostat/web/tourism/database>

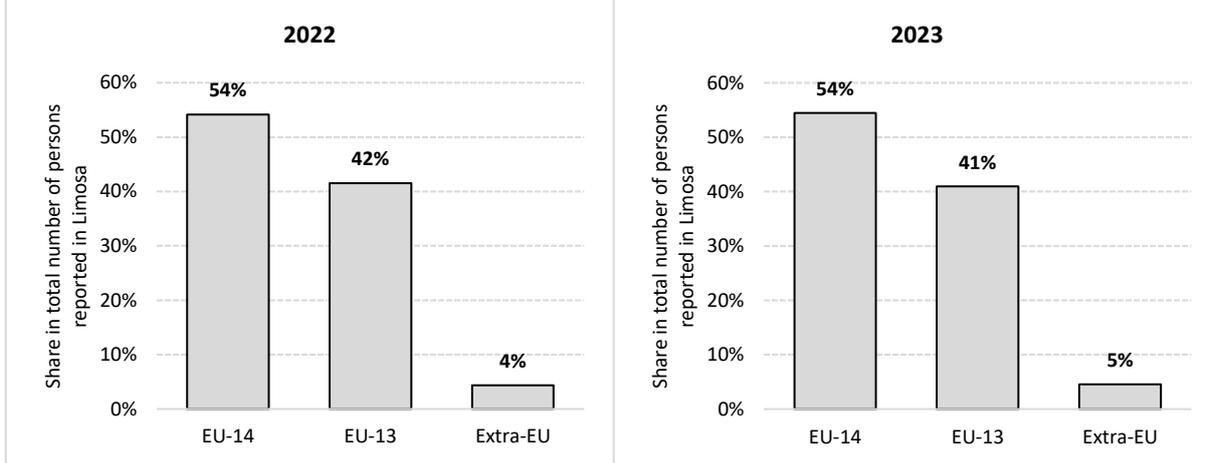
⁹⁹ Eurostat [tour_dem_tfw]

Lithuania has dropped to the seventh place with less than 10 000 posted persons notified in Limosa, accounting for 4% of posted persons received by Belgium.

Over the past decade, EU-14 Member States have always been the largest group of ‘sending’ Member States of posted persons to Belgium. Nevertheless, the relative importance of posted persons from the EU-13 increased significantly (from some 25% in 2008 to 41% in 2023) (Figure 3). In this regard, it might be a matter of time before most of the posted persons coming to Belgium will have an employer established in an EU-13 Member State. In fact, this is already the case in various labour-intensive sectors of activity (for instance in the Belgian construction sector). Furthermore, this is also the case when a distinction is made between the status of the person posted to Belgium (Figure 4). In 2023, more than half of the posted self-employed persons came from an EU-13 Member State. Over half of the posted self-employed persons visible in the Limosa data come from Poland (53%). Moreover, a large group of posted self-employed persons originate from the Netherlands and Slovakia, namely 17% and 9% respectively.

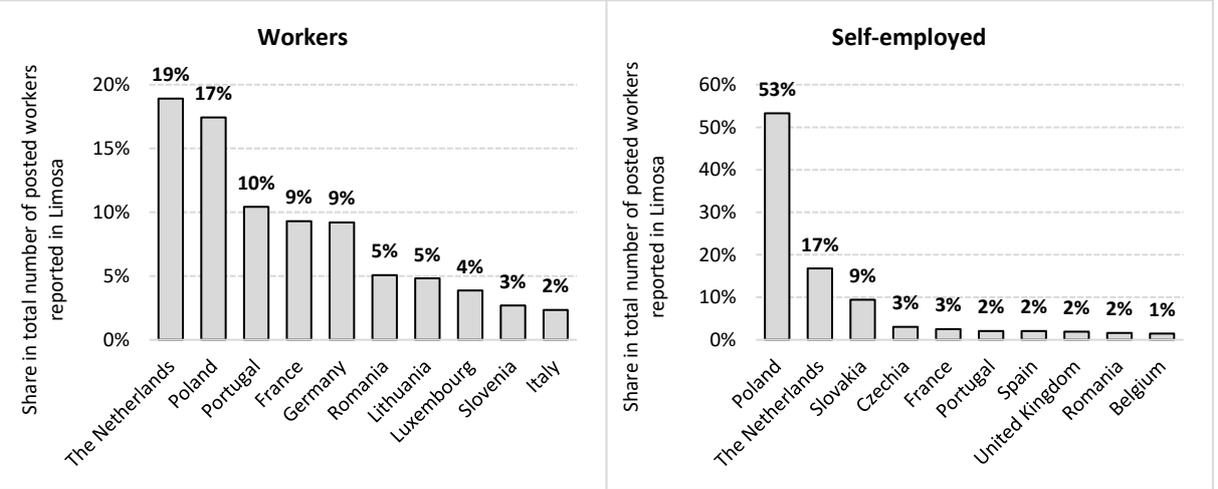
The number of posted persons from outside the EU is of little importance (some 5% in total for 2023) (Figure 3). Most of the posted persons from outside the EU come from the United Kingdom (32% of posted persons from extra-EU) and India (26%). However, as is shown in section 2.1.1.3, the share of posted persons with an extra-EU nationality (so called third-country nationals, TCNs), is much higher than the share of posted persons sent from an extra-EU sending country.

Figure 3. Share in number of persons reported in Limosa, by region of the sending country, 2022 vs 2023



Source Limosa database (data applicable to narrow group)

Figure 4. Share in total number of persons reported in Limosa, by sending country and status, 2023



* Top 10 sending countries
Source Limosa database (business info applicable to broad group)

2.1.1.3 By nationality: an increasing number of third country nationals

Next to looking at the sending country, the nationality of the persons posted to Belgium is interesting as well, as it might present a different view. The majority of posted persons to Belgium reported in 2023 are Polish nationals (around 40 500 persons)¹⁰⁰ and Dutch nationals (around 35 000 persons)¹⁰¹ (Table 4). In 2021, the order was still the other way around with most of posted persons being Dutch nationals (around 45 000 persons) followed by Polish nationals (around 39 000 persons). There is a clear difference by status of the posted person. Whereas more than half of posted self-employed are Polish (50.1%), the majority of posted workers are Dutch (15.3%).

In 2021, around 23 400 posted workers or 10.4% of all posted workers were Ukrainian, while in 2023 this group of posted workers amounted to only 11 200 posted workers or 5.7% of all posted workers. Again, this is mainly due to the absence of the transport sector in the Limosa data since 2023.¹⁰² ‘Newcomers’ in the top 10 nationalities of posted workers are Brazilian workers (3.8%) and Indian workers (2.3%).

When adding up the groups of posted workers and posted self-employed persons, it appears that about 17% of the persons posted to Belgium are of Polish origin and 15% of Dutch origin (the opposite shares as in 2021).

Table 4. Number of persons reported in Limosa, by nationality and status, 2023

Posted workers			Self-employed persons		
Top 10	Number	% share in total	Top 10	Number	% share in total
The Netherlands	30 173	15.3%	Poland	19 480	50.1%
Poland	21 057	10.7%	The Netherlands	5 178	13.3%
France	18 088	9.2%	Slovakia	2 937	7.6%
Romania	15 757	8.0%	Ukraine	2 010	5.2%
Germany	13 977	7.1%	Romania	1 007	2.6%
Portugal	11 788	6.0%	Czechia	977	2.5%
Ukraine	11 184	5.7%	France	922	2.4%
Brazil	7 443	3.8%	Spain	572	1.5%
Belarus	6 246	3.2%	Brazil	505	1.3%
India	4 609	2.3%	Bulgaria	447	1.1%
Other nationalities	56 285	28.6%	Other nationalities	4 840	12.5%
Total	196 607	100%	Total	38 875	100%

Source Limosa database (business info applicable to broad group)

More than four in ten persons posted to Belgium are nationals of an EU-14 Member State and one in three are of an EU-13 Member States (Figure 5). In most cases there is a strong link between the sending country and the nationality of the persons posted to Belgium. However, this link has recently become blurred in some sending countries,^{103,104} largely due to the strong increase in the number of TCNs posted from another Member State to Belgium.¹⁰⁵

Concerning TCNs, a distinction should be made between 1) those who are posted to Belgium directly from a third country and 2) those who are posted to Belgium via an employer established in another Member State. Figure 4 above showed that the first situation is rather limited in scale. For instance, in 2023, only 50 Ukrainians were posted directly from Ukraine to Belgium, out of the total of the more than 13 000 Ukrainians posted to Belgium (Table 4). Indeed, the reality is completely different if we look at the nationality

100 Consisting of 21 057 posted workers and 19 480 self-employed persons.

101 Consisting of 30 173 posted persons and 5 178 self-employed persons.

102 However, in 2021 there were 971 self-employed Ukrainians reported in Limosa (or 2.9% of all posted self-employed) which increased to 2 010 (or 5.2%) in 2023.

103 It is found that in 2023, 34% of posted workers had a different nationality than the country of establishment of the posting company (Myria, 2024).

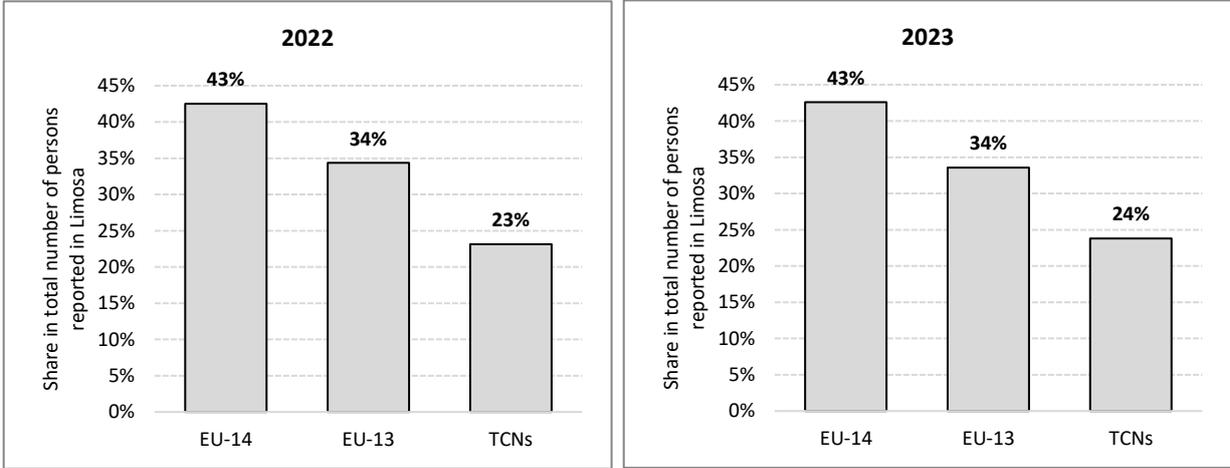
104 This is for instance the case in Slovenia and Luxembourg (data 2023). In Slovenia, 10% of posted persons from Slovenia are Slovenian nationals, while 33% concern nationals from Bosnia and Herzegovina. In Luxembourg, only 3% of posted persons are Luxembourg nationals, while 33% are Belgian nationals and 28% are French nationals being posted to Belgium.

105 The fact that TCNs can be mobile as posted workers across the EU was enabled by the European Court of Justice (ECJ) in the Vander Elst case of 1994 [Case C-43/93]. The Court decided that TCNs who have a valid work and residence permit in one Member State are free to be posted in any other Member State across the EU.

of intra-EU posted persons. In 2023, about one out of four persons posted to Belgium were TCNs (Figure 5). This is an incredibly high percentage. Moreover, the importance of the group of TCNs posted to Belgium increased over a very short period (see also Cillo, 2020; Lens et al., 2021a; Mussche & Lens, 2019; Myria, 2024¹⁰⁶).

Most of the TCNs concern Ukrainians (21% of posted TCNs), Brazilians (14%), Belarusians (10%), Indians (7%), and Bosnians and Herzegovinians (5%).¹⁰⁷ The relative importance of the number of Ukrainians and Belarusians in the total number of posted TCNs increased enormously in a very short period until 2021; however, their share has been declining since then. Both nationalities hardly appeared in the Limosa statistics before 2018, while in 2021 Ukrainians accounted for 38% of posted TCNs and Belarusian for 17%. In 2022, the shares amounted to 24% and 10% respectively, and in 2023 to 21% and 10% respectively. This might again be a consequence of the disappearance of the transport sector in the Limosa data. Indeed, in the previous country report for Belgium, it was reported that many Ukrainian and Belarusian posted workers are active in the road transport sector. Indian posted persons concerned 7% of all posted TCNs to Belgium. They are primarily active in the ICT sector.

Figure 5. Share in total number of persons reported in Limosa, by nationality, by region, 2022 vs 2023



Source Limosa database (data applicable to narrow group)

The top six flows of TCNs posted to Belgium are reported in Table 5. They can be considered the main ‘routes’ of posted TCNs being posted to Belgium. The main routes are those of Ukrainians being posted to Belgium from Poland, and Brazilians being posted to Belgium from Portugal. Both groups of TCNs are primarily active in the construction sector. Furthermore, many Belarusians are posted from Poland to Belgium and are mainly active in the construction sector. Both Indian and UK nationals are mostly posted from India and the UK itself and are mainly active in the ICT and phone sector and other sectors respectively. Finally, there is a large group of Bosnians and Herzegovinians who are posted to Belgium from Slovenia and are mainly active in the construction sector.

In absolute figures a flow of almost 8 500 Ukrainians is being posted to Belgium by a Polish employer (or they are self-employed) and almost 7 000 Brazilians are being posted to Belgium by a Portuguese employer. The former flow represents 4% of all posted persons to Belgium and 17% of posted TCNs to Belgium, while the latter represents 3% of posted persons and 14% of posted TCNs.

Whereas in 2021, road transport still appeared as a main sector of activity for four of the six main routes (De Wispelaere et al., 2022), it does not appear in the 2023 table anymore. Therefore, the main groups of

¹⁰⁶ In a recent report by Myria, the Federal Migration centre (2024), it is found that while in 2012 only 4% of persons posted to Belgium were TCNs, this share has increased to 22% in 2023. This share differs slightly from the 24% found in Figure 5, as the data used by Myria capture the number of unique persons applicable to the narrow group, excluding activities in the transport and distribution sector.

¹⁰⁷ It is noted that the group of TCNs being posted to Belgium has become more diverse over the years. For instance, there has recently been a noticeable increase in the number of posted workers with a Caucasian or Central Asian nationality (Azerbaijan, Georgia, and Uzbekistan) (Myria, 2024).

TCNs and magnitude might have shifted as well. For instance, in 2021 the main route concerned more than 12 400 Ukrainians being posted from Poland mainly active in construction and road transport, and more than 8 400 Ukrainians being posted from Lithuania mainly active in road transport. As can be seen in *Table 5*, the former route is still the main route, but it is lower in absolute numbers (almost 8 500 in 2023 compared to 12 400 Ukrainians in 2021) and only in the construction sector, while the second route has disappeared completely from the list of main mobility routes. Nonetheless, this does not mean that these flows have vanished, but the data do not allow to capture these flows anymore.

Table 5. Main routes of posted TCNs to Belgium reported in Limosa, 2023

Nationality	Sending Member State	Number	Share in total number of posted persons	Share in total number of posted TCNs	Main sector of activity
Ukraine	Poland	8 469	4%	17%	Construction
Brazil	Portugal	6 965	3%	14%	Construction
Belarus	Poland	4 399	2%	9%	Construction
India	India	2 455	1%	5%	ICT & phone
Bosnia-Herzegovina	Slovenia	1 916	1%	4%	Construction
United Kingdom	United Kingdom	1 718	1%	3%	Other sectors

Source Limosa database (data applicable to narrow group)

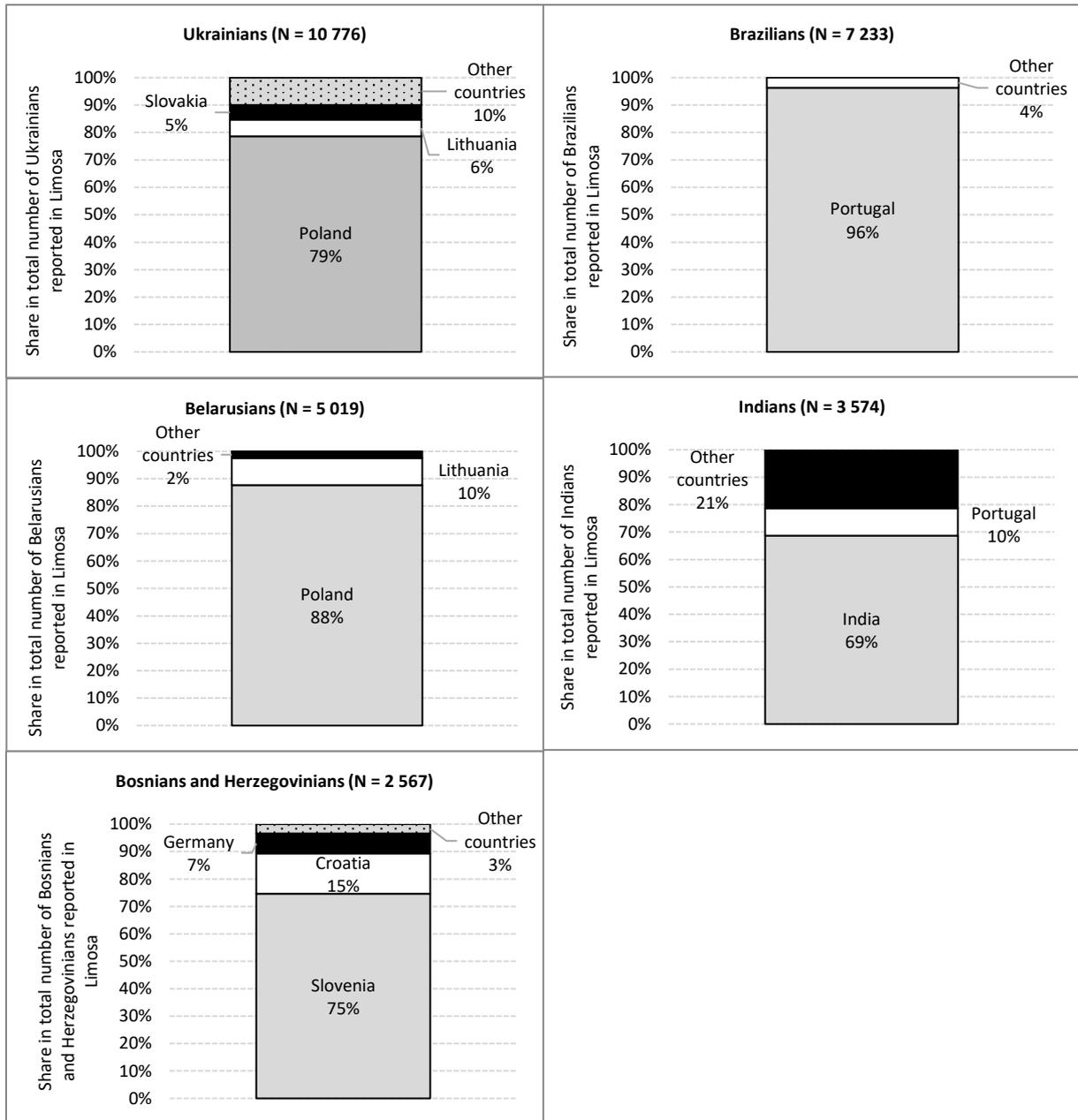
As stated before, the link between the sending country and the nationality of the persons posted to Belgium has become blurred in several sending countries. For some of the main sending countries (*Figure 6*) and nationalities of TCNs (*Figure 7*), this link is looked at in detail.¹⁰⁸

Figure 6 shows the breakdown of the main sending Member States of TCNs being posted to Belgium. Of all Ukrainians posted to Belgium, 79% are sent from Poland, another 6% from Lithuania, and 5% from Slovakia. The share of posted Ukrainians being posted from Poland has increased from 56% in 2021 to 71% in 2022 and 79% in 2023. Furthermore, it can be observed that the share of Ukrainians being posted to Belgium from Lithuania has dropped considerably in the last couple of years, from 38% in 2021 to 15% in 2022 to 6% in 2023. This decline reflects the disappearance of the transport sector in the Limosa data. Therefore, it can be assumed that in practice, a large group of Ukrainians is still posted to Belgium from Lithuania. Furthermore, almost all Brazilians are posted from Portugal (96%), a large majority of Belarusians are posted from Poland (88%), and three in four Bosnians and Herzegovinians are posted from Slovenia (75%). On the contrary, the majority of Indians are posted from India directly to Belgium (69%) and a minority from Portugal (10%).

The other point of view is pictured in *Figure 7* by looking at the breakdown of nationalities for some of the main sending Member States of posted TCNs. Most remarkably, only 10% of persons posted from Slovenia are Slovenians, while one in three are Bosnians and Herzegovinians (33%), 13% are Kosovars, and 12% are Serbians. Around two in three persons posted from Poland are Polish (66%), 17% are Ukrainians, and 9% are Belarusians. Furthermore, more than one in three persons posted from Portugal are Brazilians (35%), and many persons posted from Lithuania are non-Lithuanian nationals, namely 10% Ukrainians, 9% Azerbaijanis, 9% Romanians, and 8% Belarusians.

¹⁰⁸ These figures show the importance of historical and cultural ties for TCNs mobility flows. For example, Poland and Lithuania are the main sending countries for Ukrainian and Belarusian workers, while Brazilians are posted from Portugal, and Bosnians, Kosovars and Serbs are sent from Slovenia (Myria, 2024).

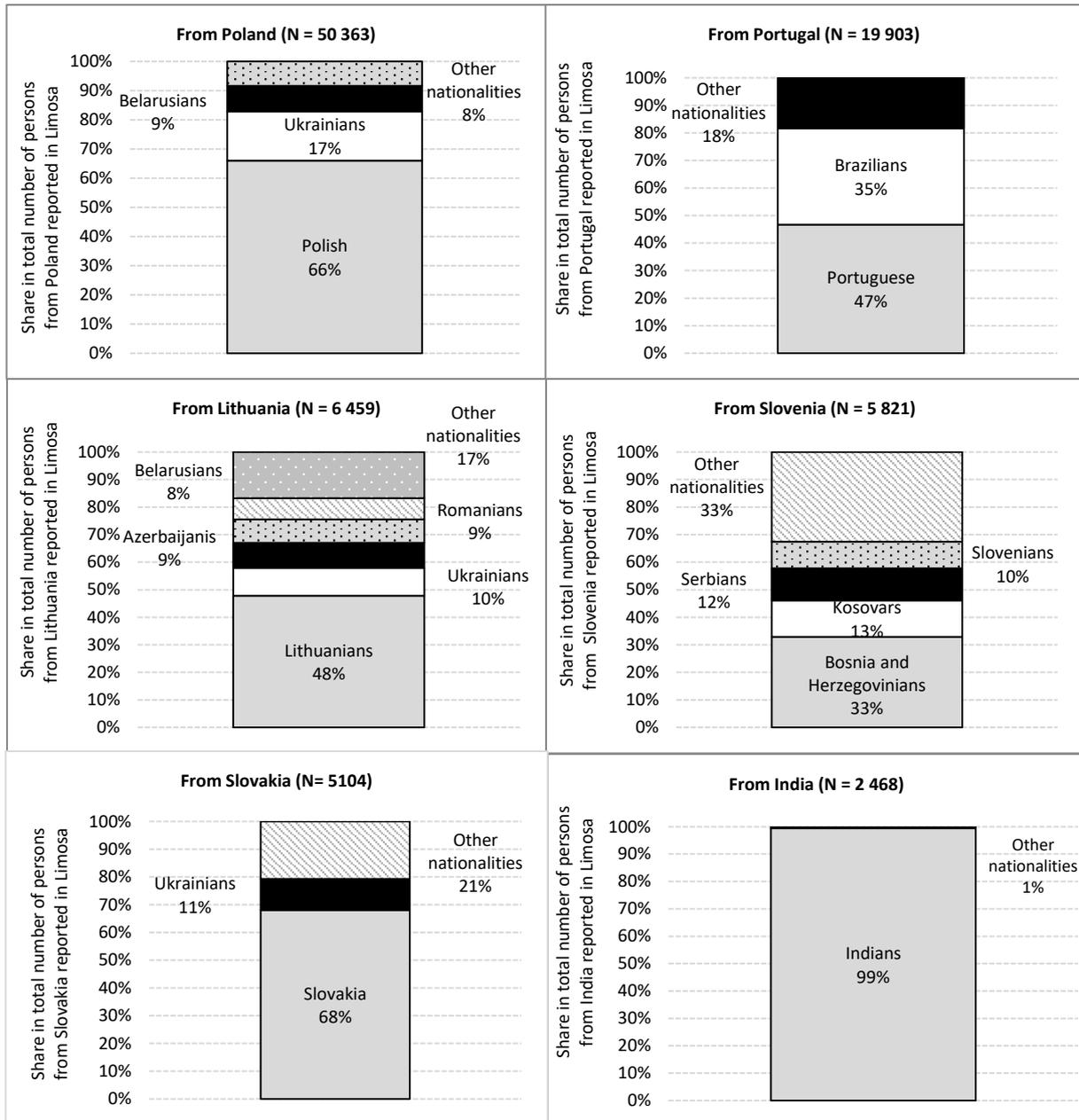
Figure 6. Main sending countries of posted TCNs reported in Limosa, 2023



* How to read this figure? Of all the Ukrainians posted to Belgium (N = 10 776), 79% is posted from Poland, 6% is posted from Lithuania and 5% from Slovakia.

Source Limosa database (data applicable to narrow group)

Figure 7. Main nationalities of persons posted from Member States with a high number of posted TCNs, 2023



* How to read this figure? Of all the persons posted from Poland to Belgium (N = 50 363), 66% are Polish nationals, 17% are Ukrainian nationals, and 9% are Belarussian nationals.

Source Limosa database (data applicable to narrow group)

Finally, we can have a look at which nationalities are most common according to the sector of employment (*Table 6* presents a selection of the main sectors of activity excluding the category ‘other sector’). Polish nationals are the main group of posted persons in the construction sector, the metalworks and pipefitting industry, and meat processing. Dutch nationals are the most common nationality in the petrochemical industry, transport and distribution, and cleaning. In the sector of electrical installation and assembly, French nationals are the top nationality and in the ICT and phone sector the majority are Indians.

Table 6. Number of persons reported in Limosa, main sectors, by nationality, 2023

Construction (N = 80 666)		Metalworks and pipefitting (N = 23 074)		Electrical installation and assembly (N = 11 415)		Petrochemical industry (N = 8 648)	
Top 5 nationalities	Share in sector	Top 5 nationalities	Share in sector	Top 5 nationalities	Share in sector	Top 5 nationalities	Share in sector
Poland	25%	Poland	17%	France	17%	The Netherlands	24%
The Netherlands	10%	France	13%	The Netherlands	16%	Romania	18%
Ukraine	9%	Portugal	8%	Poland	8%	Poland	18%
Portugal	8%	The Netherlands	8%	Germany	7%	France	6%
Romania	8%	Romania	7%	Ukraine	6%	Germany	4%
Transport and distribution (N = 4 339)		ICT & phone (N = 2 888)		Meat processing (N = 2 694)		Cleaning (N = 2 492)	
Top 5 nationalities	Share in sector	Top 5 nationalities	Share in sector	Top 5 nationalities	Share in sector	Top 5 nationalities	Share in sector
The Netherlands	26%	India	51%	Poland	35%	The Netherlands	17%
Poland	13%	The Netherlands	9%	Brazil	26%	Poland	15%
Romania	9%	France	7%	Romania	12%	Brazil	13%
Ukraine	7%	Romania	5%	Portugal	6%	France	13%
Lithuania	6%	Germany	4%	France	5%	Ukraine	6%

Source Limosa database (data applicable to narrow group)

Calculations from Constructiv based on Limosa data show that the posted persons employed in the Belgian construction sector are mainly Dutch, Portuguese, Ukrainian, Polish, and Romanian nationals (*Table 7*). All these nationalities represent around one in ten of the total number of posted workers active in the Belgian construction sector. The share of Ukrainian posted workers (10.4%) even exceeds the share of Polish posted workers (10.3%) in the Belgian construction sector. Regarding posted self-employed persons active in the Belgian construction sector, the large majority is Polish (57.9%), and to a lesser extent Dutch, Slovakian, and Ukrainian. In fact, the number of posted Polish self-employed persons accounts for almost one in five of the posted persons active in the Belgian construction sector.

Table 7. Number of persons reported in Limosa, Belgian construction, by nationality, 2023

Posted workers			Self-employed		
Top 10	Number	% in column total	Top 10	Number	% in column total
The Netherlands	6 452	10.5%	Poland	16 152	57.9%
Portugal	6 429	10.5%	The Netherlands	2 587	9.3%
Ukraine	6 401	10.4%	Slovakia	1 846	6.6%
Poland	6 328	10.3%	Ukraine	1 761	6.3%
Romania	6 121	10.0%	Romania	701	2.5%
Brazil	4 142	6.7%	Czechia	475	1.7%
Belarus	3 361	5.5%	Brazil	425	1.5%
France	1 797	2.9%	Bulgaria	375	1.3%
Bulgaria	1 563	2.5%	Spain	330	1.2%
Germany	1 452	2.4%	Belgium	248	0.9%
Other nationalities	17 358	28.3%	Other nationalities	2 989	10.7%
Total	61 404	100%	Total	27 889	100%

* Due to a different delineation of the sector, the total number of persons posted in the Belgian construction sector differs between Limosa data (80 666, see *Table 6*) and Constructiv data (89 293, see *Table 7*).

Source Constructiv based on data from Limosa

2.1.1.4 By status: workers vs self-employed

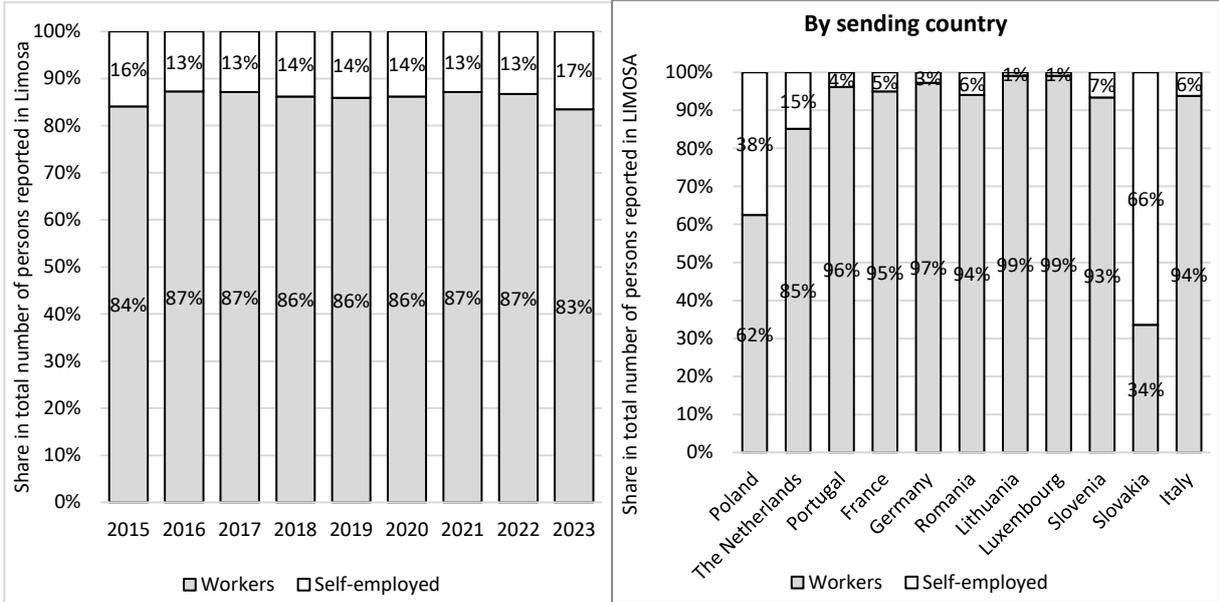
In this section, a distinction is made between the number of posted workers and the number of posted self-employed persons. The monitoring of the evolution of the number of posted self-employed persons is of great importance, not least because the Posting of Workers Directive does not apply to posted self-employed persons. Unfortunately, as mentioned before (see *section 1.2.2*), data on the number of self-employed persons to Belgium is incomplete as the notification duty for posted self-employed persons

in Limosa is limited to three 'high risk sectors' (i.e., the construction sector, the meat processing industry, and the cleaning industry).

About 17% of the persons reported in Limosa are self-employed (Figure 8 left panel). Although the share remained stable around 13%-14% from 2016 to 2022, there is a clear increase visible from 2022 to 2023, reaching 17% in 2023. This could possibly be an effect of the disappearance of the transport sector in the Limosa data.

Especially a large group of persons posted from Poland and Slovakia are self-employed (Figure 8 right panel). Almost four in ten persons posted from Poland are self-employed (38%) and even almost seven in ten of persons posted from Slovakia to Belgium (66%).

Figure 8. Share of workers and self-employed reported in Limosa, over time (2015 – 2023) and by sending country (2023)



Source Limosa database

Given that posted persons from Poland and Slovakia are to a large extent self-employed, it is interesting to see whether there are also differences by status between the main nationalities sent from both Member States (Table 8). For Poland, it appears that Polish posted persons are mainly self-employed (53%), while posted Ukrainians mostly have an employee status (84%). For Slovakia as well, it can be observed that posted Slovaks (78%) have the self-employed status to a greater extent than posted Ukrainians (73%). This observation is in a certain way a relief since posted self-employed TCNs might be the group of posted persons most vulnerable to labour exploitation, especially when they are bogus self-employed.

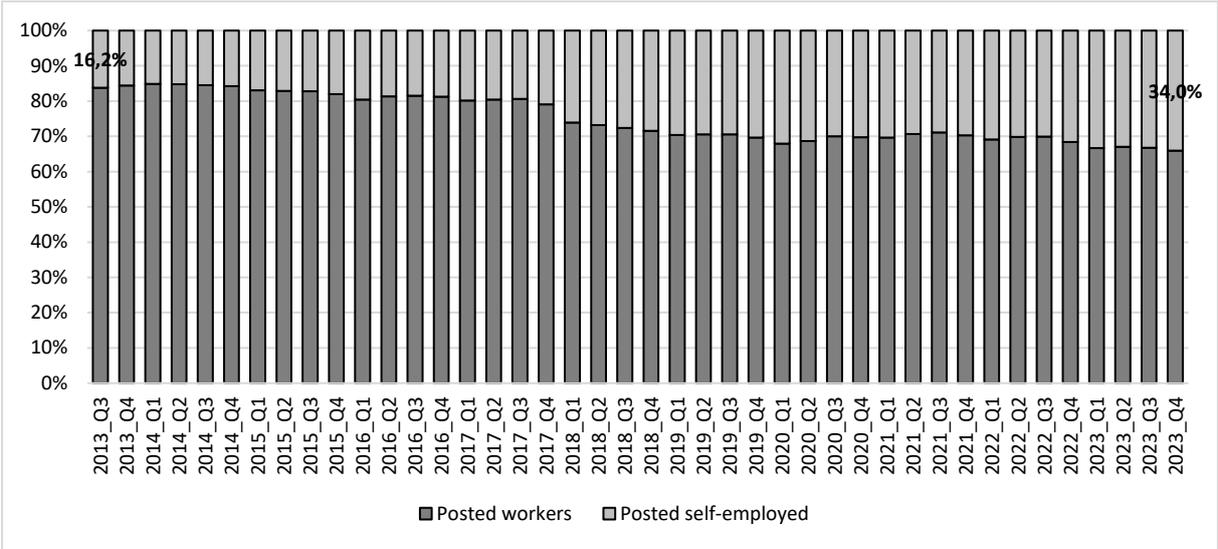
Table 8. Status of main nationalities posted from Poland and Slovakia, 2023

Poland			Slovakia		
Nationality	Status		Nationality	Status	
	Worker	Self-employed		Worker	Self-employed
Polish	47%	53%	Slovakian	22%	78%
Ukrainians	84%	16%	Ukrainians	27%	73%

Source Limosa database

When both variables of status and sector are looked at together, it is clear that posted self-employed persons are more common in certain sectors than others.¹⁰⁹ For instance, 19% of posted persons in the cleaning sector are self-employed. However, the occurrence of self-employed is most remarkable in the construction sector, where almost one out of three are posted self-employed persons. While only 16.2% of the posted persons were self-employed in the third quarter of 2013, this has grown to 34.0% in the fourth quarter of 2023 (Figure 9). This share is considerably higher than 17% of self-employed posted persons in general in Belgium (see Figure 8). Furthermore, the share of posted self-employed in the construction sector is especially high for posted persons sent from Slovakia (81%),¹¹⁰ Czechia (65%), and Poland (51%).

Figure 9. Evolution distribution posted persons in the construction sector to Belgium, by status, 2013-2023, quarterly data



Source Calculations based on data from Constructiv

2.1.1.5 The role of temporary employment agencies

In 2023, 2.4% of the EU-27 population between 15 and 64 years old was a temporary employment agency worker, compared to 1.4% of the Belgian population.¹¹¹ This share was higher for the EU-27 in industry and construction (3.3%) and in information and communication, financial and insurance activities, real estate activities, professional, scientific and technical activities, administrative and support service activities (3.0%).

Although in Limosa, it is possible to extract data on the number of posted workers sent through a private temporary employment agency, these data are deemed unreliable (NSSO, personal communication, 25 June 2024). As mentioned in section 1.2.2, an accreditation number is obligatory for temporary employment agencies, and this number was asked in Limosa starting from 2017. As a result, only agency workers posted by a foreign temporary employment agency with an authorisation are still reported under this category and the number of (persons posted through these) temporary employment agencies has

¹⁰⁹ However, the notification duty for posted self-employed persons in Limosa is limited to three 'high risk sectors' (i.e., the construction sector, the meat processing industry, and the cleaning industry).

¹¹⁰ Here, reference can be made to following interesting publication "[Bogus self-employment in the construction sector and the posting of workers from the Slovak Republic](#)" (Moran, 2024). First of all, it appears that the share of self-employed persons in the Slovak construction sector is much higher than the average in the Slovak economy: "14.6% of the working population in Slovakia is self-employed, while almost half (43.4%) of those working in the construction sector is self-employed (Eurostat, 2024b)" (Moran, 2024: 20). In addition, it appears that bogus self-employment is a major problem in Slovakia: "The most recent data from the fourth quarter of 2023 suggests that 12,300 bogus self-employed workers were active on the labour market, which is 30% of the total self-employed population (Statistical Office, 2024a)." (Moran, 2024: 21) Finally, it appears that a (large) group of self-employed who are seconded from Slovakia may be bogus self-employed: "Moreover, the analysis suggests that the change in 2017 resulted in an additional 2,000 falsely self-employed workers being posted in the construction sector in 2021. The potential loss in state revenue was calculated to be between € 9.8 million and € 14.3 million (Supreme Audit Office, 2023)." (Moran, 2024: 26).

¹¹¹ Eurostat [lfsa_qoe_4a6r2]

dropped significantly. The share of posted workers sent through a private temporary employment agency was only 1% of the total group of incoming posted workers in 2023 (Limosa database), while it amounted to 12% in 2015 (De Wispelaere & Pacolet, 2017). The fact that the number of reported posted agency workers was much higher before 2018 seems to indicate that many of these ‘agency workers’ were posted by foreign temporary employment agencies without an authorisation.

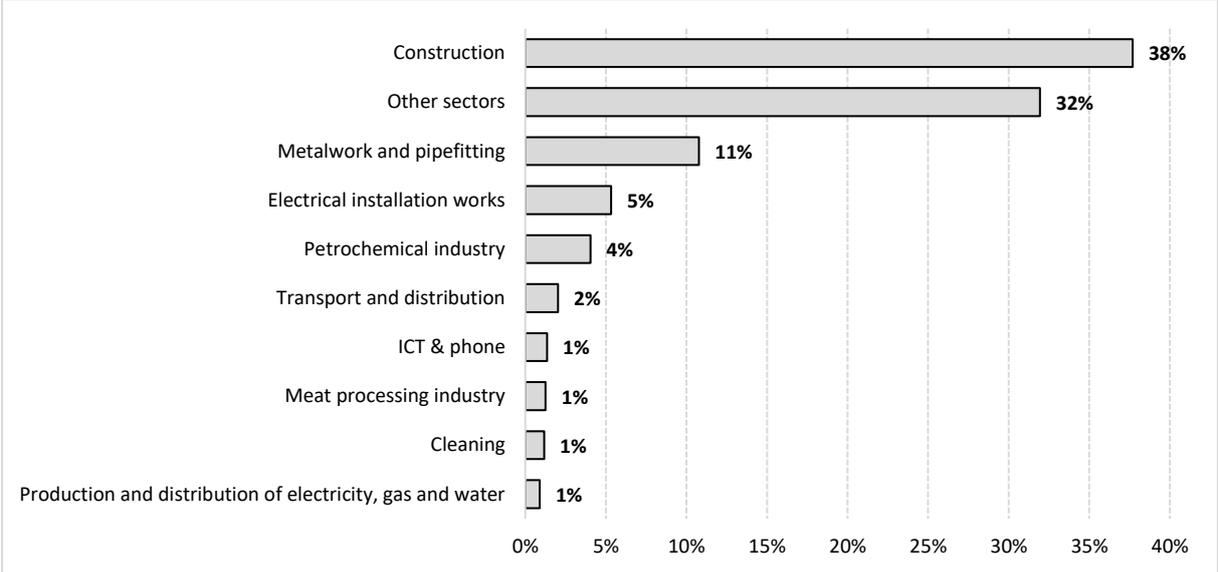
2.1.1.6 By sector of employment

The top sector of employment of posted persons to Belgium is the construction sector (*Figure 10*). Data for 2023 indicate that 38% of persons declared in Limosa are temporarily employed in this sector. Furthermore, 11% is employed in metalwork and pipefitting, and 5% in electrical installation works. In contrast to other receiving Member States, posting seems to occur to a lesser extent in the meat processing sector (1%), the live-in care sector (0.2%), and the agriculture and horticulture sector (1%).

However, this distribution by sector should certainly be nuanced. As mentioned in *section 1.2.2.*, there are doubts about the reliability of the figures by sector of activity reported in Limosa. Despite the possibility to report activities in 17 specific sectors of activity, it appears that 32% of posted workers are reported under the category ‘other sector’¹¹² (*Figure 10*). In addition, various activities are exempt from a Limosa declaration, which means that certain sectors are underrepresented. For instance, the implementation of the ‘EU Portal for road transport posting declarations’ in 2022 has removed the transport sector from the Limosa statistics. Indeed, in 2021, 17% of the posted persons notified in Limosa were reported under the sector ‘transport’. The breakdown by sector as shown based on the Limosa data is therefore probably not similar to the breakdown by sector as it actually occurs for incoming postings to Belgium.

In the two subsections below, the focus is on the Belgian construction sector and the Belgian transport sector, two main sectors of activity concerning the posting of workers and self-employed to Belgium.

Figure 10. Persons posted to Belgium and reported in Limosa, by sector, share in total, 2023



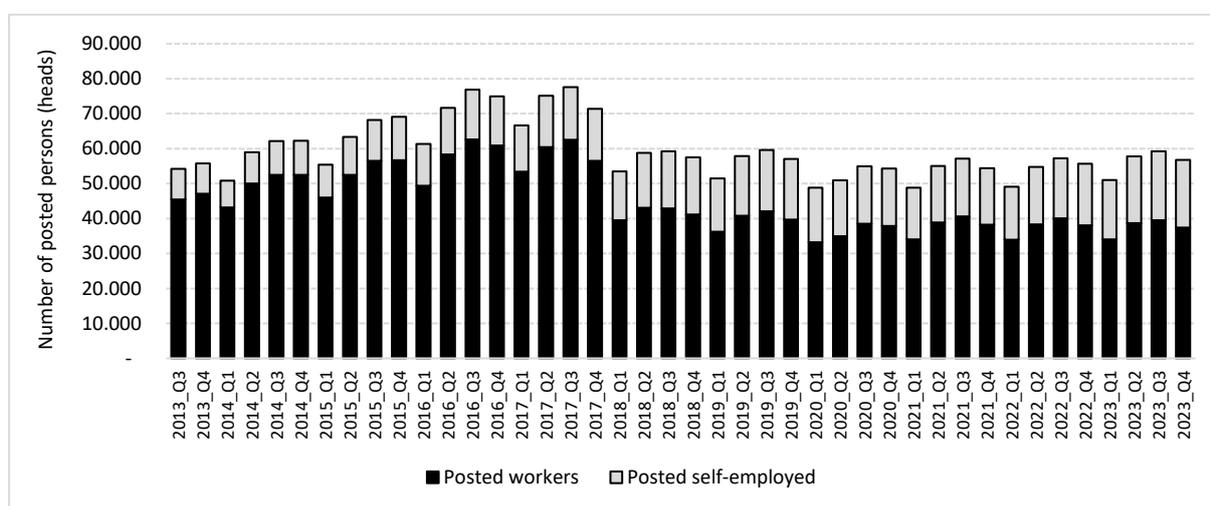
¹¹² This ‘other sector’ presumably includes a considerable share of ‘high-skilled’ posting (Myria, 2024).

Focus on the Belgian construction sector

Data from Constructiv, based on an analysis of the Limosa database, show that in 2023, the Belgian construction sector received 89 293 posted persons of which 61 404 posted workers^{113,114} (69% of total) and 27 889 posted self-employed (31% of total).

The evolution of the number of posted persons to Belgium shows that a peak was reached in the third quarter of 2017 with a total of 77 570 incoming posted persons in the construction sector, of which 62 541 posted workers and 15 029 posted self-employed (*Figure 11*). However, from 2018 onwards, significantly lower numbers can be found, with on average ‘only’ 55 033 posted persons from 2018 to 2023. This is most likely not a reflection of reality, but rather a statistical artefact. As already mentioned in *section 1.2.2*, since the end of 2017, for activities in the construction sector (Joint Committee No. 124) it is requested whether the employer pays a premium, which is comparable to the applicable ‘fidelity stamps’ in Belgium. It is likely that companies avoid this question by reporting their activities under the category ‘other sector’, even though they are active in the construction sector. Seeing that there is no reason to assume that the number of posted persons in the construction sector has actually decreased, the decline in *Figure 11* is presumably a result of this administrative change.

Figure 11. Evolution of posted persons in the construction sector to Belgium (heads), 2013-2023, quarterly data



Source Calculations based on data from Constructiv

A specific requirement in the Belgian construction sector is attendance registration, known as ‘Checkinatwork’¹¹⁵ for sites of works in immovable property where works are carried out provided that the total amount excluding VAT equals or exceeds € 500 000 (Sociale Zekerheid, 2024a).¹¹⁶ This registration must be done daily (Sociale Zekerheid, 2024c). In total in 2023, around 1.6 million employees and self-employed workers were subject to the attendance registration (*Table 9*). Out of this group, around 371 000 were posted employees/self-employed, meaning that around 23% of the persons working on large construction sites are posted persons. Furthermore, more than 38.6 million attendance registrations were made in 2023, indicating that each worker was registered around 24.1 times every month.

¹¹³ These posted workers are employed by 7 677 unique posting companies. Out of the 61 404 posted employees, 54 664 or 89% has one employer.

¹¹⁴ Due to a different delineation of the sector, the total of persons posted in the Belgian construction sector differs between Limosa data (80 666, see *Table 6*) and Constructiv data (89 293, see *Table 7*).

¹¹⁵ For more information see https://www.international.socialsecurity.be/working_in_belgium/en/checkinatwork.html

¹¹⁶ This requirement started from 1 April 2014. The threshold amounted to € 800 000 for works which commenced from 1 April 2014 until 29 February 2016, and € 500 000 for works which commenced after 29 February 2016. This attendance registration should be done at the start of the works or during the works (NSSO, 2024). When this is not done, sanctions will follow. See for the responsibilities and sanctions per role: https://www.socialsecurity.be/site_nl/employer/applies/checkinatwork/documents/pdf/sancties_N.pdf

The overall number of notified employees and self-employed has increased consistently between 2020 and 2023, albeit to varying degrees: a growth of 4% from 2020 to 2021, 1% from 2021 to 2022, and 10% from 2022 to 2023 (Table 9). Especially the growth from 2021 to 2022 can be attributed to posted workers/self-employed (+7%) as the number of 'Belgian' employees/self-employed even decreased slightly (-1%). However, the growth from 2022 to 2023 is impressive for both groups, namely 10%. Furthermore, it appears that the share of posted workers/self-employed has increased slightly from 21% in 2020, to 22% in 2021, and 23% in 2022 and 2023.

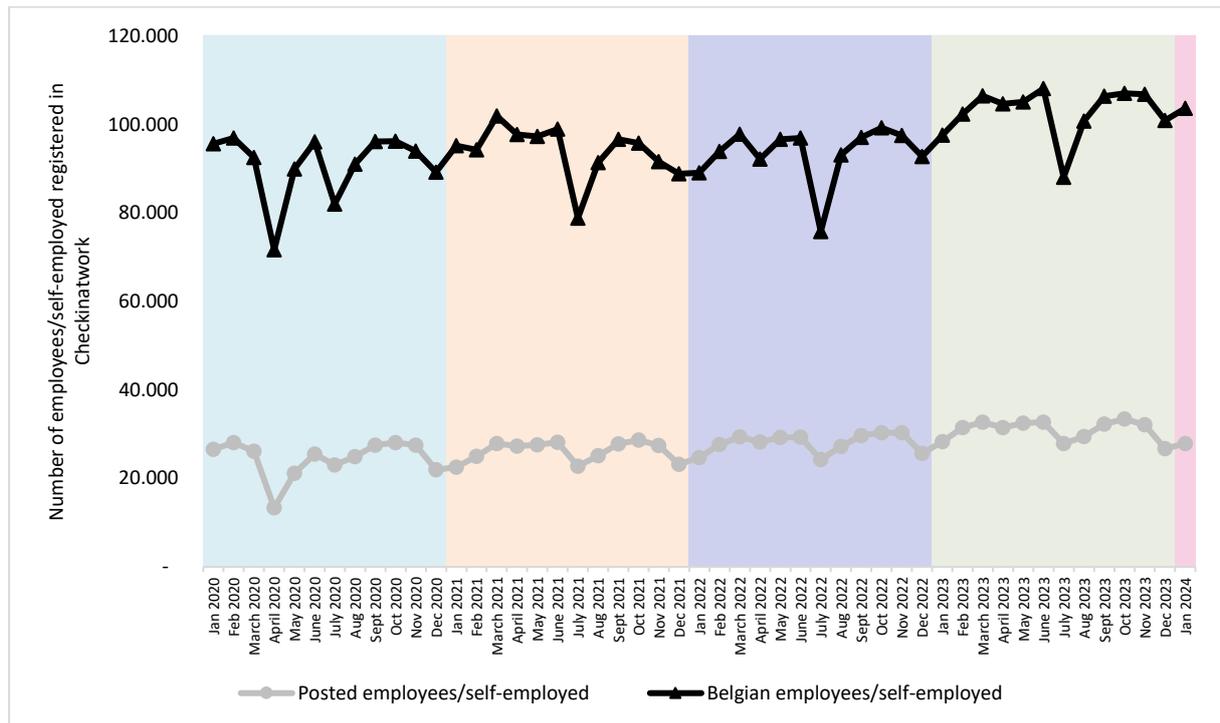
An evolution of the number of posted versus Belgian employee/self-employed per month is pictured in Figure 12. This reveals several characteristics of the works in immovable property, corresponding primarily to the construction sector. First, the impact of the COVID-19 pandemic is clearly visible. From February to April 2020 (the first lockdown in Belgium started on 18 March 2020), the number of registrations in Checkinawork decreased by 32%. The number of Belgian employees/self-employed decreased by 26% and the number of posted workers/self-employed even by 52%, a clear consequence of the (partial) closure of borders. Second, the sector's cyclical nature is obvious. Every year, the number of persons active on sites of works in immovable property is at a low point in July, when the construction leave takes place, as well as in December. However, this dip in number of employees/self-employed is clearly more pronounced for Belgian employees/self-employed than for posted workers/self-employed. For instance, from June 2023 to July 2023 the number of registrations dropped by 18%, although the decrease equals 19% for Belgian employees/self-employed as opposed to 15% for posted workers. Third, the general evolution discussed above based on Table 9 can be seen here as well. The share of posted workers/self-employed in total has grown slightly, and both the number of posted and Belgian employees/self-employed know a growth over the period 2020-2023.

Table 9. Checkinawork: number of employees/self-employed and registrations, 2020 – 2023

	Total number of employees/self-employed (A)	Of which, number of 'Belgian' employees/self-employed	Of which, number of posted employees/self-employed (B)	Number of attendance registrations (C)	Share of posted employees/self-employed in total (B/A)	Number of monthly registrations per subject employee/self-employed (C/A)
2020	1 385 393	1 091 402	293 991	31 389 158	21.2%	22.7
2021	1 442 269	1 128 622	313 647	32 867 265	21.7%	22.8
2022	1 458 496	1 122 337	336 159	38 576 300	23.0%	26.4
2023	1 605 543	1 234 397	371 146	38 659 564	23.1%	24.1

Source Based on data received from the NSSO

Figure 12. Evolution number of posted and 'Belgian' employees/self-employed registered in Checkinatwork, January 2020 – January 2024



Source Based on data received from the NSSO

A specific topic in the construction sector which deserves attention is the occurrence of subcontracting chains. A subcontracting chain occurs when a main contractor engages one or more subcontractors to carry out specific tasks through their own staff or by further subcontracting parts of the work to other subcontractors (De Smedt & De Wispelaere, 2024). While it allows construction companies to stay flexible, leverage specialised skills, and control costs, it has been said that subcontracting can lead to severe issues such as reduced accountability and transparency, and precarious working conditions for the workers involved. Seeing that these problems often stem for the high level of subcontracting layers, an analysis of the composition and size of subcontracting chains in the Belgian construction works (works in immovable property) is appropriate.

For the first time, to the authors' knowledge, this exercise is performed for the Belgian works in immovable property, of which the construction sector is a large part. The analysis is based on the declaration of works active in 2022, which is obligatory in certain cases in Belgium, among others working in immovable property.^{117,118} In the analysis, specific focus is paid to 'declarations above the threshold', meaning those subcontracting chains with an amount of € 500 000 or more. Although this threshold is arbitrary, it allows for an analysis of larger building projects (mainly B2B). Moreover, for works in immovable property, attendance registration is mandatory (Checkinatwork), as discussed above. Although this exercise is useful, it should be kept in mind that the analysed data only concern the *reported* declarations of works. Therefore,

¹¹⁷ The declaration of works is an electronic declaration submitted by the main contractor to the Belgian National Social Security Office (NSSO) before the start of the work. The contractor must declare all information associated with the construction site, contractors, and subcontractors to the NSSO. The main contractor is also responsible for declaring any changes made to the main contract. One has to make a declaration of work in immovable property in following cases: any 'client – contractor contract' of € 5 000 or more (excluding VAT) with at least 1 subcontractor; any 'client – contractor contract' of € 30 000 or more (excluding VAT) with or without subcontractors.

¹¹⁸ Along with the supply of ready-mixed concrete, works in immovable property fall under article '30bis' of the Act of 27 June 1969. In addition, declaration of works is mandatory for works '30ter': works falling under the joint committee for guarding and/or supervisory services, and companies carrying out certain activities in the meat sector. This analysis only concerns data from declaration of works in immovable property ('30bis').

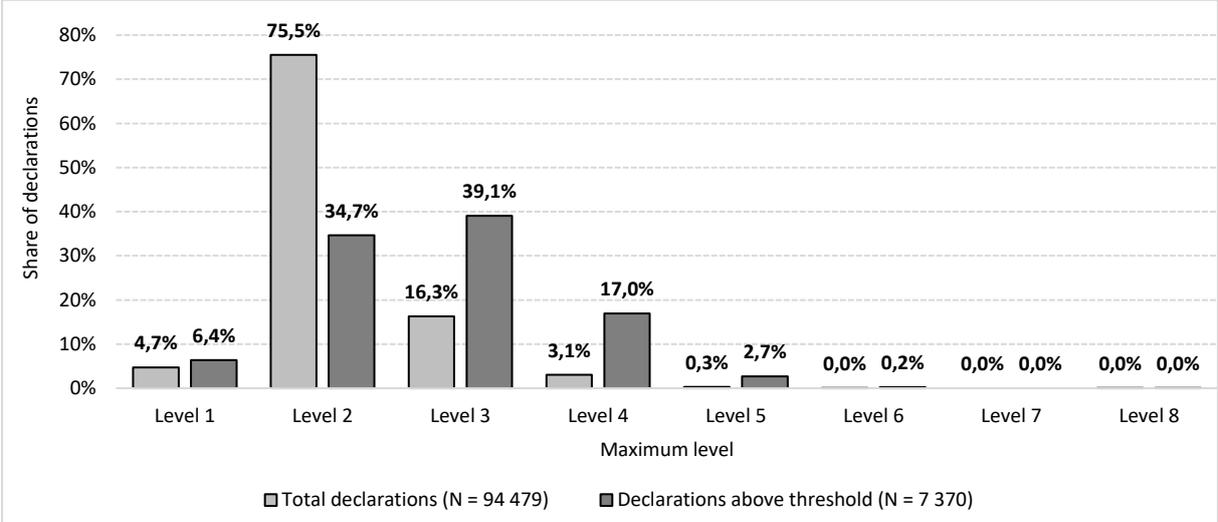
reality might differ from the reported data, even though sanctions are in place for non-reporting or late reporting.¹¹⁹

Results show that on average, a subcontracting chain consists of 5.6 (sub)contractors, while for subcontracting chains above the threshold, it grows to 17 (sub)contractors. Furthermore, 30% of subcontracting chains above the threshold of € 500 000 have 20 or more (sub)contractors in the chain, as opposed to 5% of subcontracting chains in general. The largest chain reported in the declarations of works consisted of 188 (sub)contractors in total.

The average length of a subcontracting chain is 2.2 levels (1 level of contractors + 1.2 levels of subcontractors) in general, and 2.8 levels (1 level of contractors + 1.8 levels of subcontractors) for subcontracting chains with an amount of € 500 000 or more. As *Figure 13* shows, more than 75% of subcontracting chains in general have only one tier of subcontractors (maximum level 2), while this is the case for 35% of chains above the threshold. In general, 16% of subcontracting chains have two tiers of subcontractors, and 3% have three or more tiers of subcontractors. On the contrary, of the chains above the threshold, 39% have two tiers of subcontractors, and 20% have three or more tiers of subcontractors. The longest chain reported in the declaration of works consisted of seven tiers of subcontractors.

Overall, 74% of subcontractors are active on level 2 (the first tier of subcontractors) and 23% on level 3, while of subcontractors active in chains above the threshold, only 57% is active on level 2 and 34% on level 3. It can also be noted that the average number of subcontractors active on a certain level per declaration is higher for chains above the threshold. For instance, on average 3.4 subcontractors are active on level 2 and 5.1 on level 3 in general, while it concerns 9.4 subcontractors on level 2 and 9 subcontractors on level 3 in declarations with an amount of € 500 000 or more.

Figure 13. Distribution declaration of works by maximum level, 2022



* How to read this figure? Of the total number of declarations (N = 94 479), 75.5% has a maximum level of 2, meaning that there is a client (on level 0), contractor(s) (on level 1), and one level of subcontractor(s) (on level 2) present in the subcontracting chain. Of the declarations above the threshold of € 500 000 (N = 7 370), 39.1% has maximum level 3, meaning that there are 2 tiers of subcontractor(s) present in the subcontracting chain in addition to the client and contractor(s).

Source De Smedt & De Wispelaere (2024) based on Database declaration of works 2022 from NSSO

Finally, it is found that almost all contractors are established in Belgium (98% in total and 97% for chains above the threshold). However, for subcontractors, the share of foreign companies is much larger. Of all subcontractors active in the total group of chains, 20% is foreign, and in chains with an amount of € 500 000 or more, 22% is foreign. When the subcontractors are foreign, it concerns mostly Polish companies.

¹¹⁹ A contractor who fails to comply with the obligation to declare works owes the NSSO a sum equal to 5% of the total amount of the undeclared works, excluding VAT. A subcontractor who fails to signal in writing to the contractor that he is using one or more other subcontractors shall himself owe to the NSSO a sum equal to 5% of the total amount of the works, excluding VAT, which he has entrusted to his subcontractor or to his subcontractors. If the sum claimed from the contractor was caused by a fault of a subcontractor, this sum will be reduced by the amount actually paid to the NSSO by the subcontractor concerned for this fault (RSZ, 2023).

Furthermore, it can be noticed that the further down the contracting chain, the higher the share of foreign subcontractors. Interestingly, whereas non-Belgian companies at the top levels in the chain (clients and contractors) are mainly established in neighbouring countries (the Netherlands, Germany, France, and Luxembourg), non-Belgian companies at the bottom levels in the chain are mainly Polish, as well as Slovakian and Slovenian to a lesser extent. In total, 26% of subcontracting chains have at least one foreign subcontractor, while it concerns 55% of subcontracting chains above the threshold.

Focus on the Belgian road freight transport sector

In addition to the construction sector, the transport sector has consistently been one of the most popular sectors for posted workers to be employed in¹²⁰ (De Wispelaere et al., 2022). However, as already noted several times in the country report, we risk losing sight of this sector, as the 'EU Portal for road transport posting declarations' became the obligatory prior declaration tool that operators must use when posting drivers to another Member State. Hence, as data are no longer available in Limosa on this sector, other data sources must be tapped in to, to get an idea of the extent of posting in the transport sector, such as Eurostat.

In general, the importance of the Belgian road freight transport has been decreasing. For instance, from 2008 to 2022, the total amount of tonne-km¹²¹ performed has decreased by 13%.¹²² Furthermore, a turning point for Belgium is 2010, as from that moment on, most road freight transport concerned national transport, as opposed to international transport. In 2008, the breakdown by national and international transport was still 47%-53%, while in 2022, it was 66%-34% respectively.¹²³ It has indeed been noted that in general, international transport has become more important in EU-13 Member States, while national transport has gained importance in EU-14 Member States (De Smedt & De Wispelaere, 2020).

One way to identify posting in this sector, is by looking at the magnitude of cabotage¹²⁴ and cross-trade¹²⁵. It has been established by Directive (EU) 2020/1057¹²⁶ that drivers performing cabotage or cross-trade are considered posted workers, as they are assumed to have a stronger connection to the host Member State compared to the Member State of origin (van Overbeeke, 2021). Bilateral¹²⁷ and transit¹²⁸ transport on the other hand, are not considered to be posted work (De Smedt & De Wispelaere, 2020).

As both cabotage and cross-trade are important activities of posting, they are looked at separately in this section. Of the cabotage reported by other Member States performed in Belgium, most is reported by Luxembourg (33%) and the Netherlands (29%). An interesting variable which specifies the relative importance of cabotage is the 'cabotage penetration rate'. This rate shows the share of cabotage taking place in a certain country in the total national transport in that country, thus indicating the market share of foreign hauliers in total national transport activities (De Wispelaere et al., 2022). In general, it is found that especially in EU-14 Member States, foreign hauliers are performing a lot of 'national transport', as the penetration rate is particularly high in these Member States. It appears that also in Belgium, this rate has been increasing over time (*Figure 14*). While it was only 6% in 2008, the highest level of 11% was reached in 2016 and 2017. The last couple of years (2018-2022) is has remained relatively stable at around 9%.

120 This popularity also comes with disadvantages. This sector is known to deal with certain erroneous and fraudulent practices which often involve posted workers, such as precarious working conditions and letterbox companies (De Smedt & De Wispelaere, 2020). Regarding the latter, see also Morel et al. (2021) for a thorough overview of the phenomenon of letterbox companies and existing measures, including a case study on its occurrence in freight transport by road.

121 The transport of one tonne of goods over a distance of one kilometre.

122 Eurostat [road_go_ta_tot]

123 Eurostat [road_go_ta_tot]

124 National transport undertaken by hauliers from another Member State.

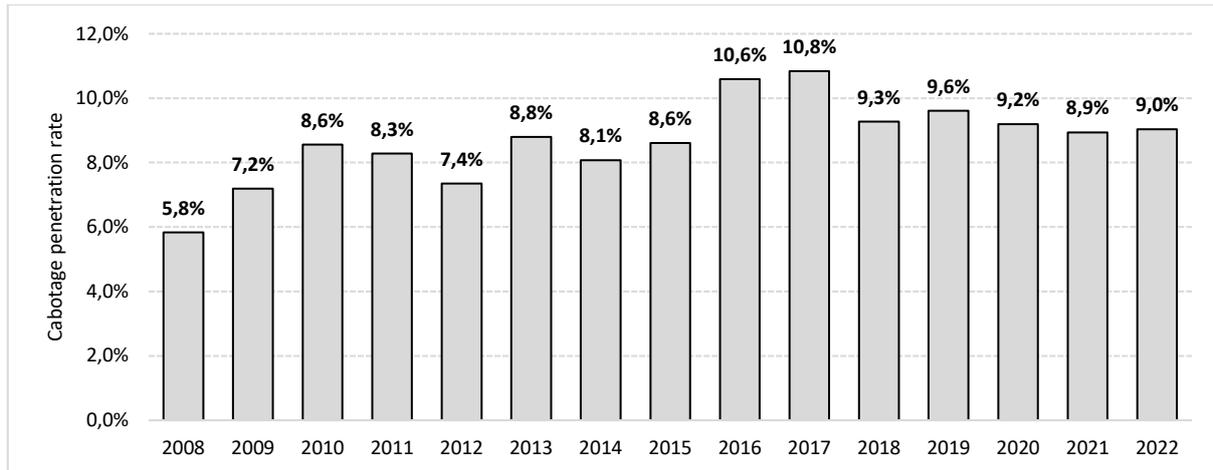
125 International road transport between two different countries performed by a road motor vehicle registered in a third country.

126 Recital 9 of this Directive states that "Balanced sector specific rules on posting should be based on the existence of a sufficient link between the driver and the service provided, and the territory of a host Member State." "International carriage in transit across the territory of a Member State does not constitute a posting situation" (Recital 11). "Where a driver performs other types of operations, notably cabotage operations or non-bilateral international transport operations, there is a sufficient link to the territory of the host Member State." (Recital 13).

127 Bilateral operations occur when transport from Member State A to Member State B is carried out by a transport company located in Member State A or B.

128 Transit arises when a driver drives into the territory of a Member State without loading or unloading cargo.

Figure 14. Cabotage penetration rate Belgium, 2008 – 2022



* The cabotage penetration rate is the share of cabotage transport in total national transport, where total national transport is the sum of national transport (for hire and reward) and cabotage transport (in that country).
 Source Eurostat [road_go_ta_tot] and [road_go_ca_c]

The majority of cross-trade loaded in Belgium and unloaded in the EU-27 is performed by Poland (34%), followed by Lithuania (14%), Luxembourg (12%), the Netherlands (11%), and Romania (10%). When cross-trade is loaded in the EU-27 and unloaded in Belgium, it is mostly carried out by the same Member States (namely Poland 32%, Lithuania 14%, the Netherlands 13%, Luxembourg 12%, and Romania 11%). Therefore, although Lithuania had almost disappeared from data on incoming postings in Belgium as a sending country because of the loss of transport data (see *section 2.1.1.2*), it still plays an important role in international transport in Belgium.

In addition to Eurostat data, it is possible to look at PD A1 data on Article 13 BR to get a grasp of the road freight transport. For instance, 40% of PDs A1 issued under Article 13 BR were issued in the freight transport by road in 2022 (De Wispelaere et al., 2024). However, as a breakdown by sector and receiving Member State is not available, it is not possible to analyse this in more detail.

Finally, a way to analyse the occurrence of TCNs in the road freight transport sector is to look at the number of driver attestations issued and in circulation. This is a uniform document certifying that the driver of a vehicle carrying out road haulage operations between Member States is either lawfully employed by the EU transport operator concerned in the Member State in which the operator is established, or lawfully placed at the disposal of that operator (De Smedt & De Wispelaere, 2020). Thus, this document is needed for those drivers who are not a national nor a long-term resident of an EU Member State. Not all the persons with a driver attestation are posted of course, as this depends on their specific transport activities, but it provides a proxy for those that *can* be posted abroad. In 2022, Belgium issued 666 driver attestations, which is a serious growth compared to 2021 (+34%) (European Commission, 2024). However, these numbers are still on the lower end of the spectrum, with Poland issuing over 106 000 driver attestations in 2022, and Lithuania almost 45 000.

2.1.1.7 By average duration

By dividing the number of reported days in Limosa by the number of reported persons, an estimate can be made of the average duration of the services provided in Belgium. Note that the reported duration in Limosa is not necessarily the same as the actual duration of posting as a notification only reflects the *intention* to send persons to Belgium. The average duration of the posting period per person based on these data amounted to 151 days in 2023 (*Table 10*). There was a gradual increase in the average duration from 157 days in 2016 to 170 days in 2021, or an increase of almost two weeks. However, from 2021 onwards, the average duration has decreased again to 167 days in 2022 and 151 days in 2023, the shortest duration in the period 2016-2023. The strong decrease in the average duration could be explained by the disappearance of the transport

sector in the Limosa statistics. Indeed, international truck drivers were mostly reported in Limosa for a long period (however, without always being active during this entire period in Belgium).

Over the years, the average duration has always been longer for self-employed than for posted workers, which is also the case in 2023. The average reported duration for posted self-employed persons is 173 days compared to 145 days for posted workers, or a difference of almost a month (28 days). Differences in the sectoral distribution between posted workers and posted self-employed persons may also play a role here.

When looking at the total number of postings to Belgium in 2022, about three in ten are reported to last less than eight days (*Table 11*). This is a rather high share of postings which might be surprising seeing that many short-term activities are exempted from making a declaration in Limosa. More than three out of four postings (76%) concern a period of less than six months. Furthermore, 15% of postings last for more than one year.

Table 10. Average period reported in Limosa - in days, 2016 – 2023

	Workers			Self-employed			Total		
	Number of persons reported	Number of days reported	Average (days)	Number of persons reported	Number of days reported	Average (days)	Number of persons reported	Number of days reported	Average (days)
2016	204 614	31 558 929	154	29 884	4 932 503	165	231 168	36 263 503	157
2017	215 732	33 365 455	155	31 785	5 183 242	163	244 144	38 353 317	157
2018	218 017	35 406 822	162	34 983	5 750 873	164	249 755	40 946 747	164
2019	224 638	35 687 332	159	36 747	6 078 717	165	257 728	41 561 864	161
2020	210 628	34 729 528	165	33 822	5 888 830	174	241 368	40 418 379	167
2021	224 461	37 788 571	168	33 190	5 720 010	172	254 724	43 317 743	170
2022	228 851	37 658 665	165	34 990	6 018 983	172	260 638	43 472 110	167
2023	196 607	28 423 209	145	38 875	6 721 224	173	231 820	34 902 507	151

Source Limosa database

Table 11. Average duration of the posting period reported in Limosa, 2022

	% share in total
Less than 8 days	30%
Between 8 days and 1 month	17%
Between 1 month and 6 months	29%
Between 6 months and 12 months	9%
Between 12 months and 18 months	12%
Longer than 18 months	3%

Source Limosa database

Figures specific to the Belgian construction sector show that around three out of ten postings of workers involve a period of less than one week (data 2023) (33% of posted workers and 28% of posted self-employed) (*Table 12*). In addition, about 16% of the postings of posted workers and 32% of postings of self-employed concern a period of more than four months.

Table 12. Average duration of the posting period reported in Limosa, Belgian construction sector, 2023

	Posted workers	Posted self-employed persons
1 to 7 days	33%	28%
8 to 14 days	7%	7%
15 to 29 days	12%	10%
30 to 60 days	14%	11%
61 to 120 days	18%	12%
Longer than 120 days	16%	32%
	100%	100%

Source Data from Constructiv based on Limosa data

In its recent judgment of 20 June 2024 in the case *SN and Others v Staatssecretaris van Justitie en Veiligheid*, the CJEU stated that the host Member State may require a residence permit from posted TCNs in cases of a posting of more than 90 days.^{129,130} In 2023, 24% of the notifications in Limosa of TCNs posted by an employer established in another Member State were found to relate to a period of more than 90 days.

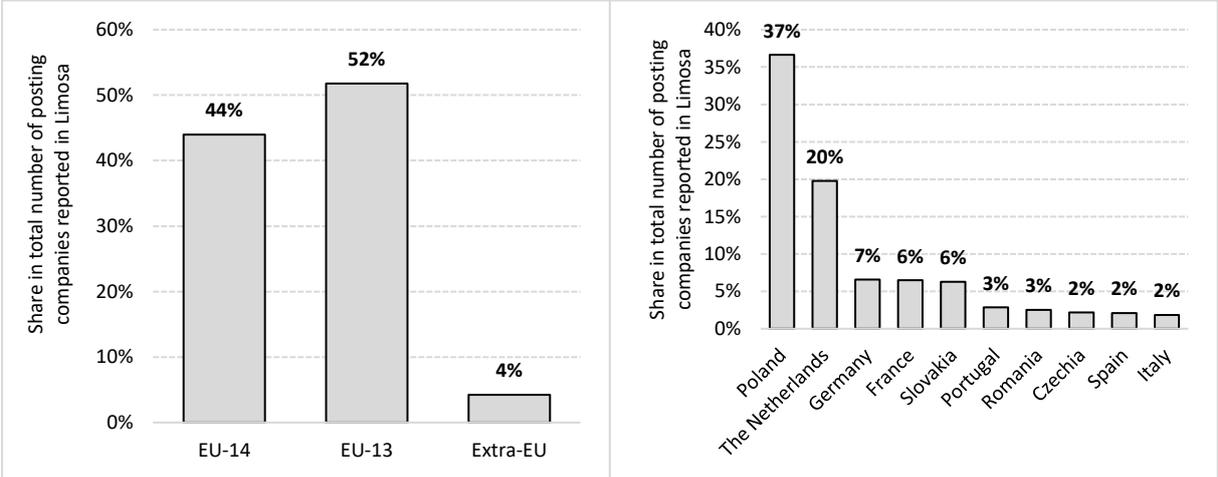
2.1.2 Characteristics of posting companies posting persons to Belgium

In this new section (compared to the previous country report for Belgium), attention is paid to the posting companies from abroad which post persons to Belgium. In 2023, there were 51 118 unique posting companies which posted persons to Belgium. It is important to note that ‘posting company’ consists of both employers which post workers to Belgium and self-employed persons who post themselves to Belgium. In 2023, some 35 128 posted self-employed persons were reported in Limosa. This results in some 16 000 employers of posted workers being registered in Limosa. Given that 170 443 posted workers were reported in Limosa in 2023, this means that each employer posted an average of nearly 11 workers to Belgium.

2.1.2.1 By country of establishment

In total, more than half of posting companies posting persons to Belgium are EU-13 companies (52%) (*Figure 15* left panel). Around 44% are from the EU-14 and only 4% are companies from outside the EU-27. Particularly the division of EU-13 and EU-14 companies is different than the breakdown by posted persons. In *section 2.1.1.2*, it could be seen that 54% of posted persons originated from the EU-14 and 41% from the EU-13. Therefore, it seems that the share of EU-14 posted persons is higher than the share of EU-14 posting companies. This could imply that an EU-14 posting company on average posts more persons abroad than an EU-13 posting company, or that more self-employed are posted from the EU-13 than from the EU-14. This latter statement can be tested in the data and indeed seems to be the case. Out of the posting companies established in the EU-14, 66% post workers to Belgium, while 34% concern posted self-employed. On the contrary, of the posting companies established in the EU-13, ‘only’ 22% post workers abroad and 78% concern posts self-employed.

Figure 15. Share in number of posting companies reported in Limosa, 2023



Source Limosa database

¹²⁹ See *C-540/22 (SN and Others v Staatssecretaris van Justitie en Veiligheid)*. This case concerned Ukrainian employees who were posted to the Netherlands by a Slovak employer to carry out metal work for a Dutch company in the port of Rotterdam. These employees had Schengen visas issued by Slovakia. The duration of the posting turned out to exceed the period of 90 days within a 180-day period during which these workers were allowed, under the Schengen scheme, to move freely within the territory of Member States other than the Member State that issued the Schengen visa.

¹³⁰ For more information, see Verschuereen (2024). See, for instance, “for postings longer than three months, the Court considered, in its recent judgment in Case C-540/22 (*SN*), the requirement by the host Member State to apply for a residence permit justified by the objective of increasing legal certainty for posted workers, of facilitating administrative checks, and by the need to check that the worker concerned does not represent a threat to public policy.” (Verschuereen, 2024: 11).

Figure 15 (right panel) indicates that 37% of posting companies are Polish and 20% are Dutch. The other main countries of posting companies sending person to Belgium follow at a distance with 7% being German, 6% French, and 6% Slovakian. Here as well, the breakdown by type of posting companies (sending workers or sending self-employed) can be remarkably different. For instance, more than half of posting companies from Czechia (81%), Poland (84%), and Slovakia (92%) concern self-employed. Furthermore, the share is on the high side in the Netherlands (49%) and Spain (50%).

2.1.2.2 By sector

The main sector of posting companies is clearly the construction sector with 51% of companies which post persons to Belgium being active in this sector. The second most common sector is the ‘other sector’ (36%), and these two main sectors are followed at a distance by metalworks and pipefitting (4%), electrical installation works (3%), and petrochemical industry (2%).

When combining the sector with the type of posting company (undertaking or self-employed), interesting differences emerge. While more than 97% of posting companies in the metalworks and pipefitting, electrical installation works, and petrochemical industry concern posting undertakings which send posted workers to Belgium, this is only the case for 24% of posting companies in the construction sector. This indicates that more than three in four posting companies in the construction sector are self-employed persons being posted to Belgium.

It is possible to look at the country of establishment of the posting companies in the different main sectors of activity (excluding ‘other sector’). Out of all posting companies active in the construction sector, 55% come from Poland and another 15% from the Netherlands (Table 13). The Netherlands is the top country of establishment in the three other main sectors of activity (20% of posting companies active in metalworks and pipefitting, 24% in electrical installation and assembly, and 47% in petrochemical industry).

It is also possible to compare Table 13 to Table 6 where the top nationalities of posted persons in each main sector of activity was presented (see section 2.1.1.3), as it can lead to interesting insights. For example, while ‘only’ 25% of posted persons in the construction sector were Polish, 55% of posting companies in this sector are Polish. This could indicate that many non-Polish persons are posted through Polish companies and/or that many posting companies in this sector concern self-employed persons thus accounting for a lower number of posted persons. Both hypotheses appear to be true based on the previous sections. Furthermore, whereas only 8% of posted persons in the metalworks and pipefitting (see Table 6 in section 2.1.1.3) is Dutch, one in five posting companies in this sector are established in the Netherlands. Additionally, most posting companies in the metalworks and pipefitting sector are Dutch (20%) and German (17%) (see Table 13), while most posted persons in this sector are Polish (17%) and French (13%) (see Table 6 in section 2.1.1.3).

Table 13. Number of posting companies reported in Limosa, main sectors, by country of establishment, 2023

Construction (N = 29 619)		Metalworks and pipefitting (N = 2 480)		Electrical installation and assembly (N = 1 794)		Petrochemical industry (N = 1 103)	
Top 5 countries of establishment	Share in sector	Top 5 countries of establishment	Share in sector	Top 5 countries of establishment	Share in sector	Top 5 countries of establishment	Share in sector
Poland	55%	The Netherlands	20%	The Netherlands	24%	The Netherlands	47%
The Netherlands	15%	Germany	17%	France	15%	France	12%
Slovakia	8%	Poland	15%	Poland	14%	Germany	12%
Portugal	3%	France	13%	Germany	14%	Italy	4%
Romania	3%	Portugal	5%	Italy	5%	United Kingdom	4%

Source Limosa database

Finally, figures for 2023 from Constructiv show that 7 677 employers (excluding self-employed persons) were registered in Limosa and provided services in the Belgian construction sector through the posting of workers. Given that 61 404 posted workers were active in the Belgian construction sector, this means that each employer posted an average of nearly 8 workers to the Belgian construction sector in 2023.

2.1.2.3 The role of temporary employment agencies

In order to be able to post agency workers to Belgium, a foreign temporary employment agency should have accreditation from the Belgian region in which the work is performed. This falls within the competence of the different Regions and Communities in Belgium. A list of the temporary employment agencies with a license operating in Flanders can be found online.¹³¹ In total, on 10 June 2024, 338 temporary employment agencies had an accreditation in Flanders, of which 120 in the construction sector and 41 in the artistic sector.

In Limosa, posting companies should indicate whether they are active as a temporary employment agency. However, the data gathered on this topic are deemed unreliable according to the NSSO (personal communication, 25 June 2024). Since 2017, the requirement to provide the ‘accreditation number’ for foreign temporary employment agencies in Limosa has led to a significant decrease in the number of registered agencies (see also *sections 1.2.2 and 2.1.1.5*). Hence, it appears that many of the posting companies posting agency workers to Belgium were doing so without an authorisation. For example, the Limosa data for 2023 reveal that only 2% of the posting companies who post workers to Belgium are temporary employment agencies, of which the majority are active in the sector ‘Other’ (35%), as well as in the construction sector (24%), and metalworks and pipefitting (12%). However, these data are most likely a severe underestimation of the true extent of temporary employment agencies posting workers to Belgium.

2.1.3 Characteristics of the Belgian clients of foreign posting companies

In addition to having a look at the characteristics of the posted workers and posting companies which are active in Belgium, it is interesting to analyse the Belgian clients which make use of the services of these posting companies. In 2023, there were 24 824 unique Belgian clients registered in the Limosa database.

A breakdown by sector of activity of these Belgian clients shows a similar view as the sector of employment of the posted persons (see *section 2.1.1.6*). Most Belgian clients are active in the construction sector (38%). The second sector is the one of ‘other sectors’ (33%) followed by clients active in metalworks and pipefitting (6%). Furthermore, more than 1 000 Belgian clients in the petrochemical industry (3%) and electrical installation works (6%) made use of the services of posting companies in 2023.

In previous research, it was found that large Belgian companies (active in the construction sector) in particular seem to make use of the services of foreign service providers (De Wispelaere & Pacolet, 2017; De Wispelaere et al., 2022). In this research, it was also stated that small Belgian companies which often compete with these foreign service providers, risk being driven out of the market.

2.1.4 Measuring the importance of intra-EU posting in total employment in Belgium

To measure total employment in a country or region, the place of establishment of the employer is decisive (as determined in the ‘system of national accounts – SNA 2008’¹³², and the ‘European system of national and regional accounts - ESA 2010’¹³³). Consequently, employment in a country as defined by the ‘domestic concept’¹³⁴ includes (only) those persons who were paid during the reference period by an employer established in that country. As a result, employment provided by (non-)resident workers on behalf of non-resident employer, and thus covering intra-EU labour mobility by the freedom to provide services, is not taken into account. It has been argued by the authors that intra-EU labour mobility by the provision of cross-border services also needs to be taken into account when calculating the employment of a country (e.g., De Wispelaere et al., 2020; De Wispelaere & Rocca, 2023). In this section, it is demonstrated that this

¹³¹ See <https://www.vlaanderen.be/en/recognition-of-temporary-employment-agencies/temporary-employment-agencies-with-a-license>

¹³² *The System of National Accounts 2008* is a statistical framework that provides a comprehensive, consistent, and flexible set of macroeconomic accounts for policymaking, analysis, and research purposes.

¹³³ *The European System of National and Regional Accounts (ESA 2010)* is the newest internationally compatible EU accounting framework for a systematic and detailed description of an economy.

¹³⁴ There are two employment concepts depending on the geographical coverage: resident persons in employment (i.e., the so-called national concept of employment) and employment in the resident production unit irrespective of the place of residence of the employed person (i.e., domestic concept). The difference between them corresponds mainly to the net number of cross-border workers.

See <https://ec.europa.eu/eurostat/documents/24987/4253479/LFS-ESA2010.pdf/47eb1f62-b546-4848-a0e5-930ab84a26f8>

is indeed a relevant exercise, both for the Belgian labour market as a whole and the Belgian construction sector specifically.

2.1.4.1 For the Belgian economy

The calculation below takes into account the number of posted workers reported in Limosa who were active in Belgium at a certain moment of the year (some 93 000 workers in 2023), and not the total group of posted workers reported in Limosa (some 196 600 workers in 2023) as this would be an overestimation.

In 2023, the group of incoming posted workers amounts to 2.2% of the total group of workers employed in Belgium (*Table 14*). This is remarkably lower than in previous years (difference of 0.6 percentage points with 2021 and 2022). This is likely due to the absence of data on posted workers in the transport sector, as they are no longer included in the figures presented below. Before 2023, the average share of posted workers in total employment was relatively stable with 2.7% in 2019 and still even 2.6% in 2020 during the COVID-19 pandemic. During the year, there are also clear fluctuations with the highest impact of posted workers in September, October, and November (2.3%) and the lowest in January and February (2.0% or lower) of 2023.

Table 14. Share of posted workers in total employment in Belgium, 2021 – 2023, by month

	Employment (domestic concept) (excl. self-employed) (A)			Posted workers (excl. self-employed) (B)			Share in total employment (B/(A+B))		
	2021	2022	2023	2021	2022	2023	2021	2022	2023
January	4 055 998	4 155 231	4 212 108	96 210	114 632	82 947	2.3%	2.7%	1.9%
February	4 053 902	4 163 871	4 206 657	102 214	121 059	85 063	2.5%	2.8%	2.0%
March	4 065 732	4 173 054	4 211 969	110 462	126 594	89 296	2.6%	2.9%	2.1%
April	4 071 669	4 180 795	4 220 978	112 943	123 561	89 068	2.7%	2.9%	2.1%
May	4 086 686	4 189 779	4 224 657	116 174	124 499	92 069	2.8%	2.9%	2.1%
June	4 101 287	4 190 595	4 220 268	120 471	123 725	95 525	2.9%	2.9%	2.2%
July	4 062 751	4 169 617	4 211 742	119 607	119 864	94 455	2.9%	2.8%	2.2%
August	4 106 915	4 077 939	4 103 862	120 172	116 866	92 813	2.8%	2.8%	2.2%
September	4 100 090	4 165 243	4 185 898	130 643	119 609	98 618	3.1%	2.8%	2.3%
October	4 157 943	4 226 690	4 240 414	133 470	116 345	101 329	3.1%	2.7%	2.3%
November	4 169 200	4 230 860	4 241 116	133 784	114 854	99 926	3.1%	2.6%	2.3%
December	4 180 897	4 243 305	4 251 510	130 966	108 355	95 871	3.0%	2.5%	2.2%
Average	4 101 089	4 180 582	4 210 932	118 926	119 164	93 082	2.8%	2.8%	2.2%

Source Limosa database and <https://www.rsz.be/stats/barometer-van-de-bezoldigde-tewerkstelling-in-belgie#archives>

2.1.4.2 For the Belgian construction sector

Table 15 presents the share of posted workers and self-employed persons in total employment in the Belgian construction sector for reference year 2023. Figures for 2023 show that posted workers (share of 14.2%) and self-employed persons (share of 7.1%) represent more than one fifth of total employment (excl. white-collar workers) in the Belgian construction sector (21.3%) (*Table 15*). In full-time equivalents (FTE), the importance of intra-EU posting drops to around one tenth of total employment in the Belgian construction sector (11.4%), as posted workers account for 7.6% of FTE in the construction sector and posted self-employed account for 3.8% of FTE. These figures show how dependent the Belgian construction sector has become on intra-EU posting.¹³⁵

¹³⁵ Moreover, as already noted, the number of posted persons active in the Belgian construction sector based on Limosa data is probably a strong underestimation of the actual number of posted persons active in this sector of activity.

Table 15. Share of incoming posted persons in total employment in the Belgian construction sector, 2023, quarterly data

	Employment			Incoming posted workers		Total
	Blue-collar workers*	Temporary agency workers	Self-employed	Posted workers	Posted self-employed persons	
Persons						
Number						
Q1	147 349	6 874	52 237	34 017	17 030	257 507
Q2	146 815	6 977	53 553	38 708	19 067	265 120
Q3	145 955	6 686	54 869	39 531	19 694	266 735
Q4	144 969	6 501	56 186	37 442	19 322	264 420
Average	146 272	6 760	54 211	37 425	18 778	263 446
Share in total						
Q1	57.2%	2.7%	20.3%	13.2%	6.6%	100.0%
Q2	55.4%	2.6%	20.2%	14.6%	7.2%	100.0%
Q3	54.7%	2.5%	20.6%	14.8%	7.4%	100.0%
Q4	54.8%	2.5%	21.2%	14.2%	7.3%	100.0%
Average	55.5%	2.6%	20.6%	14.2%	7.1%	100.0%
Persons in FTE's						
Number						
Q1	107 575	2 770	52 237	13 083	6 550	182 215
Q2	113 736	3 212	53 553	14 888	7 333	192 722
Q3	110 636	2 487	54 869	15 204	7 575	190 771
Q4	108 972	2 890	56 186	14 401	7 432	189 881
Average	110 230	2 840	54 211	14 394	7 223	188 897
Share in total						
Q1	59.0%	1.5%	28.7%	7.2%	3.6%	100.0%
Q2	59.0%	1.7%	27.8%	7.7%	3.8%	100.0%
Q3	58.0%	1.3%	28.8%	8.0%	4.0%	100.0%
Q4	57.4%	1.5%	29.6%	7.6%	3.9%	100.0%
Average	58.4%	1.5%	28.7%	7.6%	3.8%	100.0%

* Thus, excluding white-collar workers

Source Calculations based on data from Constructiv

2.2 From Belgium to other EU Member States

This section quantifies the number of persons posted from Belgium and describes their profile in detail (by receiving country, sector of activity, and duration) mainly based on data for 2023 from the Portable Document A1 (PD A1). Furthermore, information is available on the number of Belgian posting companies and their sector of activity. Finally, attention is paid to retroactive requests for a PD A1.

The mapping of postings from Belgium is certainly relevant, even though the flows are (much) lower than those for postings to Belgium. The section focuses mainly on the PDs A1 issued under Article 12 BR (i.e., postings). Nevertheless, from a labour law perspective, persons with a PD A1 issued under Article 13 BR (i.e., working in two or more Member States) can also be 'posted' to another Member State.

2.2.1 Number and characteristics of posted workers from Belgium

The following analysis of the profile of outgoing postings shows that this profile differs from that of incoming postings, both in terms of flows between Belgium and other Member States as well as in terms of sectors of activity concerned.

2.2.1.1 Measuring the flow of posted workers from Belgium

Almost 160 000 PDs A1 were issued by Belgium in 2023 (*Table 16*). More than half (56%) were issued under Article 12 BR (approximately 89 800). Out of these PDs A1, 93% were issued to posted workers, and 7% to posted self-employed persons. Furthermore, another 67 700 PDs A1 were issued for persons working in two or more Member States (under Article 13 BR). Finally, 1% of PDs A1 or 2 360 PDs A1 were issued in other categories.

One category which falls under ‘other categories’ are PDs A1 issued under Article 16 BR (special agreement). Recently, this category includes PDs A1 issued under the Framework Agreement on the application of Article 16 (1) of Regulation (EC) No 883/2004 in cases of habitual cross-border telework.¹³⁶ This Framework Agreement was put into place seeing that (partial) telework persisted as a new way of work, after the COVID-19 pandemic, in order to make sure that the correct social security legislation is applied. In 2023, Belgium issued 211 PDs A1 under the Framework Agreement out of 767 PDs A1 issued under Article 16 BR, or 28%.

Table 16. Total number of PDs A1 issued by Belgium, 2023

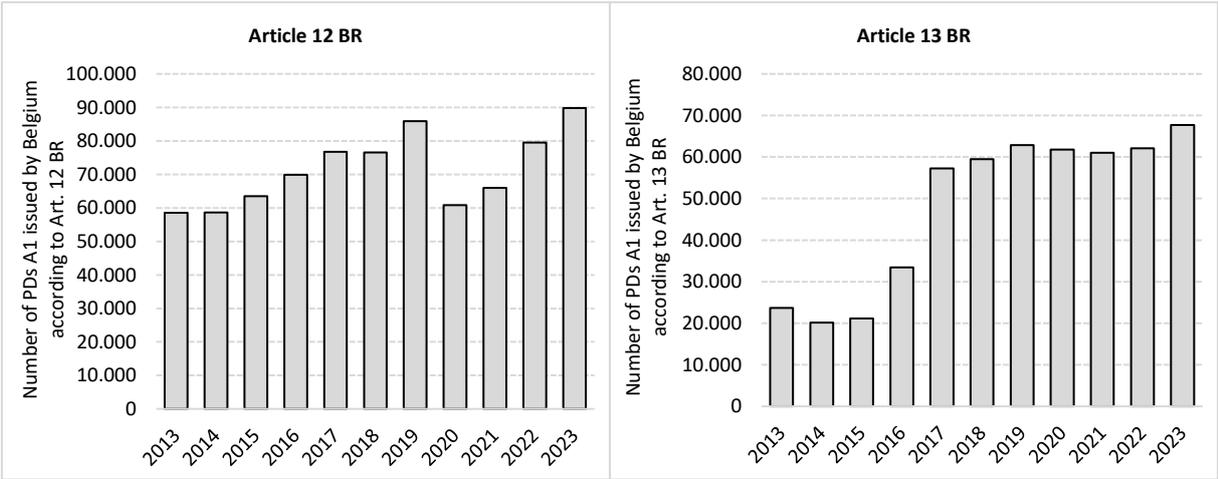
	Number of PDs A1 issued	% in total
Article 12 - posting	89 761	56%
<i>Posted workers</i>	83 256	52%
<i>Posted self-employed</i>	6 505	4%
Article 13 - working in two or more States	67 700	42%
<i>Employed, working in two or more States</i>	57 973	36%
<i>Other situation</i>	9 727	6%
Other categories	2 360	1%
Total	159 821	100%

Source Data from NSSO and NISSE

The evolution of the number of PDs A1 issued according to both Articles shows interesting results. For those issued under Article 12 BR (left panel of *Figure 16*), there was a continuous increase until 2019. The serious drop from 2019 to 2020 (-29%) can be explained by the COVID-19 pandemic. However, it appears that 2023 is the first year in which the number of PDs A1 issued according to Article 12 BR has reached the level of pre-COVID-19 again. It even surpasses the number of PDs A1 issued in 2019 by around 3 800 PDs A1 or 5%.

The right panel of *Figure 16*, presenting the number of PDs A1 issued according to Article 13 BR, shows a different story. After a sharp increase starting from 2015-2016, the number of PDs A1 issued remained rather stable. Even when the COVID-19 pandemic hit, the number of issued PDs A1 according to Article 13 BR only decreased by 2% from 2019 to 2020. Moreover, from 2022 to 2023 there is another strong increase noticeable of more than 5 000 PDs A1 or 9%.

Figure 16. Evolution of PDs A1 issued by Belgium according to Article 12 BR (left panel) and Article 13 BR (right panel), 2013 – 2023

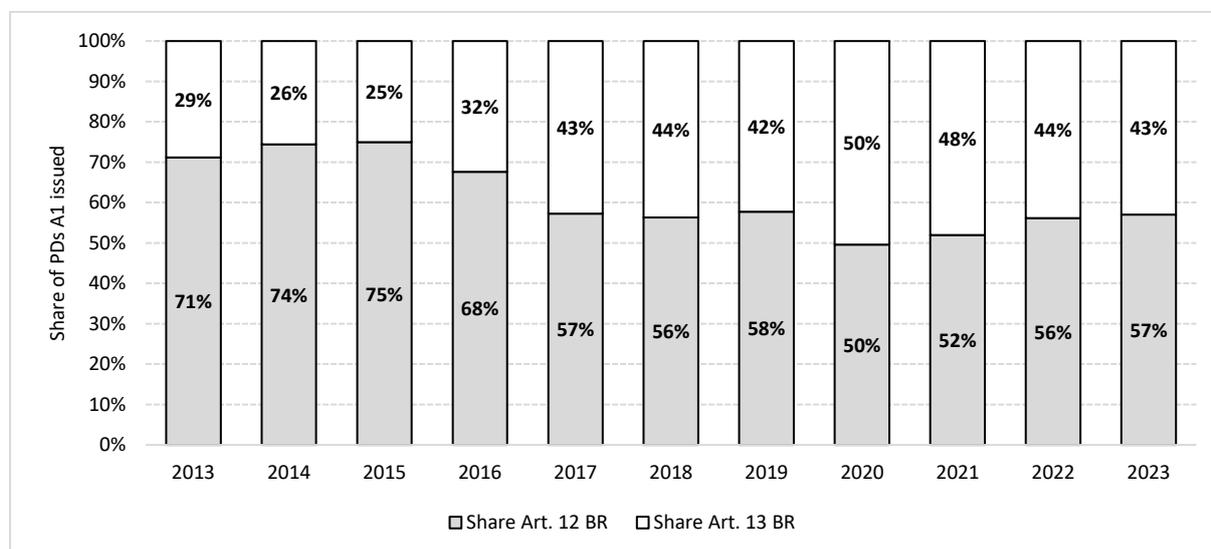


Source Data from NSSO and NISSE

¹³⁶ See <https://socialsecurity.belgium.be/en/internationally-active/cross-border-telework-eu-eea-and-switzerland>

Figure 17 shows that while in 2013, only 29% of the PDs A1 issued by Belgium concerned the application of Article 13 BR, it concerned 43% of the PDs A1 issued in 2023. Nonetheless, it seems that in recent years, the importance of Article 13 BR has (slightly) decreased again, going from 50% in 2020 to 43% in 2023.

Figure 17. Share of PDs A1 issued by Belgium according to Article 12 BR versus Article 13 BR, 2013 – 2023



Source Data from NSSO and NISSE

In order to assess the importance of postings from Belgium to other Member States, it is best to look at the number of persons with a PD A1 and thus not at the total number of certificates issued. In 2023, 42 777 unique persons received a PD A1 under Article 12.1 BR (i.e. posted workers) (Table 17). Seeing that 83 256 PDs A1 were issued under Article 12.1 BR, it can be calculated that each worker was posted abroad on average 2 times.

Hence, it appears that the number of known outgoing posted workers is much smaller than the number of incoming posted workers (see section 2.1.1.1). This becomes even clearer when looking at the number of workers with a PD A1 issued under Article 12.1 BR who were abroad at a specific moment of the year. At all four times specified, it concerns only around 5 000 posted workers under Article 12.1 BR, which shows that the period that posted workers stay abroad is of a (very) short duration.

By subtracting the average number of outgoing posted workers (around 5 000, see Table 17) from the average number of incoming posted workers (93 082, see Table 2 in section 2.1.1.1), we can even obtain an estimate of the net number of posted workers. The net number of posted workers amounts to some 88 063 workers as the number of outgoing posted workers at a specific time in year is very low. As a result, the net number of posted workers accounts for 2.1% of total employment in Belgium.

Table 17. Different concepts to measure the number of outgoing posted workers from Belgium, 2023

	Issued to posted workers (Article 12.1 BR)
Number of PDs A1	83 256
Number of persons involved	42 777
5 March	4 349
4 June	5 418
3 September	4 993
3 December	5 314
PDs A1 issued per posted worker	1.95

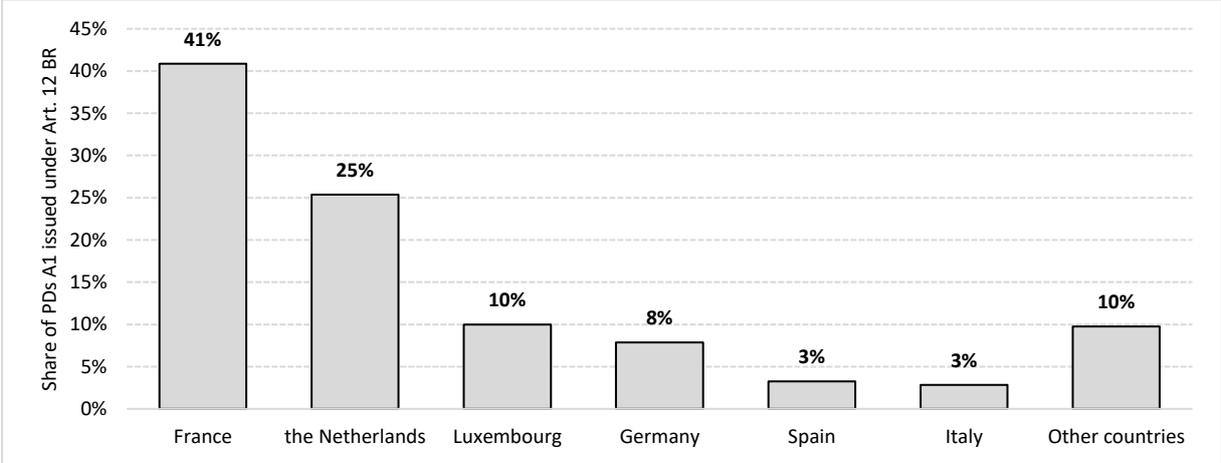
Source WABRO database

Another data source that can be used as a proxy for measuring the outflow of posted workers are tourism statistics on persons travelling abroad for business or professional purposes. In 2022, almost 780 000 trips for business and professional purposes of one night or more took place from Belgium to other EU-27 Member States.¹³⁷ The majority of these trips had neighbouring countries as their destination such as France (29%), Germany (16%), and the Netherlands (13%). This figure seems to indicate that the number of outgoing posted persons from Belgium based on the WABRO database is a strong underestimation of reality. In practice, authorities are not always informed about outgoing transnational activities. Consequently, there might be a discrepancy between the number of PDs A1 issued by the competent administrations in Belgium and the actual scale of persons providing services abroad. Finally, this data source also confirms that the inflow of posted persons is much higher than the outflow. As mentioned in *section 2.1.1.1*, in 2022, around 1.2 million trips for business and professional purposes were carried out from another Member State (mainly from France and the Netherlands) to Belgium, compared to the 780 000 trips from Belgium to another Member State.

2.2.1.2 By receiving country

The main receiving Member States of posted persons (workers and self-employed) from Belgium are neighbouring countries. More specifically, in 2023, 84% of all PDs A1 issued under Article 12 BR were for postings to Belgium’s neighbouring countries (*Figure 18*). It concerns 41% to France, 25% to the Netherlands, 10% to Luxembourg, and 8% to Germany. This profile of posted persons from Belgium strongly differs from the one of incoming posted persons to Belgium (for instance, only 39% of the incoming posted workers have a neighbouring country as sending country (see *Table 3* in *section 2.1.1.2*)). Furthermore, 3% of the posted persons from Belgium are sent to Spain and Italy.

Figure 18. Main receiving MSs of PDs A1 issued by Belgium under Article 12 BR, 2023



Source Data from NSSO and NISSE

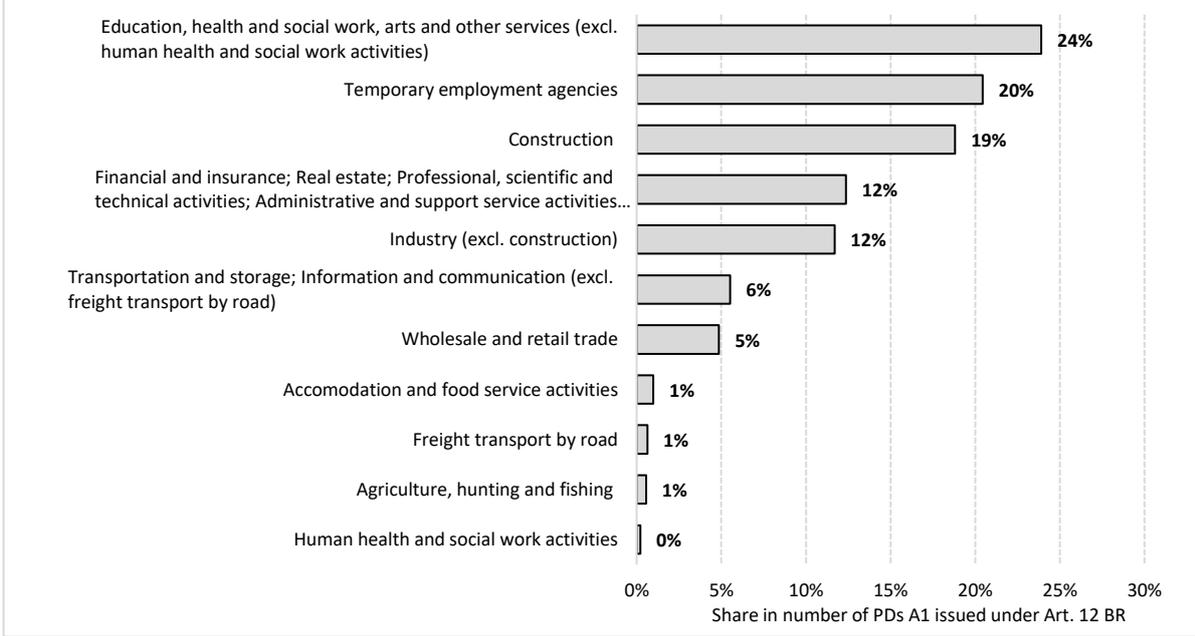
2.2.1.3 By sector of activity

The breakdown by sector of activity in 2023 shows that most PDs A1 under Article 12 BR are issued for activities in education, health and social work, arts and other services (excl. human health and social work activities) (24%), temporary employment agencies (20%), and construction (19%) (*Figure 19*). The sectors in which posted agency workers operate are unfortunately not know. This is quite a different view from the incoming perspective, where the majority of the posted persons are active in construction (38%) and metalwork and pipefitting (11%) (see *section 2.1.1.6*). However, it should be acknowledged that posting in the construction sector is not only a tale of incoming posting to Belgium, seeing that almost one in five postings from Belgium towards other Member States also occurs in this sector.

¹³⁷ Eurostat [tour_dem_itw]

For PDs A1 issued under Article 16 BR specifically, a breakdown by sector is also possible for all PDs A1 which have been issued until the end of 2023. Although the majority of PDs A1 issued under Article 16 BR have an unknown sector of activity (43%), many are issued in the manufacturing (13%) and construction sector (13%). Furthermore, it appears that 11% are issued for professional, scientific, and technical activities.

Figure 19. Breakdown by sector of activity for PDs A1 issued by Belgium according to Article 12 BR, 2023



Source Data from NSSO and NISSE

2.2.1.4 By nationality, with a focus on TCNs

In 2023, roughly 4% of the PDs A1 under Article 12.1 BR (i.e., posted workers) were issued to TCNs. Based on the WABRO database, it was possible to combine several variables, for instance sector of activity and TCN or not. Hence, it is possible to see whether the sector of activity of PDs A1 issued under Article 12.1 BR to TCNs differs from the total group of posted workers. In general, this does not seem to be the case. For both groups, the main sectors of activity are administrative and support service activities (NACE N) (26% of all PDs A1 issued in total, and 30% of PDs A1 issued to TCNs), arts, entertainment, and recreation (NACE R) (20% vs 18%), construction (NACE F) (17% vs 17%), and manufacturing (NACE C) (14% vs 12%).

2.2.1.5 By duration

The period persons can pursue an activity under Article 12 BR is set at a maximum of 24 months. This does not necessarily imply that this is also the real duration. For instance, on average, a PD A1 under Article 12.1 BR (i.e. posted workers) was issued for 25 days in 2023.

A breakdown by duration shows that more than one in four PDs A1 under Article 12.1 BR are issued for one day (28%) (Table 18). Furthermore, half of the PDs A1 under Article 12.1 BR are issued for one to three days (50%), and seven in ten for a duration of one week or less (71%). The remaining PDs A1 under Article 12.1 BR are issued primarily for a period between 8 and 30 days (13%) and between one and six months (11%). Only 2% of PDs A1 under Article 12.1 BR are issued for a period over one year. These findings show that workers posted from Belgium are mostly active in another Member State for a (very) short period.

As is the case concerning the sector of activity, the duration does not differ considerably for PDs A1 under Article 12.1 BR issued to the total group of workers compared to those issued to TCNs. The share issued for one to seven days is slightly lower for TCNs than for the total group (67% for TCNs vs 71% in

total), while for a duration of one to six months the share is somewhat larger (14% for TCNs vs 11% in total).

Table 18. Number of PDs A1 issued by Belgium according to Article 12.1 BR, by duration, 2023

Duration	Share in number of PDs A1 issued
1 day	28%
2 days	13%
3 days	10%
4 days	7%
5 days	9%
6 days	3%
7 days	2%
Between 8 and 30 days	13%
Between 1 and 6 months	11%
Between 6 and 12 months	3%
Longer than 12 months	2%
Total	100%

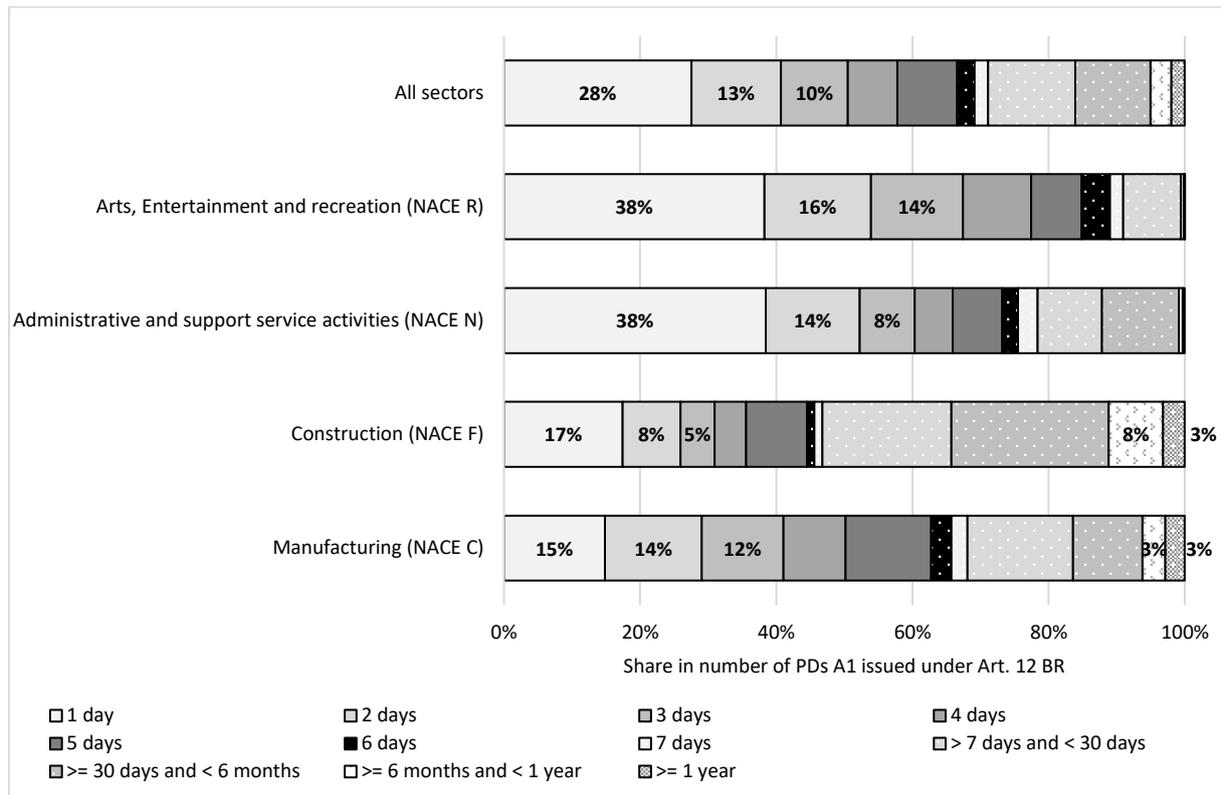
Source WABRO database

A cross-section of sector of activity and duration is provided as well. For the four main sectors of activity, this is shown in *Figure 20*. It is remarkable to see that both in the arts, entertainment, and recreation sector, and the administrative and support service activities sector, almost four in ten PDs A1 under Article 12.1 BR are issued for one day (38% for both sectors). On the contrary, these shares are ‘only’ 17% and 15% for the construction and manufacturing sector respectively, which is considerably lower than the 28% in general (as seen in *Table 18* above and *Figure 20*). In the arts, entertainment, and recreation sector, even more than two thirds of PDs A1 under Article 12.1 BR are issued for a duration of one to three days (67%), and 91% for a duration of one to seven days. On the right side of *Figure 20*, it can be seen that especially in the construction sector, PDs A1 are issued for a longer period, namely 11% for a duration of more than six months, as opposed to 5% in general (*Table 18*).

Hence, in general, it can be concluded that the majority of PDs A1 under Article 12.1 BR are issued for short durations. However, this strongly depends on the sector of activity, as in certain sectors this is less the case (for instance construction), while in others this is even more so the case (for instance the arts sector).

When comparing the duration by sector between the total number of PDs A1 issued under Article 12.1 BR with those issued to TCN, a notable difference occurs in the construction sector. In general, 31% are issued for a duration of one to three days and 47% for a period of one to seven days, while for PDs A1 issued to TCNs these shares are only 26% and 39% respectively. It appears that in this sector, TCNs are posted to another country for a longer period (duration of more than six months: 11% in general versus 15% for TCNs).

Figure 20. Breakdown of duration for PDs A1 issued according to Article 12.1 BR for some main sectors of activity, 2023



* Only the top four sectors of activity are displayed in this figure based on the number of PDs A1 issued under Article 12.1 BR in these sectors.
Source WABRO database

2.2.2 Characteristics of Belgian employers that asked for a PD A1 issued under Art. 12.1 BR

In addition to looking at the number of PDs A1 issued to posted workers and self-employed persons, it is possible to have a look at the number of Belgian employers that asked for a PD A1 under Art. 12.1 BR.¹³⁸ It was reported that there were 4 233 Belgian employers in 2023 which posted workers abroad to other Member States.

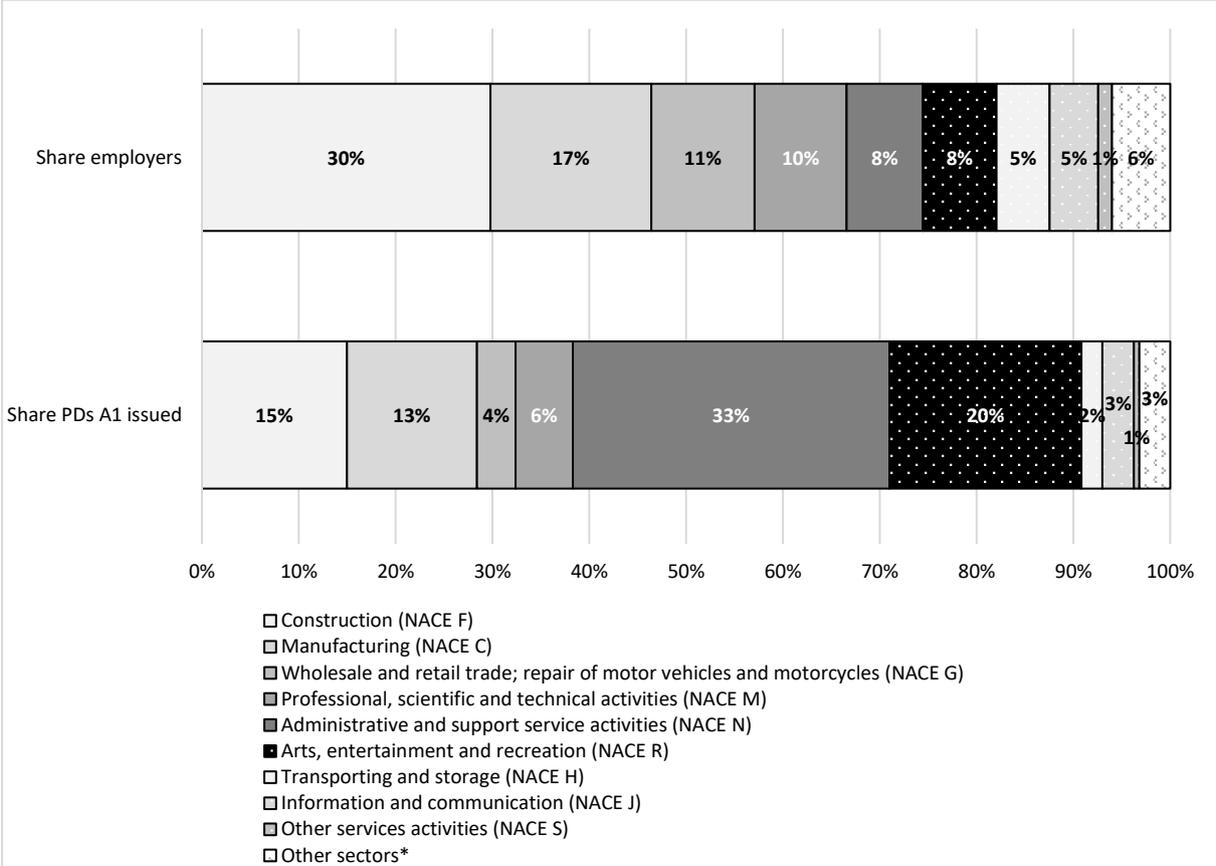
2.2.2.1 By sector of activity

For the Belgian employers which issued a PD A1 under Article 12.1 BR between 2019 and 2023, more detailed information is available by sector. For instance, the average number of PDs A1 received under Article 12.1 BR is particularly high in the administrative and support service activities sector (NACE N) and the arts, entertainment, and recreation sector (NACE R), namely 192 PDs A1 and 120 PDs A1 respectively.

Furthermore, it is interesting to compare the share per sector in the number of employers with the share per sector in the number of PDs A1 received under Article 12.1 BR. *Figure 21* reveals that while one in three Belgian employers which received a PD A1 under Article 12.1 BR are active in the construction sector (30%), these employers only account for 15% of PDs A1 received. On the contrary, only 8% of the employers are active in the administrative and support service activities sector, although they account for 33% of the PDs A1 received under Article 12.1 BR. Similarly, the employers in the arts, entertainment, and recreation sector account for 8% of Belgian posting companies even though these employers received one in five of the PDs A1 under Article 12.1 BR (20%). Therefore, in these latter two sectors, proportionally more PDs A1 under Article 12.1 BR are received compared to their significance in terms of number of employers, while the opposite is true for the construction sector.

¹³⁸ However, this does not necessarily mean that the posting actually took place.

Figure 21. Belgian employers receiving a PD A1 under Article 12.1 BR between 2019 and 2023, by sector, comparison share in number of employers and share in PDs A1 received under Article 12.1 BR



* ‘Other sectors’ consists of Financial and insurance activities (NACE K), Accommodation and food service activities (NACE I), Agriculture, forestry and fishing (NACE A), Water supply; sewerage; waste management and remediation activities (NACE E), Education (NACE P), Human health and social work activities (NACE Q), Real estate activities (NACE L), Electricity, gas, steam and air conditioning supply (NACE D), Public administration and defence; compulsory social security (NACE O), Mining and quarrying (NACE B), Activities of households as employers; undifferentiated goods - and services - producing activities of households for own use (NACE T), and Activities of extraterritorial organisations and bodies (NACE U)

Source WABRO database

2.2.2.2 By importance in the total number of Belgian employers

In a next step, it is possible to confront the number of Belgian posting companies to the total number of Belgian companies to get an idea of their importance. On 31 December 2023, 227 898 Belgian SMEs were active in the private sector (<250 employees) (FOD Economie, 2024). Seeing that they account for 99.4% of the employers at the NSSO, it can be estimated that a total of 229 274 unique Belgian employers were active in 2023. As mentioned above, 4 233 unique Belgian employers posted workers abroad in 2023. Consequently, it is found that 1.8% of Belgian employers have posted workers abroad in 2023 (=4 233/229 274).

For a breakdown by sector, however, only data on the total number of companies posting workers abroad between 2019 and 2023 are available. Hence, in *Table 19* below, a total of 7 786 Belgian companies posted workers abroad between 2019 and 2023 (as opposed to the 4 233 unique posting companies in 2023). This total number of posting companies between 2019 and 2023 is compared to the total number of Belgian companies active in 2022 (excluding self-employed) to get a rough idea about the share of Belgian employers posting workers abroad in each sector. As *Table 19* shows, the share of posting companies differs markedly between sectors. For instance, in the arts, entertainment, and recreation sector more than one in ten employers posted workers abroad (12%), and in the construction sector, roughly 8% of the Belgian employers is a posting company. Furthermore, 5.5% of employers active in the transportation and storage

sector has posted workers abroad between 2019 and 2023. On the contrary, posting does not seem common in the human health and social work activities sector (0.3%) and the real estate activities sector (0.1%) seeing that less than 0.5% of Belgian companies in these sectors received a PD A1 under Article 12 BR between 2019 and 2023.

Table 19. Share of Belgian employers receiving a PD A1 under Article 12.1 BR, by sector of activity, 2019-2023

	Total number of employers (2022) (A)*	Number of employers requesting a PD A1 (2019-2023) (B)	Share of Belgian employers requesting a PD A1 (B/A)
Agriculture, forestry, and fishing (NACE A)		90	
Mining and quarrying (NACE B)	164	5	3.0%
Manufacturing (NACE C)	39 159	1 328	3.4%
Electricity, gas, steam, and air conditioning supply (NACE D)	835	10	1.2%
Water supply; sewerage, waste management and remediation activities (NACE E)	1 378	52	3.8%
Construction (NACE F)	28 857	2 386	8.3%
Wholesale and retail trade; repair of motor vehicles and motorcycles (NACE G)	39 056	855	2.2%
Transportation and storage (NACE H)	8 046	440	5.5%
Accommodation and food service activities (NACE I)	19 228	104	0.5%
Information and communication (NACE J)	9 344	401	4.3%
Financial and insurance activities (NACE K)	14 028	107	0.8%
Real estate activities (NACE L)	10 257	14	0.1%
Professional, scientific, and technical activities (NACE M)	31 879	761	2.4%
Administrative and support service activities (NACE N)	13 273	629	4.7%
Public administration and defence; compulsory social security (NACE O)		8	
Education (NACE P)	1 497	49	3.3%
Human health and social work activities (NACE Q)	12 028	36	0.3%
Arts, entertainment, and recreation (NACE R)	5 034	609	12.1%
Other services activities (NACE S)		114	
Activities of households as employers; undifferentiated goods - and services - producing activities of households for own use (NACE T)		4	
Activities of extraterritorial organisations and bodies (NACE U)		2	
Total**	234 063	7 786	3.3%

* The Eurostat data concern 2022 and include all Belgian enterprises excluding the enterprises with 0 or 1 person employed, in order to exclude self-employed persons from the data, seeing that data from the WABRO database do not include data on self-employed persons posted abroad. These data may differ from following source: <https://economie.fgov.be/nl/themas/ondernemingen/kmos-en-zelfstandigen-cijfers/tewerkstelling-kmos#:~:text=Op%2031%20december%202023%20waren,5%20%25%20tussen%202021%20en%202022.>

**The total only includes those sectors of activity for which data in both columns A and B are available.

Source WABRO database, Eurostat [sbs_sc_ovv] data 2022

2.2.3 Retroactive request for a Portable Document A1

The current legal framework provides that the employer or the person concerned (i.e., the posted self-employed person) must inform the competent authorities about their planned transnational activities,

whenever possible *before* these activities take place.¹³⁹ Consequently, in some/several cases, a posting may take place without the institutions being informed.¹⁴⁰ Moreover, in some/several cases the PD A1 is awarded with retroactive effect.¹⁴¹ In that case, a request for a PD A1 is made during or even after the posting activities took place.

Table 20 sheds light on the number of PDs A1 granted retroactively by the NSSO. On average, between 2021 and 2023, more than one in four PDs A1 issued was issued retroactively, namely 28%. The percentage of PDs A1 granted retroactively is stable over this period. This shows that a high percentage of companies may not request a PD A1 in advance (and do so only when actually asked).

The fact that the percentage of PDs A1 granted retroactively is so high might seem surprising, as the application procedure for the PD A1 in Belgium is relatively easy, certainly in comparison with other Member States. However, according to the NSSO, this high percentage might just be a consequence of the easy procedure. Many PDs A1 are requested retroactively, not because of a control, but because employers are used to the rapid procedure. Consequently, they wait until the last minute or forget to do it but know that it will go smoothly. Hence, the NSSO believes these high shares are rather an indication of the procedure's high convenience.

Table 20. Number and percentage of PDs A1 granted retroactively (excl. self-employed), 2021-2023

	2021	2022	2023
Total number of PDs A1 issued (A)	117 278	135 003	145 400
Number of PDs A1 issued retroactively (B)	34 088	38 588	39 417
Share (B/A)	29%	29%	27%

Source WABRO database

The added value of having such data became clear during the negotiations on the revision of the Coordination Regulations. In the provisional agreements among the Council of Ministers, the European Parliament, and the European Commission (in that of 25 March 2019: Document 7698/19 ADD1 REV1 of 25 March 2019,¹⁴² and in that of 17 December 2021: Document 15068/21 of 17 December 2021¹⁴³) it was agreed that the employer or the posted self-employed person should inform the competent institution 'in advance' (i.e., 'a mandatory prior notification'), except for 'business trips'^{144,145}. It is rather unclear what the impact will be of such a provision on both posting companies and the competent institutions.

¹³⁹ This obligation is defined by Article 15 (1) of the Implementing Regulation.

¹⁴⁰ Moreover, requesting a certificate is not a condition of being posted (see *Alpenrind GmbH and Others* (C-527/16; paras 70–72).

¹⁴¹ See Case C-178/97 *Barry Banks and Others*. In *Alpenrind GmbH and Others* (C-527/16), the CJEU confirms the binding and retroactive effect of the PD A1 (par. 77): "Having regard to the foregoing considerations, the answer to the second part of the second question is that Article 5(1) of Regulation No 987/2009, read together with Article 19(2) thereof, must be interpreted as meaning that an A1 certificate issued by the competent institution of a Member State under Article 12(1) of Regulation No 883/2004, is binding on both the social security institutions of the Member State in which the activity is carried out and the courts of that Member State, if appropriate with retroactive effect, even though that certificate was issued only after that Member State determined that the worker concerned was subject to compulsory insurance under its legislation."

¹⁴² See <https://data.consilium.europa.eu/doc/document/ST-7698-2019-ADD-1-REV-1/en/pdf>

¹⁴³ See <https://data.consilium.europa.eu/doc/document/ST-15068-2021-NIT/en/pdf>

¹⁴⁴ Defined in the provisional agreement of 25 March 2019 as "a temporary working activity of short duration organised at short notice, or another temporary activity related to the business interests of the employer and not including the provision of services or the delivery of goods, such as attending internal and external business meetings, attending conferences and seminars, negotiating business deals, exploring business opportunities, or attending and receiving training."

¹⁴⁵ And for exceptional cases, where it was not possible to notify before the start of the activity abroad (see provisional agreement of 17 December 2021).

3. Scale and characteristics of infringements related to intra-EU posting

The main objective of this chapter is to provide administrative data on the number of inspections carried out by the Belgian social inspection services on the compliance with the posting rules and the outcome of these inspections¹⁴⁶. The collection of such data should allow us to make a preliminary assessment of the extent to which posting to Belgium is ‘infected’ by all kinds of infringements to the labour and social security aspects of posting. As already noted in *section 1.2.2* in *Chapter 1*, the use of inspection data has several limitations of which the reader should be aware when reading the analysis below. Inspection data probably bias the real relationship between posting and cross-border social fraud. After all, inspections will mostly take place on the basis of a risk assessment, mostly focused on specific ‘risk sectors’ (e.g., in the construction sector, in road transport, in the meat processing industry, etc.) and when certain ‘red flags’ are present. Such inspections will yield higher infringement rates and may therefore give a distorted view of the actual number of infringements related to intra-EU posting in the receiving Member State.

In this chapter, the first section focusses on the different enforcement bodies involved in the enforcement of labour and social security rules on the posting of workers in Belgium (*section 3.1*). In *section 3.2*, the number of inspectors and inspections is looked at. Next, the type of infringements found as well as their magnitude are discussed (*section 3.3*). In the following section, the sanctions are analysed (*section 3.4*). Finally, at the end of an inspection or investigation, recovery should take place which is examined in *section 3.5*. The figures reported are mainly from the Social Information and Investigation Service (SIIS)^{147,148} and the FPS Social Security. Please note that SIIS refers to the notion of ‘social dumping’ when collecting statistics. This notion is broader than the posting rules. Finally, it should be noted that the enforcement statistics refer only to incoming postings.

3.1 Enforcement bodies involved in the enforcement of the posting rules

Inspections on the labour and social security aspects of posting are in principle carried out, solely or jointly, by the social inspection services of the Belgian FPS Employment, Labour and Social Dialogue (i.e., both by the Directorate-General for Supervision of Social Law and the Directorate-General Control on well-being at work¹⁴⁹), the National Social Security Office (NSSO), and the National Institute for the Social Security of the Self-employed (NISSE). Specialised units are created within the Directorate-General for Supervision of Social Law (i.e., ‘Posted Workers’¹⁵⁰ and ‘Transport’), the NSSO inspectorate (i.e., ‘GOT’),^{151,152} and the NISSE inspectorate (i.e., ‘the Fair Competition Directorate’), that focus on the enforcement of the posting rules.

146 A thematic paper in the context of the POSTING.STAT 2.0 project brings together the data collected on enforcement from the 11 Member States involved in the project. See De Wispelaere, De Smedt, & Gillis (2024).

147 The Social Information and Investigation Service (SIIS) is a strategic body that develops, on the basis of the knowledge and insights of the inspectorates of the administrations and with scientific support, a vision on the fight against social fraud and translates it into concrete strategies. It is important to understand that SIIS itself is not an enforcement body; they do not carry out any inspections themselves. The SIIS prepares a strategic plan and an operational action plan on the fight against social fraud and social dumping and is responsible for policy support.

148 Mainly reported in their annual report on the fight against social fraud (SIIS, 2024a) and their annual report on social dumping (SIIS, 2024b).

149 Unfortunately, no data are available on compliance with the OSH rules in the case of posting.

150 Previously, ‘Control of foreign enterprises active on Belgian territory’ (COVRON).

151 See also <https://ec.europa.eu/social/BlobServlet?docId=22386&langId=en>. GOTOT stands for Grensoverschrijdende Tewerkstelling – Occupation Transfrontalière (cross-border employment) (Smals, 2024).

152 Moreover, the ECOSOC teams within the inspectorate of the NSSO play a crucial role in detecting labour exploitation. For an overview of statistics on the investigations carried out by the ECOSOC teams in 2022 see https://www.myria.be/files/2023_MYRIA_Jaarljkis_evaluatieverlag_Mensenhandel_en_mensensmokkel-3.4.pdf. This report shows that the ECOSOC teams also regularly encounter labour exploitation of posted workers.

Furthermore, the Social Information and Investigation Service (SIIS) (mainly by the ‘district cells’ (*arrondissementcellen*)), the regional inspection services,¹⁵³ and the Federal Police (mainly by the MOTEM teams (*Multidisciplinair Onderzoeksteam - Enquête Multidisciplinaire*)¹⁵⁴) play an important role in the fight against ‘social dumping’. Several of these enforcement bodies are discussed in more detail below:

- **The inspectorate of the NSSO**

Enforcement of the social security aspects of the posting of workers is mainly taken up by the NSSO inspectorate. The NSSO has several specialised teams. The GOT team mainly focuses on the incoming posted workers. In addition, the ECOSOC team may also play an important role, as the main task of an ECOSOC team is two-sided and consists of investigating the illegal employment of foreign workers and detecting situations of human trafficking, and especially labour exploitation.

- **The Directorate-General for Supervision of Social Laws**

The general mission of the Supervision of Social Laws is to ensure compliance with the implementation of policies on collective and individual labour relations, by playing a consultative, preventive, and repressive role.¹⁵⁵ Compliance with the labour law aspects of posting as defined in the Posting of Workers Directive is mainly monitored by the Directorate-General for Supervision of Social Laws.¹⁵⁶ The Supervision of Social Laws consists of different departments of which ‘international affairs’ is one. This department itself consists of two teams: one on posted workers and one on transport.

- Team Posted Workers

In each regional directorate, a team oversees investigations that require a special approach given their complexity, size and/or employment in an international context. The first of these is the issue of correct compliance with wage and working conditions by foreign companies working with posted workers in Belgium.

- Team Transport

Two ‘Transport’ teams coordinate inspections regarding compliance with pay and working conditions in the transport and logistics sector. This in both a national and international context. This monitoring is done in cooperation with the Directorate of Transport of the FPS Mobility and Transport, the police and other enforcement bodies.

- **The inspectorate of the NISSE**

The Fair Competition Directorate of the NISSE is in charge of a series of control and verification missions both in terms of the affiliation of the self-employed (and companies) and in terms of their rights.¹⁵⁷ It collects and provides the operational departments with the data and evidence they need to make their decisions. To this end, it has inspectors and social auditors, as well as administrative support staff. In addition to tasks which are purely linked to the social status of the self-employed, the ECL has several other missions related to the fight against social fraud and social dumping. These assignments are situated around four axes: the fight against sham statuses, the fight against fictitious affiliations, the fight against undeclared work, and the fight against social dumping.

¹⁵³ Enforcement of the rules relating to the authorisation of foreign temporary employment agencies and of the rules to work in Belgium as TCN.

¹⁵⁴ The Federal Police joins forces with the labour inspectorates to combat social dumping, undeclared work, bogus self-employment, and organised bankruptcies by criminal gangs. These joint investigation teams (MOTEM) tackle social fraud in the same way in all judicial districts. An investigation plan is drawn up at the opening of each case, in consultation with the competent inspection services. The aim of this initiative is not to tackle isolated cases of social fraud, but to combat organised social fraud, with a view to recovering illegally acquired property. In 2023, there were 17 MOTEMs concerning among others VAT carousels, domicile fraud, false invoicing, etc. (See <https://www.police.be/annualreport-federalpolice/en/>). In the period 2018-2021, 282 social fraud files were started and € 62 million was confiscated (see <https://www.politie.be/5998/nl/pers/aanpak-van-sociale-fraude-de-motem>).

¹⁵⁵ See <https://werk.belgie.be/nl/over-de-fod/structuur-van-de-fod/arbeidsinspectie-ad-toezicht-op-de-sociale-wetten>

¹⁵⁶ Compliance with OSH conditions is enforced by the Directorate-General Control on well-being at work.

¹⁵⁷ See <https://www.siod.belgie.be/nl/siod/inspectiediensten/directie-eerlijke-concurrentie-rsvz>

The social inspectors in Belgium have a broad margin of discretion. They have the competency to provide information and advice, to issue warnings, to grant a period of time to allow regularisation, and to draw up an official report (*Pro Justitia*). Infringements may lead to judicial prosecution or administrative fines.¹⁵⁸ The labour auditor/prosecutor (*Auditeur du travail/ Arbeidsauditeur*) investigates and prosecutes criminal offences in matters related to social and labour law.¹⁵⁹ The ‘service administrative fines’ (*Directie van de administratieve geldboeten/ la Direction des amendes administratives*) of the Belgian FPS Employment, Labour and Social Dialogue is responsible for the administrative fines.

3.2 Number of social inspectors involved in the enforcement of the posting rules

Before analysing the figures, it is important to understand what is understood under ‘inspector’. It appears that the definition/scope of this concept is defined by the different bodies themselves (SIIS, personal communication, 29 April 2024). Therefore, it does not only include social inspectors, but can potentially also include administrative staff. In this section, the notion of ‘FTEi’ is used. This notion corresponds to the part of an FTE which is available for the core task-related activities (i.e., investigations and audits, and the administrative tasks necessary to complete these investigations successfully).¹⁶⁰

In total in 2023, there were 80.7 FTEi involved in the enforcement of the posting rules (*Table 21*). Most FTEi deployed in the enforcement of the posting rules are employed at the NSSO (34.6 FTEi or 43%) and the Directorate-General for Supervision of Social Laws (34.9 FTEi or 43%). The number of FTEi deployed by the NISSE in the enforcement of posting rules is significantly lower (11.2 FTEi or 14%).

Seeing that in total there were 568 FTEi employed by the three social inspection services concerned (NSSO, NISSE, and the Directorate-General for Supervision of Social Laws), roughly 14% of their FTEi in 2023 were involved in the enforcement of the posting rules. Nevertheless, clear differences occur between the social inspectorates involved. For example, the Directorate-General for Supervision of Social Laws deploys almost one in five of their FTEi in the enforcement of the posting rules.

Table 21. Number of FTEi involved in the enforcement of the posting rules, 2023

Social inspection service	FTEi involved in the enforcement of the posting rules (A)	Share in total FTEi involved in the enforcement of the posting rules	Total number of FTEi (B)	Share in total (A/B)
NSSO	34.6	43%	305.8	11.3%
NISSE	11.2	14%	82.5	13.6%
Supervision of Social Laws	34.9	43%	179.7	19.4%
Total	80.7	100%	568	14.2%

* FTEi stands for the part of an FTE which is available for the core task-related activities, for instance excluding time spent on following training courses.

Source SIIS (personal communication, 29 April 2024), SIIS (2024a)

The figures show a strong increase in the number of FTEi involved in the enforcement of the posting rules (from 69 FTEi in 2021 to 80 FTEi in 2023). However, this increase is mainly driven by the inclusion of the FTEi of the ‘Transport Team’ of the Directorate-General for Supervision of Social Laws in the reported data, which was previously not the case. This also shows that some caution is needed when interpreting the evolution of the number of FTEi involved in the enforcement of the posting rules.

¹⁵⁸ There are 4 sanction levels in the [Belgian Social Criminal Code](#): Level 1: an administrative fine of € 80 to € 800; Level 2: a criminal fine of € 400 to € 4 000 or an administrative fine of € 200 to € 2 000; Level 3: a criminal fine of € 800 to € 8 000 or an administrative fine of € 400 to € 4 000; Level 4: a criminal fine of € 4 800 to € 48 000 or an administrative fine of € 2 400 to € 24 000 and/or imprisonment from 6 months to 3 years.

¹⁵⁹ <https://www.om-mp.be/nl/uw-om/arbeidsauditoraten>

¹⁶⁰ An FTEi is determined by reducing the FTE by the following types of non-core task-related activities, insofar as these types of non-core task-related activities are relevant to the organization in question: * percentage of FTE spent on services outside one’s own department; * percentage of the FTE spent on following training courses; * percentage of FTE spent on national projects (e.g., coordination, project work, cooperation); * percentage of FTE spent on contributing to knowledge management; * percentage of the FTE spent on providing training or contributing to other forms of knowledge sharing; * percentage of FTE spent on administrative tasks that are not directly linked to the core tasks (e.g., evaluations); * percentage of FTE spent on coordination in your own service. The remaining percentage is that part of the FTE that is available for carrying out core task-related activities, i.e., the FTEi (SIIS, personal communication, 29 April 2024).

Furthermore, in the preface to the 2023-2024 action plan in the fight against social fraud of SISS (2023), it is stated that “Central to this action plan is the strengthening of the inspectorates [...]. The fight against social fraud and social dumping can only be won if sufficient resources are made available. That is why we have committed ourselves to providing the necessary strengthening of the social inspection services. Specifically, 168 inspectors are being recruited to the various social inspection services.” The question of course arises how many of these inspectors will be additionally deployed to enforce the posting rules.

It is interesting to have a look at the number of incoming posted persons per FTEi involved in the enforcement of the posting rules. In 2022, 260 638 posted persons were registered in Limosa. The figure for 2022 has been taken into account as in 2023 postings in the transport sector are no longer visible in the Limosa data. At that time, 79.7 FTEi had been deployed by the NSSO, NISSE, and the Directorate-General for Supervision of Social Laws in the enforcement of the posting roles. This means that there was one FTEi for 3 270 reported incoming posted persons in Limosa. Hence, the benchmark of one social inspector per 10 000 workers, as defined by the ILO, is reached. However, the question remains whether this is a useful benchmark for determining the number of FTEi needed in the enforcement of posting rules.¹⁶¹

3.3 Number of inspections related to the enforcement of the posting rules

Two different concepts are distinguished by SIIS when collecting inspection statistics, namely a ‘control’ and an ‘investigation’ (SIIS, personal communication, 29 April 2024). An investigation/inspection is an assessment by one or more actor(s) (i.e., a social inspector or administrative staff) within one service about the compliant or non-compliant behaviour of the subject of the investigation (i.e., an employer, an employee, a self-employed person). An investigation may be conducted with regard to several subjects (matters) and may give rise to one or more results. Within one investigation, one or more controls may be carried out, which may take different forms. For instance, an on-site control is an action that a social inspector may undertake as part of an investigation, which involves the social inspector going to the premises of the actor concerned. This section reports the number of investigations regarding compliance with the posting rules.

In 2023, 7 759 investigations took place regarding compliance with the posting rules (Table 22). In addition, 248 investigations focused specifically on *Brazilian filières*, and 672 investigations on the posting of TCNs.

Table 22. Number of investigations related to the enforcement of the posting rules, 2023

Social inspection service	Total number of investigations regarding compliance with the posting rules	Of which on Brazilian filières ^a	Of which on posting of TCNs
NSSO	2 481	117	191
NISSE	653 ^b	13	71
Supervision of Social Laws	4 625	118 ^c	410 ^d
Total	7 759	248	672

^a The term ‘Brazilian filière’ is used to depict professional money laundering networks operating on an international scale. Initially, these networks focused mainly on social fraud in the Brazilian-Portuguese milieu, hence their name. In the meantime, the networks have evolved and although the front men – managers of the companies – often still have Portuguese or Brazilian nationality, the activities have long since gone beyond money laundering from undeclared work in the construction sector (CTIF-CFI, 2021: 14).

^b During these 653 inspections, 1 651 persons were controlled by NISSE.

^c On top of these 118 inspections on Brazilian filières by the teams Posted Workers and Transport of DG Supervision of Social Laws, an additional 39 inspections were carried out by regional directorates of DG Supervision of Social Laws in which Brazilians were involved.

^d On top of these 410 inspections on posting of TCNs by the teams Posted Workers and Transport of Supervision of Social Laws, an additional 639 inspections were carried out by regional directorates of Supervision of Social Laws in which TCNs were involved.

Source SIIS (2024b)

¹⁶¹ “The determination of the concrete number of inspectors needed by each inspectorate will be determined by criteria specific to the national context, including: the number and nature of the functions assigned to the inspection system; the number, nature, size and situation of the workplaces liable to inspection; the number of workers; the number and complexity of legal provisions to be enforced; the material and financial resources available to the inspectorate; and the practical conditions under which visits of inspection must be carried out in order to be effective. A ratio exclusively based on the number of labour inspectors per thousands of workers does not take into consideration all the elements identified by Article 10 of Convention No. 81 and should not be used as a benchmark” (ILO, 2022: 4.1.8).

As already shown in *Table 21* in *section 3.2*, the number of FTEi deployed in the enforcement of the posting rules by the Directorate-General for Supervision of Social Laws and NSSO is almost identical (almost 35 FTEi). However, this is certainly not the case for the number of investigations regarding compliance with the posting rules. Indeed, the Directorate-General for Supervision of Social Laws carried out 6 out of 10 investigations related to the enforcement of the posting rules (*Table 23*). The NSSO accounted for about 3 in 10 investigations and, finally, the NISSE for less than 1 in 10 investigations.

In 2023, a total of 60 311 investigations were conducted by NSSO, NISSE, and the Directorate-General for Supervision of Social Laws. This means that around 13% of all investigations are aimed at combating infringements to the posting rules, although once again strong differences occur between the social inspection services involved. For instance, more than one in four of the investigations carried out by the Directorate-General for Supervision of Social Laws are aimed at the enforcement of the posting rules (26.5%). For the NSSO and NISSE, it is ‘only’ 6.6% and 12.6% of their investigations respectively.

Table 23. Share of investigations regarding compliance with the posting rules in total number of investigations, 2023

Social inspection service	Number of investigations regarding compliance with the posting rules (A)	% share in the number of investigations regarding compliance with the posting rules	Total number of investigations (B)	Share (A/B)
NSSO	2 481	32.0%	37 651	6.6%
NISSE	653	8.4%	5 195	12.6%
Supervision of Social Laws	4 625	59.6%	17 465	26.5%
Total	7 759	100%	60 311	12.9%

* FTEi stands for the part of an FTE which is available for the core task-related activities, for instance excluding time spent on following training courses.

Source SIIS (personal communication, 29 April 2024), SIIS (2024a)

3.4 Infringements found

When an investigation is carried out, infringements could be found. SIIS defines a ‘positive investigation’ as an investigation whose outcome consists, in part or in whole, of (proposals for) one or more subsequent steps, as a result of having established one or more breaches during one or more positive controls that took place within the framework of this investigation.

When identifying¹⁶² and quantifying infringements, a distinction could be made between the labour law and social security law aspects of posting. Regarding the application of the Posting of Workers Directive, infringements such as bogus self-employment and failure to respect the terms and conditions of employment may occur (sometimes even leading to labour exploitation). Infringements related to the application of the Posting of Workers Directive may also include not respecting ‘administrative obligations’¹⁶³ such as not reporting the activities in the prior declaration tools of the receiving Member State (for Belgium this concerns the Limosa declaration). Regarding the application of the Coordination Regulations (i.e., Regulations 883/2004 and 987/2009), infringements such as the non-compliance with the posting conditions¹⁶⁴ as well as paying the correct level of social security contributions are the main concerns.

Infringements may, of course, also apply to other branches of law, such as migration law. Think for instance about the posting of TCNs from one Member State to another without these persons having a

¹⁶² For an overview, see for instance the Annual Report published by the Directorate-General for Supervision of Social Law and the Strategic Plan for 2022-2025 of SIIS (see <https://www.sirs.belgique.be/en/node/201>).

¹⁶³ Even though they are key to an effective and efficient enforcement.

¹⁶⁴ There are several conditions, to be fulfilled cumulatively, for the proper use of posting under the Coordination Regulations: 1) the employer must ‘normally carry’ out its activities in the Member State of establishment; 2) there is a direct relationship between the posting employer and the posted worker; 3) the posting is of a temporary nature; 4) the posted worker is not being replaced. All posting conditions can individually disrupt the labour market of the receiving Member State if they are not respected. For instance, no substantial activities in the Member State of establishment by setting up a ‘letterbox company’ (see also BTB (2021)).

valid residence or work permit. Setting up a letterbox company is another example where several aspects of the law may be violated. Finally, infringements related to intra-EU posting might in some cases be linked to criminal activities.^{165,166}

Table 24 shows that out of the 7 759 investigations related to the compliance of the posting rules, 3 429 were positive investigations in which an infringement was found, or an infringement rate of 44.2%. For the NSSO the infringement rate (63.3%) is significantly higher compared to the other two social inspection services. The difference in infringement rates between the social inspection services can (mainly) be explained by differences in the selection of their investigations. For instance, the NSSO will only start an investigation when clear elements of infringements are visible.

For the two specific topics of Brazilian filières (77.8%) and TCNs (59.1%) the infringement rates are even higher than in general (44.2%).

Table 24. Number of 'positive' investigations, 2023

		NSSO	NISSE	Supervision of Social Laws	Total
Total	Investigations (A)	2 481	653	4 625	7 759
	Positive investigations (B)	1 571	171	1 687	3 429
	Share positive investigations (B/A)	63.3%	26.2%	36.5%	44.2%
Of which Brazilian filières^a	Investigations (A)	117	13	118	248
	Positive investigations (B)	107	0	86 ^b	193
	Share positive investigations (B/A)	91.5%	0%	72.9%	77.8%
Of which TCNs	Investigations (A)	191	71	410	672
	Positive investigations (B)	144	6	247 ^c	397
	Share positive investigations (B/A)	75.4%	8.5%	60.2%	59.1%

^a The term 'Brazilian filière' is used to depict professional money laundering networks operating on an international scale. Initially, these networks focused mainly on social fraud in the Brazilian-Portuguese milieu, hence their name. In the meantime, the networks have evolved and although the front men – managers of the companies – often still have Portuguese or Brazilian nationality, the activities have long since gone beyond laundering money from undeclared work in the construction sector (CTIF-CFI, 2021: 14).

^b On top of the 86 positive inspections regarding Brazilian filières by DG Supervision of Social Laws, 26 positive inspections were carried out by regional directorates.

^c On top of the 247 positive inspections regarding TCNs by DG Supervision of Social Laws, 390 positive inspections were carried out by regional directorates.

Source SHIS (2024b)

The most common infringements found differ depending on the enforcement body (Table 25) and depending on the specific topic (Brazilian filières and TCNs). For the NSSO, most infringements are found concerning the electronic attendance registration (Checkinetwork), Regulation (EC) 883/2004, and notifications in Limosa. For the NISSE, it primarily concerns unlawful posting/simultaneous employment, Limosa, and undeclared work, and for the Directorate-General for Supervision of Social Laws the most common infringements are found in the area of not having a residence or work permit, Dimona, and the payment of wages.

¹⁶⁵ See for example <https://www.europol.europa.eu/newsroom/news/employment-fraud-in-construction-sector-twelve-arrested-in-belgium-and-italy> "The criminal organisation, managed by a single Italian family, had several companies in Italy, Romania, and Slovakia, which recruited workers locally. The workers were then sent to in the construction sectors in Western European countries, mainly in Belgium and Luxembourg. In Belgium, about 20 local subcontractors then hired the workers. The working conditions were often poor, and the working legal conditions were not met including limit of working hours per day/week, minimum salary, and annual leave. The investigation uncovered that the hiring companies had no activity in the countries they were based in and the employees they hired had never actually worked for the original companies. The fraud is estimated at € 20 million without the possible VAT losses."

¹⁶⁶ See for example <https://www.lecho.be/entreprises/construction/un-important-reseau-de-dumping-social-demantele-en-belgique/10340052.html>

Table 25. Most common type of infringements found, 2023

	Type of infringement
Total	
NSSO	Electronic attendance registration (Checkinetwork), Regulation (EC) 883/2004, Limosa
NISSE	Unlawful posting/simultaneous employment (for investigations social dumping), Limosa (for ePVs – police reports)
Supervision of Social Laws	Dimona*, preparation of individual account, payment wages
Brazilian filières**	
NSSO	Electronic attendance registration (Checkinetwork), Regulation (EC) 883/2004, work notification
NISSE	None of the inspections were positive inspections. The meetings in the context of the social dumping program have shown that the Brazilian filières have so far constituted an exclusive problem for employees.
Supervision of Social Laws	No residence or work permit, Dimona, payment wages
TCNs	
NSSO	Electronic attendance registration (Checkinetwork), Regulation (EC) 883/2004, Limosa
NISSE	Undeclared work and spontaneous affiliation
Supervision of Social Laws	No residence or work permit, Dimona, payment wages

* Dimona (Déclaration Immédiate/Onmiddellijke Aangifte) is the electronic message by which the employer declares every entry and exit of an employee to the NSSO.

** The term 'Brazilian filière' is used to depict professional money laundering networks operating on an international scale. Initially, these networks focused mainly on social fraud in the Brazilian-Portuguese milieu, hence their name. In the meantime, the networks have evolved and although the front men – managers of the companies – often still have Portuguese or Brazilian nationality, the activities have long since gone beyond money laundering from undeclared work in the construction sector (CTIF-CFI, 2021: 14).

Source SIIS (2024b)

It is possible to have a look at the evolution of the infringement rate and compare it to the infringement rate of inspections which focus on national social fraud. In 2023, 42.1% of inspections regarding national social fraud found an infringement compared to 44.2% of inspections regarding cross-border social fraud ('social dumping'). However, before 2022 (especially in 2020 and 2021) the share of positive inspections in national social fraud was remarkably lower than the infringement rate for cross-border social fraud. For instance, in 2021, there was a difference of 24 percentage points (41.7% for national social fraud versus 65.7% for cross-border social fraud).¹⁶⁷

3.4.1 Focus on infringements concerning Portable Documents A1

Specific attention can be paid to the PD A1, as enforcement in this regard can happen before issuing a PD A1, namely when checking the posting conditions, and after issuing a PD A1, by either requesting a withdrawal to the competent Member State or withdrawing a PD A1 as competent Member State.

Regarding the number of PDs A1 which were withdrawn after they were issued, it is reported that NISSE started the dialogue and conciliation procedure to contest 351 PDs A1 in 2023 (SIIS, 2024b). Furthermore, the NSSO reported 1 200 fictitious PDs A1 in 2023.

To advance the dialogue and conciliation procedure concerning the validity of the PD A1, the Belgian FPS Social Security initiated the OSIRIS platform in June 2015, in partnership with the other competent Belgian institutions (Morsa, 2015, 2019). This project resulted from Decision No A1 of 12 June 2009¹⁶⁸ which lays down the rules for the application of a dialogue and conciliation procedure concerning the validity

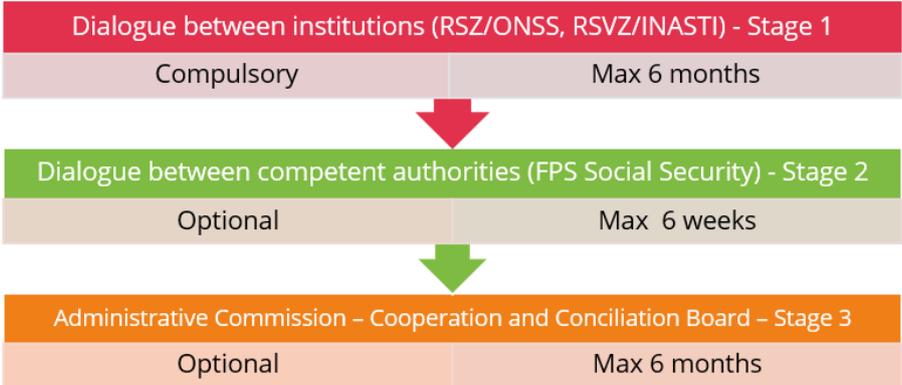
¹⁶⁷ Although more recent data in this regard are not available, the previous POSTING.STAT project showed that inspections in general and inspections with an infringement are highly focussed on certain sectors (De Wispelaere et al., 2022). For instance, in 2020, 57% of all inspections of the NSSO and the NISSE took place in the construction sector, which led to the fact that 50% of inspections with an infringement could be found in the construction sector as well. In 2019, even 68% of inspections took place in the construction sector and 76% of inspections with an infringement occurred in this sector (De Wispelaere et al., 2022; Parliamentary question from Hans Verreyt to Pierre-Yves Dermagne (550001501); Data received from SIIS).

¹⁶⁸ [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32010D0424\(01\)&from=de](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32010D0424(01)&from=de)

of documents, the determination of the applicable legislation and the provision of benefits under Regulation (EC) No 883/2004. The aim of OSIRIS is to systematise the use of the dialogue and conciliation procedure in the handling of disputes relating to the validity of PDs A1.¹⁶⁹

There are three phases defined in the dialogue and conciliation procedure (Figure 22). In the first stage, in the event of doubts concerning the validity of the PD A1 issued by the competent institution of another Member State, or in the event of a dispute relating to the (provisional) determination of the applicable law, the inspection services send a reasoned request to the competent institution(s) in the other Member State concerned, asking them to provide the necessary clarifications concerning its decision and, if necessary, to withdraw the PD A1. If the institutions cannot reach an agreement during the first stage of the dialogue procedure, the institutions notify their competent authorities. They each appoint a central contact person. These contact persons shall endeavour to seek an agreement on the matter. If no agreement is reached at the end of the second phase of the dialogue, the parties concerned may go to the Administrative Commission in a third stage, with the possibility of a referral to a Conciliation Board if both parties in the dispute and the Administrative Commission agree.

Figure 22. Dialogue and conciliation procedure: ‘A1 procedure’



Source Belgian Federal Public Service Social Security (2024)

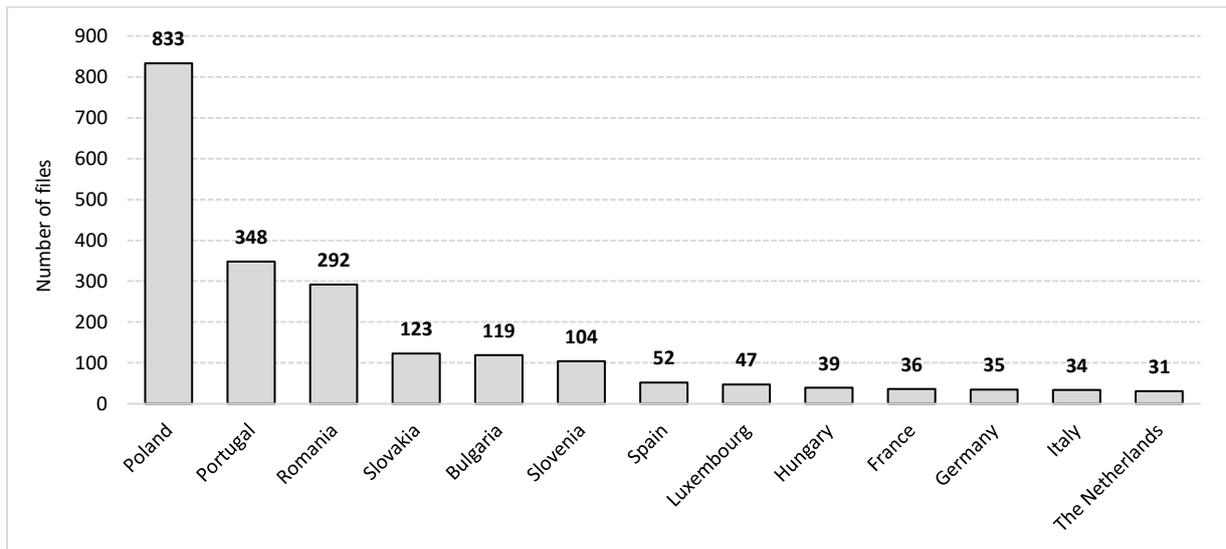
The competent Belgian institutions and authorities have been using the dialogue and conciliation procedure quite extensively since mid-2015. From the start of OSIRIS in June 2015 until 1 July 2024, 2 599 files have been processed through OSIRIS. Most of these files were already settled in the first phase of the dialogue and conciliation procedure (2 139 files or 82.3% of all files), a minority in the second phase (453 files or 17.4%) and almost no files were settled in the third phase by the Administrative Commission (7 files or 0.3%) (Belgian Federal Public Service Social Security, 2024). However, the total number of PDs A1 withdrawn over the same period at the request of Belgium is higher than the total number of cases handled in OSIRIS. This shows that not all queries are registered in the OSIRIS platform. Most of these concern queries for the withdrawal of a PD A1 based on identified errors.

Most files processed through OSIRIS concern PDs A1 which were issued by Poland (833 files or 32% of total files), followed at a distance by Portugal and Romania (Figure 23). Furthermore, more than 100 files had Bulgaria, Slovakia, and Slovenia as a sending Member State.

Since 1 September 2023, data are available on the type of request, the nationality, and the sector concerned in the files processed through OSIRIS, as since then ‘OSIRIS 2.0’ is operational (Belgian Federal Public Service Social Security, 2024). This reveals that of all files opened since 1 September 2023 (753 files), the majority concern an inquiry for information (537 files or 71%). A quarter relate to an enquiry with a view to reviewing the applicable legislation with a withdrawal of a PD A1 (190 files or 25%). Finally, a minority relate to an enquiry with a view to reviewing the applicable legislation without a withdrawal of a PD A1 (6 files or 1%), or other types of enquiries (20 files or 3%).

¹⁶⁹ ELA (2024), *Cross-border social fraud and abuse in social security: the Osiris Platform Belgium*. Available at: https://www.ela.europa.eu/sites/default/files/2024-04/BE_good-practice_osiris-platform.pdf

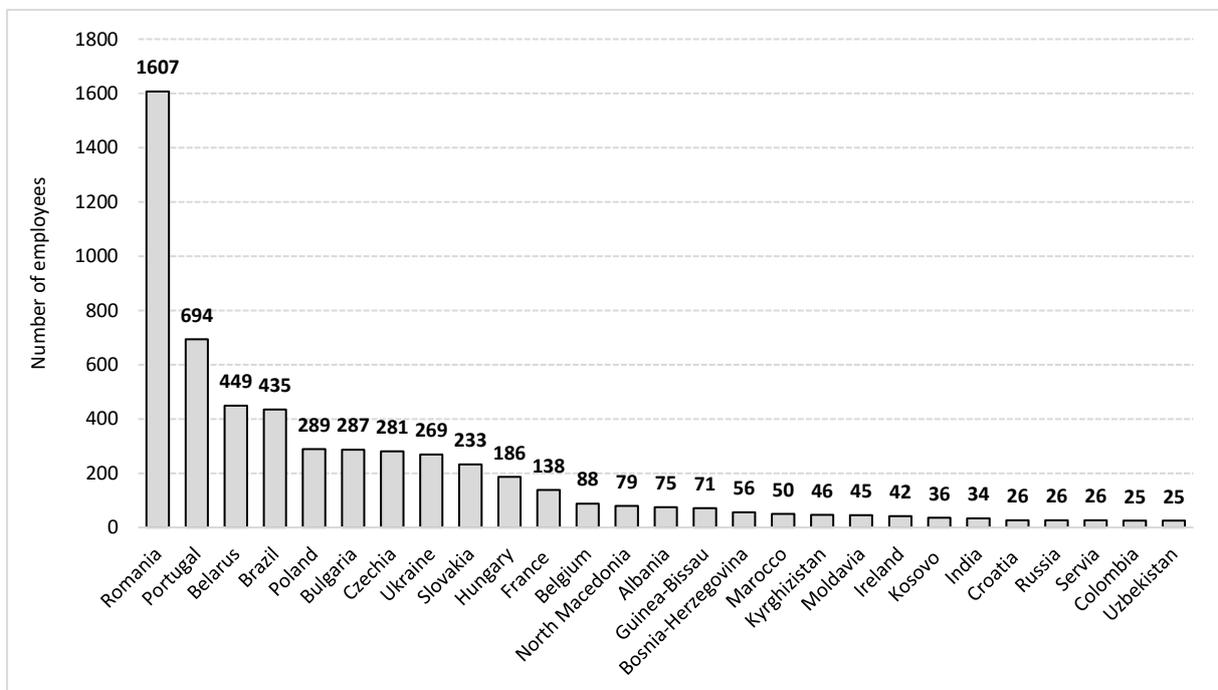
Figure 23. Number of files processed via the OSIRIS platform between June 2015 and 1 July 2024, main sending Member States involved



Source Belgian Federal Public Service Social Security (2024)

Data on the nationality of the employees involved, available since 1 September 2023, reveal interesting findings. The Romanian nationality clearly predominates among employees who have a file under the dialogue and conciliation procedure (1 607 employees or 29% of the total number of employees) (Figure 24). They are followed by the Portuguese (694 employees or 12%). The Belarussians and Brazilians, on almost the same level (both 8%), complete the top four nationalities. This is especially remarkable when comparing it to the total number of files by Member State of origin (Figure 23), as there especially Poland stands out, while ‘only’ 5% of employees involved are Polish nationals.

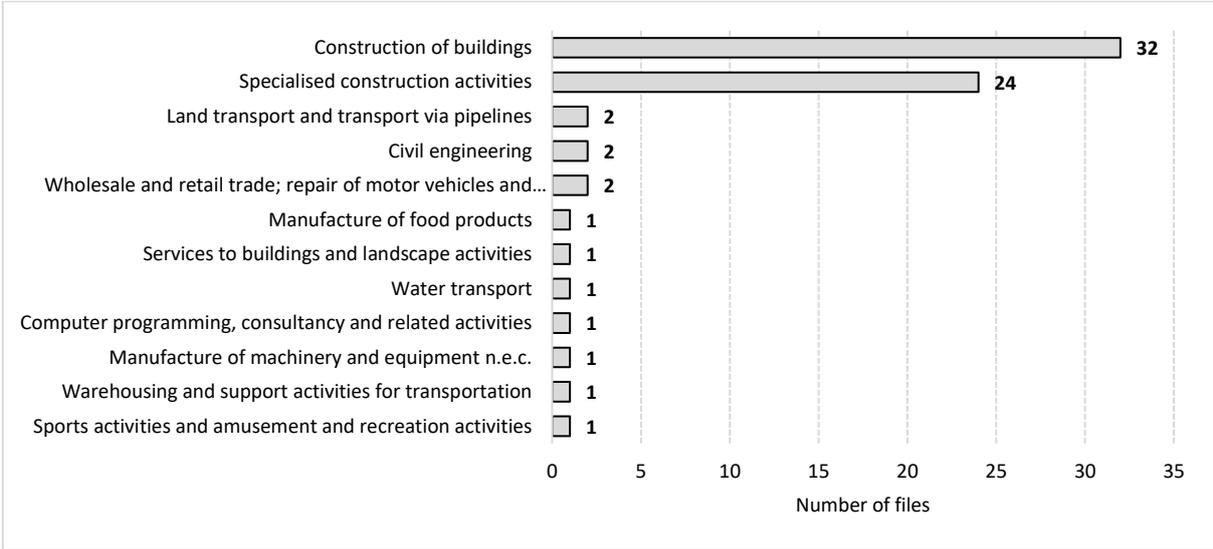
Figure 24. Nationality of the workers in the files processed via the OSIRIS platform, since September 2023



Source Belgian Federal Public Service Social Security (2024)

Concerning the sector of activity, the construction sector is responsible for the large majority of files which are opened by the NSSO and the NISSE. More specifically, 32 files or 46% of files opened since 1 September 2023 concerned the construction of buildings and 24 files or 35% of files concerned specialised construction activities (Figure 25).

Figure 25. Sector of activity in the files processed via the OSIRIS platform, since 1 September 2023

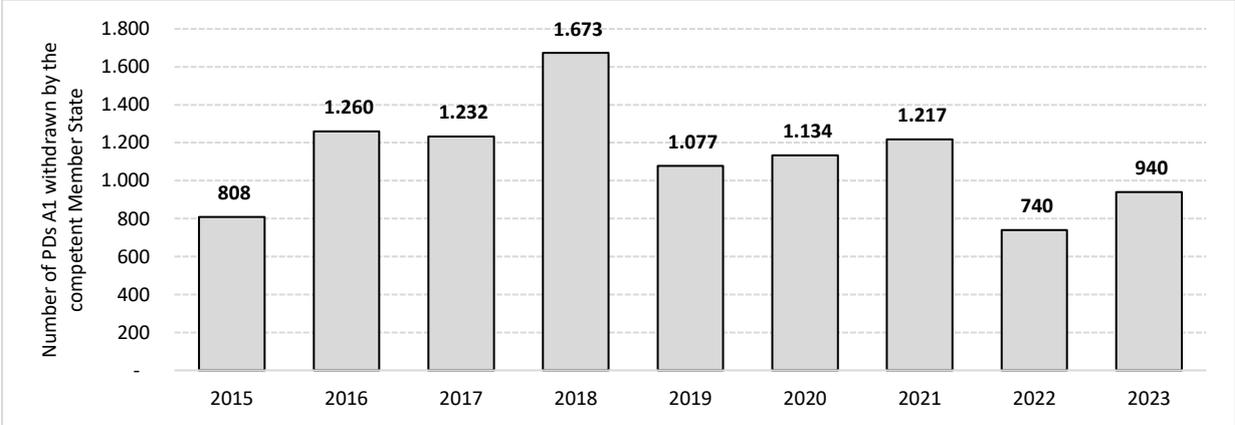


Source Belgian Federal Public Service Social Security (2024)

Another new variable, which has only become available since the second quarter of 2024, is the reason for the request, the legal motive. It appears that the lack of substantial activities of the employer in the sending country is the most common legal motive, followed by no direct relationship between employer and employee, and not respecting the prior submission of one month.

Finally, data on the number of PDs A1 withdrawn by the competent Member States applicable to activities in Belgium show that from 2016 to 2021, more than 1 000 PDs A1 were annually withdrawn by the competent institutions in another Member State which apply to activities in Belgium (Figure 26). However, in 2022 it concerned 740 PDs A1 and in 2023 940 PDs A1. The peak was reached in 2018 with 1 673 withdrawn PDs A1. In total, this concerns between 0.5% and 1% of the total number of PDs A1 issued to workers posted to Belgium. Regarding the 940 withdrawn PDs A1 in 2023, information is available on the nationality of TCNs in these files, from September 2023 onwards. A total of 138 TCNs (62 of which are Brazilians) are involved in files regarding a request for information or a request for review.

Figure 26. Number of PDs A1 withdrawn applicable to activities in Belgium, 2015 – 2023



Source Belgian Federal Public Service Social Security (2024)

3.5 Sanctions

After an infringement is found, sanctions follow. A uniform definition of the concept ‘sanction’ is not available, as this can take on many different forms. Unfortunately, only the NSSO is able to provide data on the type of consequences given in a positive investigation (SIIS, 2024b). The Directorate-General for Supervision of Social Laws reports that their database needs to be adjusted to deliver such data, and for the NISSE the sanctions given concern proposals for regularisation following the withdrawal of a PD A1.

For the 1 571 positive investigations reported by the NSSO (see *Table 24* in *section 3.4*), 2 007 sanctions are given (*Table 26*). This is possible as one positive investigation can lead to multiple consequences. The majority of these sanctions concern the drafting of an official report (*Pro Justitia*), namely almost 500. Furthermore, more than 300 consequences each concern a regularisation, a penalty report, and a warning. Regarding the specific topic of Brazilian filières, the NSSO gave 107 sanctions for the 107 positive investigations, mostly concerning a penalty report (37) and the drafting of an official report (*Pro Justitia*) (20). For the 144 positive investigations concerning TCNs, 144 consequences followed. It mostly concerned the drafting of an official report (*Pro Justitia*) (40) and the provision of information and advice (25).

Table 26. Type of consequences for a positive investigation, NSSO, 2023

Consequence	Number
Pro Justitia drafted	498
Penalty report	314
Warning	313
Regularisation	311
Provide information and advice	272
Pro Justitia/sentence report by other service	118
Transfer to an external service	86
Transfer to another directorate	74
Follow up criminal record	21
Total	2 007

* These data only concern the sanctions given by the NSSO, not the NISSE nor the Directorate-General for Supervision of Social Laws. In total, the NSSO accounted for 45.8% of total investigations with an infringement in 2023 (see *Table 24* in *section 3.4*; 1 571 positive investigations by the NSSO on a total of 3 429 positive investigations by all enforcement bodies). Source SIIS (2024b)

3.6 Recovery

A final step in the process of enforcement of the posting rules concerns recovery. This refers to both the recovery of unpaid social security contributions, and the rectifications of rights/duties of citizens. For the NSSO, the recovery of unpaid contributions is defined as the amounts of social security contributions for which a PD A1 withdrawal request has been submitted (SIIS, personal communication, 29 April 2024). The NISSE regards recovery of unpaid social security contributions as social security contributions for which a PD A1 withdrawal request has been submitted. For both the NSSO and the NISSE, these amounts are *estimated amounts* of social security contributions as the withdrawal of a PD A1 may take some time. the Directorate-General for Supervision of Social Laws states that the rectification of rights/duties of citizens includes regularisations effectively imposed on foreign companies (all wages, allowances, and holiday pay) falling under the units ‘Posted Workers’ and ‘Transport’. This also includes the *Pro Justitia* amounts.

The evolution of the recovery of unpaid social security contributions and the rectification of rights is shown in *Table 27*. In 2023, around € 7.4 million was reported for recovery of unpaid social security contributions (including additional imposed social security contributions). The rectification of rights/duties of citizens because of the non-compliance with the minimum wages and conditions amounted to € 14.8 million in the same year. However, it is important to stress that these amounts concern the *claimed* amounts. These amounts are mentioned at the end of an investigation when the actual recovery still needs

to take place. Hence, the actual share of recovered amounts in the total amount claimed is not known, although it is assumed that the recovery rate is on the low side in reality. This indicator (share of recovered amounts) was part of the ambitious KPI-list (key performance indicators) of SIIS but has not yet been realised (SIIS, personal communication, 29 April 2024). Although this is crucial information to have, it remains a black box.

When comparing the amount of claims related to unpaid social security contributions in a cross-border context to the total amount claimed of unduly paid social contributions/benefits by the Belgian social inspection services, the share amounts to some 6% in 2023 (SIIS, 2024a).¹⁷⁰ This share was 15% in 2022, mainly due a higher amount linked to ‘social dumping’ and a lower total amount of claims.

Table 27. Amount claimed/regulated in case of infringements to the posting rules, in €, 2018 – 2023

	2018	2019	2020	2021	2022	2023
Claims related to unpaid social security contributions	21 779 601	35 592 132	8 396 832	15 315 602	31 986 644	7 433 924
Additional amount of wages and allowances paid to employees involved in cases of ‘social dumping’ (regularisation)	16 993 980	21 769 873	19 799 741	20 259 060	18 525 752	14 793 932
Total	38 773 581	57 362 005	28 196 573	35 574 662	50 512 396	22 227 856

Source De Wispelaere et al. (2022), SIIS (2024a)

¹⁷⁰ We compare € 22.2 million of claims related to ‘social dumping’ to the total amount of € 385.5 million unduly paid social contributions/benefits which were claimed by the Belgian social inspection services in 2023 (SIIS, 2024a).

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