



# **Mutual Learning Programme**

DG Employment, Social Affairs and Inclusion

**Thematic Paper**

**Towards a multi-disciplinary way of combating (cross-border) undeclared work: some comparative and European reflections**

**Peer Review on "Joint operation groups between public agencies- an effective tool to prevent and tackle undeclared work"**

**Oslo (Norway), 25-26 September 2017.**



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## **Executive Summary**

The fight against undeclared work is a burdensome task that requires a global approach with the involvement of all actors, all contributing their experiences and competences. A multi-disciplinary approach with the support of the different inspections, administrative, judicial or police services is the only option for a successful way to tackle these paramount issues. As this collaboration needs an exchange of information and data, the use of e-tools, databases and communication tools are indispensable, at a national as well as international level. This exchange has to take place within an appropriate legal framework, fully respecting the protection of privacy. In this respect, several pilot projects could be set-up on a regional level.

## **1 Introduction**

Work-related crimes, in particular undeclared work, is a topical issue at both national and at European level. But it is not a clear-cut concept and difficult to define. It can be divided into different categories, along different axes. It is uniform concept that covers different forms as benefits fraud or evading the payment of the social security contributions through the set-up of constructions,- although often being a combination of both- it can be organized or not, and it can be a purely national phenomenon or have a cross-border element. Some forms will be easier to detect, while others will be far more difficult. Undeclared work is often extremely difficult to detect as the activity is by definition not declared to any social security institution, not registered in any social database and no taxes or contributions are paid. In addition, work-related crimes and undeclared-work is a kind of container concept that cannot be divided into different parts along the competences of the different inspection services as it often implies different infractions and involve violations of different categories of legislation. Social security and labour law infractions often go hand in hand and are two sides of the same coin, just as undeclared work is generally not only an infraction of social legislation but also of fiscal regulations. National authorities have therefore the task to compete against difficult to eliminate, disturbing and disrupting phenomena. In order to be successful, there is a need for multi-disciplinary cooperation and the exchange of information. This paper sketches some of the problems inspection services encounter when fighting undeclared work on a national and at European level. It also covers how Europe is coping with these problems and formulates some reflections for action and solutions.

## **2 Setting the scene**

The different institutions and organisations that are competent for the fight against undeclared work often form a patchwork. While in some countries a central organisation is responsible for this task, in other countries several decentralised organisations have the competencies. At the same time, in some countries all these organisations are part of the Ministry for social affairs, while in other countries they belong to the Ministry competent for fiscal matters. Each of these organisations or inspection services have their own structure (some are part of a public administration, some of them are governed by a tripartite structure with social partners on the board...) and their own ways of working (while some of these institutions may impose criminal sanctions, others will impose administrative fines). In the fight against undeclared work one must take these characteristics into account. Each organisation will often have their own expertise. A successful fight against undeclared work requires an integrated, coordinated and professional approach, to tackle these phenomena efficiently. Successful approaches need to take into account also the wide variety of social law and the different tasks inspection services have to fulfil. But quite often one notices that the cooperation between the different bodies (both administrative and judicial) is often sluggish, laborious and painfully inefficient due to problems of cooperation between

administrations of one Member State (internal, national cooperation) as well as to problems of cooperation between administrations of different Member States (external, international cooperation). (Verbeke and Jorens, 2011) In too many cases, both within the Member States as on EU level, Chinese walls however exist between departments and services competent for either labour law or social security matters and the other institutions. (Jorens, Y., Gillis, D. and Valcke, L, 2015) These Chinese walls need to come down since the 'new business models' and fraud schemes exploit the weaknesses in cooperation and enforcement such Chinese walls create. A multi-disciplinary approach, involving actors from different fields such as labour law, social security, tax, etc. is the only way to effectively prevent or stop elaborate 'business models' or fraud schemes. A successful fight against undeclared work involves directly different legal systems (amongst them administrative, civil, social, fiscal and criminal law regulations). Furthermore, different inspection, administrative, judicial or police services resort under different government departments. As undeclared work is often a container concept, it is important not to lose sight of the global picture and to involve all the inspection services with their own expertise and means with a common perspective. The enforcement is the Achilles-heel of a successful fight against this phenomenon. Good administrative cooperation is therefore of paramount importance.

It is beyond dispute: in order to properly prevent the emergence of undeclared work or to tackle existing cases, authorities need to exchange information. Such information exchange is of primordial importance both within a single Member State between different authorities, and between authorities in different Member States. There is a growing need for a multi-dimensional cooperation and multi-national approach as all inspection services have their limitations. The vast complexity of social and fiscal law and the number of competent control and inspection services often however complicates cooperation. It is important to indicate that according to international legal provisions as ILO Convention N°. 81, inspection services do have great autonomy. The efforts of Member States to combat, tackle and prosecute work-related crime and undeclared work are often then also complicated due to various legal issues and to problems of a more practical nature. Procedural issues on e.g. the use and value of evidence (leading to the situation where information exchanged becomes inadmissible in a court case, thus completely reducing the benefits of the exchange altogether) and privacy related issues may have an impact on cooperation between competent bodies within a national state or in a cross-border context. To this day, data and information are being exchanged in various ways, some of which are unsafe and unsecure (a CD-ROM, email with excel list, an envelope...) and pose a threat to the protection of the data and of the privacy of natural and legal persons concerned. The way data are being exchanged also may raise questions about the legal value of the information used. It is not possible to correctly apply social law provisions, both on a European and Member State level, and prevent and fight fraud, error and abuse without the lawful and legal exchange of personal data. A caveat is required here: in no way can one simply argue that the fight against undeclared work is more important than data protection. After all, it is up to the courts to make sure that the rights of those they judge are respected, also – and particularly – when these (basic) rights are violated or risk being violated by the executive branch –thereby respecting the hierarchy of legal norms.

When administrations work together and exchange data, there is a very prominent problem with the so-called semantic interoperability of concepts. Depending on the legislative framework, a concept may have different meanings. A same legal concept may have a different name, or the same name is used for different concepts or the same concept can have the same name but a different meaning. This might lead to misunderstandings: we can mention here as example the concept of wage: the concept of wage is often subdivided into different categories in law (social, fiscal and labour law) and also within a category, different definitions could be found. This exchange of information can be greatly facilitated by use of digital means such as electronic databases and tools. These electronic means of communication and information sharing can speed up the process of requesting or exchanging information. Also, it might

decrease possible errors or mistakes by providing a clear classification of documents. However, this does not imply that there are no difficulties encountered. In case of electronic data exchange, it is of the utmost importance to exclude this problem of semantic interoperability and exclude as much as possible the chances of misinterpretation (Verbeke, D. and Jorens, Y., 2011 and Jorens, Y., Gillis, D. and Valcke, L, 2015). Therefore, qualified data (standardised) are required. Often we can also notice that each of the actors active in the fight against undeclared work has at its disposal a gamut of different electronic tools and instruments that it can use in order to prevent, detect or tackle social fraud. These authorities can access a diverse pool of information, including amongst others identity and residence information, employment information (including information on wages and labour time), and information on ongoing or concluded investigations. Sometimes for some sectors – as they are more prone to work-related crimes and undeclared work than others - specific information is available as well. A typical example is the construction sector; where in many states separate registers exist, for example a registry including information on the type of construction work and the relationship between the contractor and the commissioner. However, what is remarkable is that most databases at the disposal of the inspection services are administered by themselves or by authorities, whose field of action and responsibilities are closely connected to their own. Access to databases administered by different federal authorities proves to be more difficult to obtain, although not impossible. In this respect e.g. some inspection services might have access to databases administered by other Ministries (e.g. of Economy or of Internal Affairs) like databases containing all basic data of undertakings and their establishments or databases which keep track of all foreign persons legally staying in the country or the database of registered vehicle license plates. More and more also other departments request access to databases: we can mention the example of the financial policy services asking for access to social security databases and vice-versa or the labour inspection services requesting access to databases containing information on licenses for the transport of goods and of persons (the national databases are also connected to ERRU, the European Register of Road Transport Undertakings. ERRU links up national electronic registers of road transport undertakings. ERRU allows a better exchange of information between Member States, so that the competent authorities can better monitor the compliance of road transport undertakings with the rules in force). While such databases are accessible for road transport inspection services, they might not be for labour inspection services. However, this cooperation between different authorities does not always go so smoothly. The use of electronic instruments and the speed with which these instruments allow to sharing and exchange information, raises issues of data protection and privacy. A good cooperation framework is therefore required.

### **3 Approaches to the policy issue**

The enhancement of administrative cooperation and information exchange, specifically in the field of the prevention and enforcement of fraud and abuse, require both labour law and social security authorities and inspection services to be involved as well as judicial and police services. As cooperation between all these institutions and organisations raise several challenges, it could be envisaged to sign a protocol of cooperation in that respect. Not all information can as such easily be exchanged. A particular type of information for which exchange is far from impeccable, is tax-related information. In this respect, considerable differences between Member States emerge as well. In many states, social inspection services can pass information to tax authorities but not vice versa, due to 'Taxpayers Charters', specific fiscal privacy, or procedural regulations. For example, in Belgium the social security and labour inspection services have access to a database which brings together crossed social and tax data (VAT) for a limited number of sectors, for purposes of combating fraud. This database was started up as an effort to make it possible to fight social fraud in a systematic and structured manner. Similarly, the Italian database of the Ministry of Finance, which contains



information on individual tax returns and bank transactions, is partially open for use by other public bodies – access to data on the income tax returns is thus not restricted to the Ministry of Finance. Conversely, the situation seems to be very different in e.g. Austria, because of tax secrecy. The taxation programmes contain information on tax files, taxes on wages and tax arrears, and are administrated by the Ministry of Finance. Access is, however, limited to tax authorities, despite the fact that the social insurance authorities have requested access. While this is already the case within a national context, this is definitely so within an international context. While at the same time the exchange of information between fiscal services is extensively regulated at a European level, the cross-border exchange of fiscal information with social inspection services is often impossible due to 'privacy-issues' being invoked. (Jorens, Y., Gillis, D. and Valcke, L, 2015).

In their fight against undeclared work, inspection services often also need to rely on administrative data from different social security organisations. Access to these data is however not always an easy task. An interesting example as a solution to this problem can be found in Belgium. Thanks to the Crossroads Bank for Social Security (CBSS) Belgian federal social inspection services have direct access to a huge amount of significant data. It is important to note the fact that the CBSS is not a database but an application that grants or denies access to databases of different administrative authorities. (Verbeke, D. and Jorens, Y., 2011). As a result, in most cases all contact between administrative authorities regarding the exchange of personal data will be channelled through the CBSS and administrative authorities can use the data they have been granted access to directly, without the body to who the data belongs intervening. Access to the CBSS is granted or denied by the Social Sector Committee. The SSC is an independent committee created within the Commission for the Protection of Privacy, which itself is part of the legislative branch. A similar example can be found in Austria where the Austrian Federal Ministry of Finance has a special unit, Kontrolle Illegaler Arbeitnehmerbeschäftigung (KIAB) (Control of illegal employment) that exchanges information with different competent authorities: KIAB uses an electronic platform (KIAB Online) for documentation of the workflow of controlling illegal employment and electronically filing information to the competent authorities. The purpose of the application is clear: the centralised documentation and archiving of the relevant information, the electronic filing of demand for penalty and information and the automated integration thereof in the workflow of the receiving authorities. The advantages of KIAB Online are clear: electronic and centralised documentation of the cases and collecting of proof; electronic processing of the demand for a penalty and information to other competent authorities concerned; register of verdicts for public procurement and immediate statistics.

Often inspection services can rely on the assistance of the police services. Several reasons may be invoked here. (Verbeke, D. and Jorens, Y., 2011). On the one hand it might have a preventive effect as inspectors can be confronted with aggressive workers/employers when performing their controls, while on the other hand police may intervene in case inspectors do not have the competences e.g. for detaining people. However, cooperation might go further. In some countries, an established cooperation has been set up, like in Belgium where a 'mixed support cell' against serious and organised social fraud has been established within the Federal Belgian Police. The aim of this support cell is to tackle serious and organised social fraud. In other words, the support cell will investigate and prosecute criminal structures that are organised with the aim to commit, facilitate and organise serious social fraud. This support cell will contain social inspectors of the main social inspection services and an analyst from the Social Information and Investigation Service and two police officers, hence the name 'mixed support cell'. The cell will investigate social fraud by means of data mining and analyses of concrete cases of fraud in order to determine profiles and indicators. The support cell will be a centre of expertise and will give advice on the appropriate approach to combating organised social fraud.

A particular cooperation can be seen in Belgium where the several social inspection services signed a Protocol Agreement in order to enhance cooperation. As a result of this agreement, 'Arrondissementale Cellen' (District Cells) were established, aiming to coordinate joint actions of the different social and fiscal inspection services and the police. The District Cells are presided by the Labour Auditor, a social law public prosecutor. Just as in Norway, these District cells could be seen as local operational units that cooperate in a horizontal way. Contrary to Norway, the public prosecutor is part and even chairs these meetings. There are horizontal and vertical relationships between the actors as these District Cells implement the global action plan against undeclared work prepared by the Social Information and Investigation Service (SIOD), a cooperation platform between several Ministries. Discussions on the cooperation and tasks between the local and central level also take place in Norway.

When exchanging data, the protection of privacy is of the utmost importance. The European Court of Justice has pointed out that it is contrary to EU law that a public body in a Member State transfers personal data to another public body in order to subsequently process these data, without informing the data subjects about this transfer and processing. (ECJ, Case C-201/14, Smaranda Bara, ECLI:EU:C:2015:638) In the light of the lawfulness all processing of personal data must comply with the principles on data quality and with one of the 'criteria for making data processing legitimate' as laid down in the European Directives on Privacy. The requirement of fair processing of personal data requires 'a public administrative body to inform the data subjects of the transfer of those data to another public administrative body for the purpose of their processing by the latter in its capacity as recipient of those data.' The data controller or his/her representative must also inform the person concerned about the processing of the latter's personal data, and that the requirements to do so depend on whether or not the data have been collected from the data subject. It is also not sufficient that the definition of transferable information and the detailed arrangements for transferring that information were laid down in protocols. It should be a legislative measure.

Such a judgement might have disastrous consequences for the exchange of information. (Jorens, Y., Gillis, D. and De Potter, T., 2017) All too often, a transfer is provided for by law, whereas this law does not lay down a definition of the transferable data and does not stipulate the implementation of the transfer. This is definitely the case in a national context but certainly also in an international context. It can therefore be asked whether all cases in which data are exchanged in the context of the fight against (cross-border) work-related crimes and undeclared work are actually in compliance with all privacy and data protection requirements. In addition, in a cross-border context, in many cases the exchange of information between administrations of different Member States is based on various types of agreements, which are rarely published. It therefore seems very clear that in most cases exchanges of information based on all kinds of 'agreements and bilateral cooperation arrangements' or on administrative agreements not ratified by law and not published, the data subjects thereby not being sufficiently informed, will be contrary to this rule. The exchange of data is also worked out more in detail in the recent proposal from the European Commission to modify the coordination regulations on social security that provides for a far reaching form of information sharing (Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 883/2004 on the coordination of social security systems and regulation (EC) No 987/2009 laying down the procedure for implementing Regulation (EC) No 883/2004 (COM (2016) 815).. It stipulates 'that necessary relevant information regarding the social security rights and obligations of the persons concerned shall be exchanged directly between the competent institutions and the labour inspectorates, immigration or tax authorities of the States concerned', and that this exchange may also include the processing of personal data for purposes other than those under the Coordination Regulations, in particular 'to ensure compliance with relevant legal obligations in the fields of labour, health and safety, immigration and taxation law.' In order to protect the rights of data subjects while at the same time facilitating the legitimate interest of States to collaborate in enforcement of legal obligations, it is necessary to clearly specify

the circumstances in which personal data exchanged pursuant to these Regulations may be used for purposes other than social security and to clarify the obligations of Member States to provide specific and adequate information to data subjects. This should clarify if and to what extent the exchange of data is adjusted to the legal requirements. The impact of this provision is far from clear and several legal issues have to further clarify (implementing provisions, by whom?) (Jorens, Y., Gillis, D. and De Potter, T., 2017).

It is therefore a burdensome task to find out whether and how a balance needs to be struck between the protection of privacy and the adequate identification and tackling of undeclared work. This consideration is also of the utmost importance when pondering whether nationally developed e-tools or databases might be accessed or used by authorities in other Member States as well.

Although the use of electronic instruments opens several perspectives, they are not infallible. Several difficulties and limits remain. First, time constraints automatically limit all possible efforts, as it makes the need to determine priorities inevitable. Not all databases or e-tools can be applied to the fullest of their potential, just as not all potential problem cases can be followed up with the same vigour at all times. Second, a lot of data available does not automatically entail an increase of its benefits: this data has to be processed correctly and be of a good quality to begin with. If not, the potential benefits it might offer, might perish very quickly. The emergence of big data in this respect also entails the need for more potent databases and processing mechanisms.

Furthermore, databases and e-tools are no panaceas on their own – they are only used to the fullest when combined with other steps and efforts, such as for example (joint) field inspections, more attention for sector-specific elements, and clearly determining the inspection targets. (Jorens, Y., Gillis, D. and Valcke, L, 2015).

The need for cross-border cooperation between administrative, inspection, judicial and police services originates from the fact that the legal competence of these services is limited to their national territory. However, there is no legal framework providing freedom of movement of information or inspectors at the same supra-national level. In general inspection services have no legal competence outside their regional or national territory. That is why Member States resort to other mechanisms, such as personal contacts or bilateral agreements to obtain the required information. The structures that have been put in place do not turn out to be as efficient as is needed to successfully combat undeclared work. In most cases, it often takes months before a request for information is answered, if answered at all. Furthermore, the answers given are often inadequate, due to problems of interpretation, a lack of knowledge of the case details or of the legal systems concerned. The legal framework within which this cooperation takes place is however far from clear, in particular when this information gathered by the inspection services is used in a following phase as basis for either prosecution or civil proceedings. This emphasizes the importance of the (respect of) procedural regulations and legal framework at the level of the administrative investigation, carried out by the social inspection services. It is useful to investigate the consequences of presumably illegally obtained proof which might lead to sanctions at the procedural level. While in some countries this information will be dismissed, in other countries these unlawfully obtained data might under certain circumstances still be used before the Courts or Administrative Proceedings.

However, the number of bilateral agreements explicitly allowing cross-border inspections, joint actions or even a swift exchange of information is limited, to say the least. Most of these bilateral agreements are concluded between administrative or inspection services of the Member States concerned. Therefore, they do not have the statute of national law with all its consequences.

## **4 Existing evidence on the effectiveness of measures**

Digital instruments and databases have become an important instrument to register, prevent and tackle (cross-border) work-related crimes. Databases were historically collected by institutions for internal data management analyses and management reporting. Here, a descriptive point of view is adopted on the existing status quo and figures (past and present). Data could however be used in a further way of particular interest for combating undeclared work and social fraud i.e. through data-mining. 'Data mining (sometimes called data or knowledge discovery) is the process of analysing data from different perspectives and summarizing it into useful information - information that can be used to increase revenue, cut costs, or both. Data mining software is one of a number of analytical tools for analysing data. It allows users to analyse data from many different dimensions or angles, categorize it, and summarize the relationships identified. Technically, data mining is the process of finding correlations or patterns among dozens of fields in large relational databases' (Bhargava, B., Zhong, Y., & Lu, Y., 2003; Bolton, R. & Hand, D., 2002; Phua, C., Lee, V., Smith, K., Gayler, R, 2015). This system of datamining could contribute to the problem of finding a technical solution for information exchange and making information available as described in the Norwegian report.

These next levels of data mining and the analytics of data collected are of a predictive (the future) and prescriptive (the strategy) nature. (Jorens, Y., Gillis, D. and Valcke, L., 2015) After the prescriptive stage the data can be used for a semantic vision of the found data. This means that you ask the following questions in the given order: What happened? Why is it happening? What are trends? What to do? What does it mean? The answers to these questions can play a significant role in the detection and prevention of social fraud. Firstly, this segment addresses the data mining, the pure collecting of data; after this comes the detection of indicators and 'red flags'. Scientific literature defines indicators as a measurable phenomenon that has a signalling function and that gives a clue about the degree of quality; if an indicator differs from an agreed standard, then adjustment is possible. (Kragten, 2010). Indicators (and the combination of indicators) are crucial to detect, prevent or tackle cross-border social fraud. These indicators are the so-called 'red flags': they are used to scan the available information and thus reveal (potential) cases of fraud. The detection of 'red flags' is the result of data matching based on theoretical, statistical and practical knowledge and is seen as predictive in nature: when this event crosses with those characteristics there will probably be a greater chance that there is work-related crime or undeclared work. Several countries have started up a predictive analysis. The Belgian social inspection services started up such an analysis with positive results (the system works as follows: one creates two groups of past audits for 1 regulation (employers with infringements = positives; employers without infringements = negatives; one finds characteristics distinguishing positives from negatives (model) and proposes risks to inspectors). The newest models predict 55% to 70% positives in top risks. Inspection services could between them put forward several indicators that can trigger the start of an investigation of a (potentially) fraudulent case. An in-depth discussion about these indicators is important as their importance cannot be understated: if the indicators are not accurate enough, fraud cases might escape the eye of the inspection services. If the 'red flags' are too strict this will result in too many false positives and create a dangerous atmosphere of profiling innocent companies and individuals. Defining these indicators strengthen the idea that cooperation between different authorities is crucial to be able to put together all facts and detect undeclared work or risk cases adequately. A sectoral approach is here required as every sector has his own traditions and properties. Defining these indicators is a task for all actors involved, including the social partners but also the academic world.

Essential in the detection and formulation of 'indicators' is the attention for the crossing of different alarm signals, on several danger levels. We can attribute a value to the risk of an indicator via a simple Risk Matrix (IBM, 2010). Within this matrix, we could have an indicator for the risk that comes with respect to the consequences and the impact if

it appears. Both values are multiplied with each other in order to obtain a comprehensive risk value. The performance in a risk matrix with colour code can help produce the risk of the indicator visually, and also makes clear that not every indicator has the same alarming value that shows there is a risk and that immediate action is required. Depending on the combination a visit of the social inspection services becomes more advisable. Subsequent to the colour coding of the indicators comes the operationalisation of these colour-coded indicators. 'To operationalise is translating a variable in the concrete actions (operations) that one must do to determine whether, and to what extent, the characteristics of that variable apply to a certain research unit.' (X, 2013). This is so because the ultimate objective is to introduce these indicators in a computer application that reacts to the alarm signals and red flags when working on/with different databases of (social security) institutions (through collaboration the best result can be obtained). The generalised quantitative operationalisation of the indicators requires a large sample of data and the knowledge of a multidisciplinary team. Building on this, and knowing the given dangers, future research should focus on the profiling of the fraudster' in, for example, the construction industry (employee, partner, contractor etc.). Using the intersection with other databases, the necessary information can be extracted and used in the computer application allowing the profiling of 'a fraudster'. (IBM, 2010). Such a system could be developed as well on a national as on an international level.

Performing such an analysis, is not without any danger. One has to pay attention in the first place to the aspect of privacy. In the second place, certainly in an international environment, one has to pay attention to the issue of semantic interoperability. In an international context, definitions are important as well: a particular term might be interpreted very differently in another Member State. The semantic interoperability of concepts and indicators is vital for the adequate use of indicators in the cross-border fight against undeclared work. The same goes for the databases used: as each database has a conceptual framework that is essential to its functioning, it is crucial that these are attuned before bringing the databases together. Another potential issue is the return-on-investment. How to determine whether databases and e-tools have been useful, and have been worth the (financial) effort? The importance of such instruments for the prevention of undeclared work cannot be underestimated, but then again: how to measure the number of fraud cases avoided by the use of e-instruments? Without a doubt, these instruments contribute greatly in different ways, not all of which are easily quantifiable. Concepts such as 'return-on-investment' have to be used carefully when assessing the value of such instruments; they should not become the only concerns when measuring the benefits of tools such as those at issue here. The return on investment of systems of swift data-exchange and data-mining and data-matching is clearly positive, provided a certain threshold is met, meaning that a critical mass of data exchanged is needed in order for the return on investment of such exchange to be positive. In this respect, further research is called for in order to identify which authorities and inspection services frequently require which data from which authorities and inspection services or private parties in the different Member States (Jorens, Y., Gillis, D. and Valcke, L., 2015). Recently a pilot project was started at the Benelux level between the SVB, the Sociale Verzekeringsbank, (Dutch Social Insurance bank) and the RSZ, Rijksdienst voor Sociale Zekerheid (Belgian office for social security) dealing with the exchange of data from employees – working in the Netherlands for their established employers - who are active in Belgium and were notified (the so-called Limosa system) but for whom no A-1 (social security forms) documents were requested from the Dutch social Insurance Bank. In such cases it might be interesting to start an investigation as this might indicate that some employees were wrongly or not at all paying social security contributions in one of the two countries. The Belgian institution has transferred a file of several hundreds of notifications, based on certain indicators defined by the Dutch institution. The idea was to find out if the results would be sufficient to start an investigation. Apart from other outcomes (e.g. of 25% of notified people no personal data could be retrieved in the Dutch databases ) for more than 40% there is a more

than average to high risk that there might be a situation that someone is in the wrong country insured or not at all.(Benelux 2016)

The benefits of such a working method cannot therefore be ignored. The ultimate goal is to be able to design an early warning system: 'any initiative that focuses on systematic data collection, analysis and/or formulation of recommendations, including risk assessment and information sharing, regardless of topic, whether they are quantitative, qualitative or a blend of both.' That early warning system should make it possible for the inspection services to conduct more focused and successful visits and checks, even across the boundaries of inspection services, institutions and countries.

When relying on databases and e-tools, automated fraud detection must be centralised as much as possible (at the highest possible level – the more information, the better), so irregularities come to light more quickly (because of the overall picture).

Good administrative cooperation is currently seen as the key-element for combating undeclared work on an EU-level. Several of the social law instruments on EU-level foresee a cooperation between the institutions or inspection services. One of the key aspects of administrative cooperation for combating undeclared work is (electronic) data exchange, mutual providence of (digital) information and the possibility to pass on questions (in writing) to foreign competent bodies. It is in this respect that article 76 of Regulation 883/2004 on social security for migrant persons characterizes good cooperation as implying good administrative assistance, direct communication between the authorities, prohibition of refusal of claims or documents based on language, a mutual information duty and providing information within reasonable period. However, one should not forget that the coordination regulations are not an instrument aiming to combat social fraud. In the new proposal from the European Commission (so –called Mobility package) to amend the coordination regulations, some further rules were inserted that should strengthen Member States in their efforts to combat social fraud and error. In the first place it is necessary to establish a further permissive legal basis to facilitate the processing of personal data. In the second place with a view to expediting the procedure for the verification and withdrawal of documents (in particular concerning the social security legislation which applies to the holder) in case of social fraud and error, it is necessary to strengthen the collaboration and the exchange of information between the issuing institution and the institution requesting a withdrawal by setting time-limits. Where there is doubt about the validity of a document or the accuracy of the facts on which they are based, the issuing institution shall reconsider the grounds for issuing the document and, if necessary, withdraw it or rectify it, within 25 working days (in urgent cases two days) from the receipt of the request. Also article 4 of the Posting Directive 96/71 (labour law) focuses on cooperation with respect to information, with liaison offices that reply to motivated requests for information. As this article states, such cooperation shall in particular consist of replying to reasoned requests from those authorities for information on the transnational hiring-out of workers, including manifest abuses or possible cases of unlawful transnational activities. Practice has however demonstrated that this system did not run very smoothly. Recent developments have strengthened this cooperation. Within the recent Enforcement directive 2014/67 a system is set up where inspection services have to monitor, in order to be able to reply to requests from inspection services from other countries, that service providers established on their territory provide their competent authorities with all information (this may also include the sending and serving of documents) necessary to supervise their activities in compliance with their national laws. In addition, the inspection services must carry out checks, inspections and investigations, including the investigation of any non-compliance or abuse of applicable rules on the posting of workers. Member States shall therefore take appropriate measures in the event of failure to provide such information. The Directive prescribes that this information must be provided within a term of 25 working days from the receipt of the request – although no sanctions are provided for in the event of non-compliance. However, a shorter time limit may be mutually agreed between the Member States, or, in urgent cases (requiring

the consultation of registers, such as those on confirmation of the VAT registration, for the purpose of checking an establishment in another Member State) the information must be provided as soon as possible, but at least within two working days from the receipt of the request. (Jorens, Y., Gillis, D. and De Potter, T., 2017) Both EU-instruments focus on the use of electronic tools (Jorens, Y; Humblet, P. and Lorré, J., 2008). Under the coordination regulations, the implementation of an Electronic Tool for the Exchange of Data under the social security Regulations (EESSI) is seen as a contribution to the prevention of social fraud and error as it guarantees contributions are paid to the right Member States and benefits are not unduly granted or fraudulently obtained. The EESSI-project has as objective an electronic exchange of data that should allow the smooth international cooperation between national administrations. In the context of the posting directive the Internal Market Information System (IMI) was made accessible. The IMI project is purely an exchange of data aiming to improve the communication between the national authorities. An additional advantage is that IMI is a kind of super structure which implies that national legislations on data will further apply. These instruments are rather new, compared to the long established administrative cooperation and mutual support (FISCALIS) within the fiscal field (direct taxes) Tax authorities work with CCN/CSI (Common communication network/common systems interface), which is a gateway between the computer systems of the Member States and the Commission within one infrastructure with the possibility for interoperability. The Commission administers the supranational infrastructure while the Member States are responsible for the national network. Contrary to IMI, no European databank is created and the system is limited to a network that only exchanges data. The system of CCN/CSI does exchange sometimes very sensible data (e.g. industrial secrets) but not necessarily personal data. As this exchange of data mostly takes place between the users, this architecture hardly knows any guarantees for privacy protection.

Another example of cooperation between European inspectorates, was the previous CIBELES (Convergence of Inspectorates Building a European Level Enforcement System) project. The Senior Labour Inspectors' Committee, the SLIC, was mandated by the European Commission to monitor the enforcement of EU legislation concerning health and safety at work at the national level. This project has had as an objective to improve the manner in which information is exchanged between European labour inspectorates (in the field of occupational health and safety) to ensure enhanced cross border enforcement and mutual assistance in inspection and sanctioning proceedings. This project faced several challenges concerning the enforcement of the regulatory framework, the role of the social partners and the exchange of data.

All these European projects however are characterized by an exchange that only takes place between the direct counterparts. There is no real multi-disciplinary cooperation.

The above-mentioned instruments combating social fraud, notwithstanding their enormous importance, have, however, a rather limited objective and radius of action. Indeed these instruments only focus on an exchange of information after a request. When combating undeclared work, the objective may however reach much further and consequently a more ambitious framework may be striven towards. One could think about an extra-territorial competence of national inspection services. Could it not be an idea to give a foreign inspection service access to national data or databases, or even allowing them to carry out investigation actions themselves on the territory of another state? When access would be given to a database by a foreign user, an authentication system is required that is interoperable between different countries (cf. European project STORK, security identity across borders linked). Several questions have to be answered: is it the idea to have an automated system of transfer of data requiring the developing of structural electronic data? Exchange of data must always be based on the principle of reciprocity according to which other Member States may request an equivalent protection of personal data. In addition beforehand in a protocol rules of mutual trust should be adopted which is the basis for application of mutual recognition, guaranteeing that the right of privacy would only be limited in case of justified objectives

and that the principle of security is respected (preventive control and control afterwards - circle of trust). The optimisation of exchange of data is the guarantee for privacy. It would be preferable to install one forwarding point, exercising further control as well on information that is sent abroad as on information received from abroad. Direct contacts and exchange from institution to institution is less preferable. It will be necessary to develop a system of identification in conformity with the rules on privacy but also allowing an easy identification. Social insured people abroad should be indicated with an unique identification key mentioning a minimal set of identification data (MID's).

## **5 Conclusions**

Combating (cross-border) undeclared work and social fraud is of paramount importance. It is high on the political agenda of several Member States and has gained some importance within the European Union. In their fight against this phenomenon, the different inspection services and enforcement bodies are confronted with a lot of practical and legal challenges and often they suffer a lack of staff and resources and have sometimes inadequate access to databases and information in general. As a result, the number of inspections and actions is limited, too limited to adequately tackle undeclared work. This is true not only in a national context but definitively also in an international context.

In this paper some proposals are made that should enhance this fight against undeclared work and social fraud. A container concept as undeclared work and social fraud can only be fought in a successful way through a multi-disciplinary approach and through a global collaboration of all administrative, inspection, judicial and police services. Such a horizontal approach that respects and guarantees the experiences and way of working of each of the different partners is preferable to working through a single agency, just as it is also mentioned in the Norwegian paper.

Experiences and knowledge should be shared. A more efficient way of combating fraud requests a sharing of knowledge. Knowledge of the different mechanisms of undeclared work and fraud, but also of the national and European legislation, of who is who and who has competence to deal with this fight as well as of the tools and methods used and practices followed by the inspection services. Knowledge needs to be shared and built upon. A very important issue hindering in particular cross-border cooperation is the fact that there is obviously no real common incentive for such cooperation. This lack of a common incentive has several reasons: cross-border social fraud is not always perceived as a European problem by the Member States; cross-border social fraud is mostly perceived as 'one way', from one Member State to another; cross-border cooperation takes time and effort while Member States do not always get something 'in return' or do not value what they do get in return and efficient cooperation can mean loss of income for the cooperating Member State (as they would lose social security contributions). Exchanging information and cooperation across borders often faces more difficulties than intrastate communication, for several reasons. The competences of inspection services are after all limited to the territory of their Member States, the definitions and interpretation of core concepts are (sometimes very) different in the countries (even within one country, in the different institutions) and the cooperation is not always very structured and runs slowly. Some of the information, knowledge and enforcing issues administrative, inspection, judicial and police services encounter can be partly resolved using electronic tools. The paper has demonstrated the advantages of (national) databases: a unique identifier for both natural and legal persons (who is who); the importance of semantic (legal) next to technical interoperability (working with databases requests for a standardisation of concepts); the speed of the information exchange; the efficiency of a multi-disciplinary exchange of information; the various possibilities in the prevention of fraud and error and the various systems of the protection of the right to privacy and data protection. However, such systems could be enhanced through the application of data-mining and data-matching mechanisms. It is



worth thinking about it, as some first results have demonstrated. When using electronic systems and communication tools, it is important to take care that the legal framework should be adjusted to properly support these instruments, in particular with respect to issues around privacy. Apart from these electronic tools, reflections could be made for a more ambitious collaboration. Collaboration is not necessarily limited to an exchange of information or the optimal functioning of EU-legal instruments, but can also lead to a far-going operationalization of the different national inspection services and institutions combined with a (broad) access to the national system. To what extent is it possible that inspection services receive access to different databases or even be present during administrative enquiries...? While this might be perhaps more debatable on a European level, reflections and pilot projects could be set-up on a regional level, like e.g. between the Nordic countries (and the Nordic Council).

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