



European Platform Undeclared Work

Case studies on cross-border cooperation

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1 Case Study Belgium - Netherlands cooperation: Port of Antwerp case

1.1 Context of the case study

1.1.1 Issues investigated with the case study

A joint Belgium-Dutch labour inspectorate investigation uncovered a clear case of bogus self-employment, involving workers from various nationalities (Turkish, Bulgarian, Romanian) hired through a Dutch temporary agency. An interesting aspect of the case was the fact that the employees thought they were employed by the agency, while in reality they were incorrectly registered as self-employed. For several years, the construction company involved was observed and visited by the Belgium Labour Inspectorate due to the suspiciously cheap labor engaged. Only through the exchange of information and collaboration with the Netherlands however, could the data be gathered, compared, and the case resolved. A key operation was the joint inspection, which took place in August 2014.

The Labour Inspectorate in Belgium suggested the action during a series of three workshops, held in the framework of the Benelux joint declaration for collaboration (signed on 13.02.2014 in Brussels), as well as through the Liaison bureau on the Benelux cooperation. After the Dutch inspection performed a pilot check on six self-employed persons and established that five of them should in fact be reclassified as employees, the need for collaboration became clear.

The initiative was well-received and it was clear from the start whom to contact. Contacts between the inspectors in both countries were already established in the framework of the Benelux Working Group on "Fraudulent Temporary Agencies", which meets 2-3 times per year. It was initiated by the Belgian Secretary of State in 2013. In addition, a meeting was held in The Hague for this specific case, where the two countries established each other's competences, bottlenecks, approaches and interests, as well as the time-schedule of the cooperation.

1.1.2 Scope of cooperation

The most important aspect was the data gathering and verification process. The Dutch inspection collected all contact details of the workers (addresses, mobile phone numbers, e-mails, etc.), daily attendance sheets and number of hours worked by each employee. However, some of this information was purposely provided incorrectly – both at the inspection and at the business (company) registers. In addition, a special short questionnaire and interviews were used on the site. The inspection continued later in The Netherlands by verifying the data at the official records of the Dutch temporary agency. Relevant information was exchanged between Belgian and Dutch authorities on the legal basis of Directive 96/71/EC concerning the posting of workers. The exchange of fiscal information was based on bilateral fiscal agreements between The Netherlands and Belgium.

1.1.3 Needs

What was needed the most by the joint action was the collection and verification of evidence and data on: a) the labour hours (really worked vs invoiced on paper); b) attendance lists for each day (not available during the inspection); c) the (bogus) self-employment status on each employee, and d) other evidence of illegal work. This information was gathered both during the site inspection in Belgium, and from the office of the temporary agency in the Netherlands. Some of the data, however, was partial or incorrect, which resulted in the necessity of checks in online databases, additional calculations and comparisons by the Dutch and Belgium authorities. The Dutch Revenue Service was able to collect information on possible bogus self-employment.

1.2 Process

1.2.1 Resources employed

The joint action was carried out simultaneously on the building site in Belgium and at the head office of the temporary agency in the Netherlands. In Belgium, 8 inspectors and 2 Dutch observers were engaged. In the Netherlands, a team of about 9 inspectors were involved from the Dutch Inspectorate SZW at the Ministry of Social Affairs and Employment, the National Revenue Service, the social security agency and the municipality. They were supported by digital experts from the Inspectorate SZW and a bailiff (deurwaarder in Dutch). The same day the Dutch Inspectorate also paid a visit to the accountant of the temporary agency. Data from the period 2013-2015 was checked in both countries. Based on the findings, in December 2014, the Dutch team visited the company who agreed to engage all self-employed people as regular employees and any fines imposed to be paid by April 2015. The Dutch Inspectorate also paid a visit to the accountant of the temporary agency. The temporary agency was contacted since most of the "self-employed" did not want to make the switch to an employee. The issue was resolved at an information meeting. After the inspection, one Belgian inspector continued to follow up the case. The Dutch Revenue Service and SVB¹ (responsible for issuing A1's) also continued their investigations, focusing mainly on the validity of the A1 forms and the manifestations of bogus self-employment.

1.2.2 Basis for cooperation

This cooperation was underpinned by the Benelux joint declaration on cooperation in the fight against social dumping (13 February 2014, Brussels); as well as the recommendation of the Benelux Committee of Ministers, dated 23 September 2015, relating to the development of a multilateral cooperation in the fight against social fraud at Benelux - and European levels. The Directive on posting of workers² and the Enforcement directive³ also formed a legal base for cooperation and exchange of information.

1.2.3 Steps identified

The inspectors gathered information in advance from the Belgian LIMOSA database, where foreign service providers declare the social security status of their workers. Although more than 60 people were listed as workers, only 30 people were found on the site during the inspection. All of them were identified (names, addresses, employee's status) with the aid of a short questionnaire, supported by a team of interpreters needed due to the various nationalities of the workers (mainly Turkish, Macedonian and Romanian). Only a few people, including the site manager, were interviewed extensively. The inspectors found out that the initially long version of the questionnaires was impractical and there was a great shortage of interpreters due to the holiday period. The Belgium inspectorate confirmed that the presence of the two inspectors from the Netherlands on the site was very beneficial for provision of guidance on the most urgent issues. They also played an important role during the consultations, giving direction and establishing ongoing communication channel with the research team in the Netherlands.

¹ The Sociale Verzekeringsbank, the organization that implements national insurance schemes in the Netherlands (www.svb.nl).

² Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services, <http://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A31996L0071>

³ Directive 2014/67/EU of the European Parliament and Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014L0067>

The site manager provided in a timely manner a large number of documents, later double-checked by the Dutch side.

On the Dutch side a rather extensive investigation was carried out on the spot at the temporary agency: a combined team of labour inspectors, inspectors from the tax office and the Employee Insurance Agency (UWV) as well as specialized (digital) experts were involved.

On the Belgian side a formal report with the key findings for the prosecutor was drawn up. The cooperation proceeded in an expedient manner, as there were no language barriers for both inspection teams, and it was very easy for them to communicate.

1.2.4 Costs of cooperation

For the Belgian inspectorate, the preparation took several days of research in the databases and update of the data, followed by one day travel to The Hague for the joint meeting. The inspection on the site involved 8 Belgian inspectors, and the conclusion of the process was followed up by 1 inspector. Travel cost was limited to a train ticket to The Hague and the normal transportation cost during the day of the inspection. The most significant cost was the cost of several interpreters, needed as most of the workers spoke only Turkish or Bulgarian. The 5 interpreters for the inspection day were hired at an hourly rate of 48 €. According to the Dutch Inspectorate of Social Affairs and Employment, apart from travelling costs and costs for interpreters, the extra costs for this successful international cooperation were negligible compared to other regular inspections carried out within the Dutch territory.

1.3 Outcomes

1.3.1 Results of the case

There was an instruction to withdraw all 62 A1 forms. The activity resulted in a fiscal correction made for 62 self-employed for the period 2013-2015 of about EUR 1.5 million according to the Dutch fiscal services; the pension rights were corrected. The case is still ongoing with the Justice department - with the A1 forms being withdrawn, the next step would be to subject the workers to the Belgian social security rules. In Belgium there is a pro-justitia for the undeclared work of 6 Romanian persons; the rest of the cases are pending.

1.3.2 Success factors of cooperation

Both the Belgium and Dutch inspectors got acquainted with each other – their competences, interests, working methods. They learned each other's needs, power and authorities, as well as the limitations in legislation and methodology. It was the start of a more substantial cooperation, resulting in at least 1-2 joint cases per year. Speaking the same language in Belgium and The Netherlands is also a major advantage.

1.3.3 Limits of cooperation

On the Belgian side, the main challenge was the lack of a sufficient number of interpreters, which resulted in fewer people being interviewed in detail. Although the collaboration was smooth, due to the technical time needed for the investigations, most workers succeeded to move to other building companies or temporary agencies.

The Dutch inspectors needed longer travelling and inspection time than the average for similar national inspections, as international cooperation requires more extensive communication before and after the actual on-site visit, due to differences in laws and procedures. Also some practicalities and uncertainties were relevant e.g. whether smartphones, laptops and other means of communications would work abroad, and whether the Dutch inspectors could get digital access to Dutch information systems from Belgium.

1.4 Annexes

1.4.1 Annex 1: Bibliography

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<http://ec.europa.eu/social/BlobServlet?docId=18526&langId=en>

2 Case Study Belgium – Romania cooperation: An overview of IMI cases

2.1 Context of the case study

2.1.1 Issues investigated through IMI system

The labour inspectorate in both countries use the IMI (Internal Market Information) system to investigate issues related to the posting of workers (i.e. the dedicated module). However, in practice, the practice of posting of workers overlaps with undeclared work, wage dumping and other practices that circumvent the law in cases of cross border working. For example, there are cases where through the IMI system it has been discovered that certain employees worked fully undeclared (i.e. they were not registered either in Belgium or in Romania) or that the Belgian employer pretended a 'fake posting' (i.e. the Belgium employer claimed that employees were posted by a Romanian company, however during the investigation it was discovered that the company workers were ostensibly posted from did not have any economic activity in Romania and it was only set up to be able to apply lower wages and thus reduce labour costs).

The collaboration was initiated by the Belgian Labour Inspection. For example, during 2017, the Romanian Labour Inspection received 89 requests from Belgium. This is one of the largest number of requests received via the IMI system by the Romanian Labour Inspection to date (a similar number of requests were also received from France). It is the second largest number of requests sent by Belgium via the IMI system (Belgium sent a larger number of requests only to Portugal). The requests were received by the Romanian Labour Inspection, which showed willingness to provide the information requested even when the information requested came under the competence of other Romanian institutions (i.e. in these cases the Romanian Labour Inspectorate forwarded the request to the relevant institutions and gathered the necessary information for a joint transmission).

The Belgium labour inspectors appreciated the efficiency and responsiveness of the Romanian counterpart taking into account the large number of requests (source: interview with the Belgian labour inspector).

Conversely, in 2016 and 2017, Romania did not send any requests to Belgium regarding the posting of workers (details in Appendix 1).

2.1.2 Scope of cooperation

The scope of cooperation through the IMI system is information exchange. However, besides collaboration on IMI cases, the Labour Inspectorates from the two countries also undertook joint visits (i.e. labour inspectors from Romania accompanied their Belgian peers in the field in Belgium and Belgian labour inspectors joined field visits in Romania).

2.1.3 Needs

The needs vary according to the type and the complexity of the information requested. As an estimation, in 90% of cases, the requests from the Belgian Labour Inspectorate required controls at the employers' premises in order to verify compliance with the terms and conditions of employment. The Romanian Labour Inspectorate check compliance with national provisions on posted workers from Romania through the Territorial Labour Inspectorates.

2.2 Process

2.2.1 Resources employed

Requests for information on posting of workers received by the Romanian Labour Inspectorate include issues that fall within the competence of the Labour Inspectorate but also within the competence of other institutions, such as the National Agency for

Fiscal Administration (tax issues - payment of contributions, salary adjustments), the National House of Public Pensions (with regard to the issuing of the A1 portable document), the State Inspectorate for Road Traffic Control (which ensures at the national level the control of the compliance with both the national and international regulations in the field of road transport). When the information requested via the IMI system refers to data gathered by other institutions, the Labour Inspectorate sent a request to the relevant institutions to gather the information (a detailed description of the steps undertaken by the Romanian Labour Inspection is provided below).

The number of staff involved by both parties depends on the complexity of the case. In Romania, the exchange of information through the IMI system is ensured by the labour inspectors within the division of the Labour Inspectorate designated for this purpose (four persons), while the inspections are carried out by labour inspectors within the Territorial Labour Inspectorates. For controls regarding the posting of workers, two labour inspectors are involved and the procedure of carrying out the inspection can take between 1 to 4 weeks, depending on: the procedure necessary for notifying the employer of the documents requested by the labour inspectors; the availability of the legal representative of the employer to provide the documents necessary for the inspection; the company size; the complexity of the issues to be investigated; the number of posted workers for which information is requested. This activity falls under the day to day responsibilities of the labour inspectors.

2.2.2 Basis for cooperation

The exchange of information regarding the posting of workers takes place via the IMI system and does not use other forms of agreement (it is based on the Posting of Workers Directive 96/71/EC and the Enforcement of Posting of Workers Directive 2014/67/EU). There is no bilateral agreement between the Belgian and Romanian Labour Inspectorates (unlike in the case of some other countries). However, a bilateral agreement exists between the two ministries which oversee the labour inspectorates.

2.2.3 Steps identified

The main steps undertaken by the Romanian Labour Inspectorate and the response time varies depending on the type of information requested.

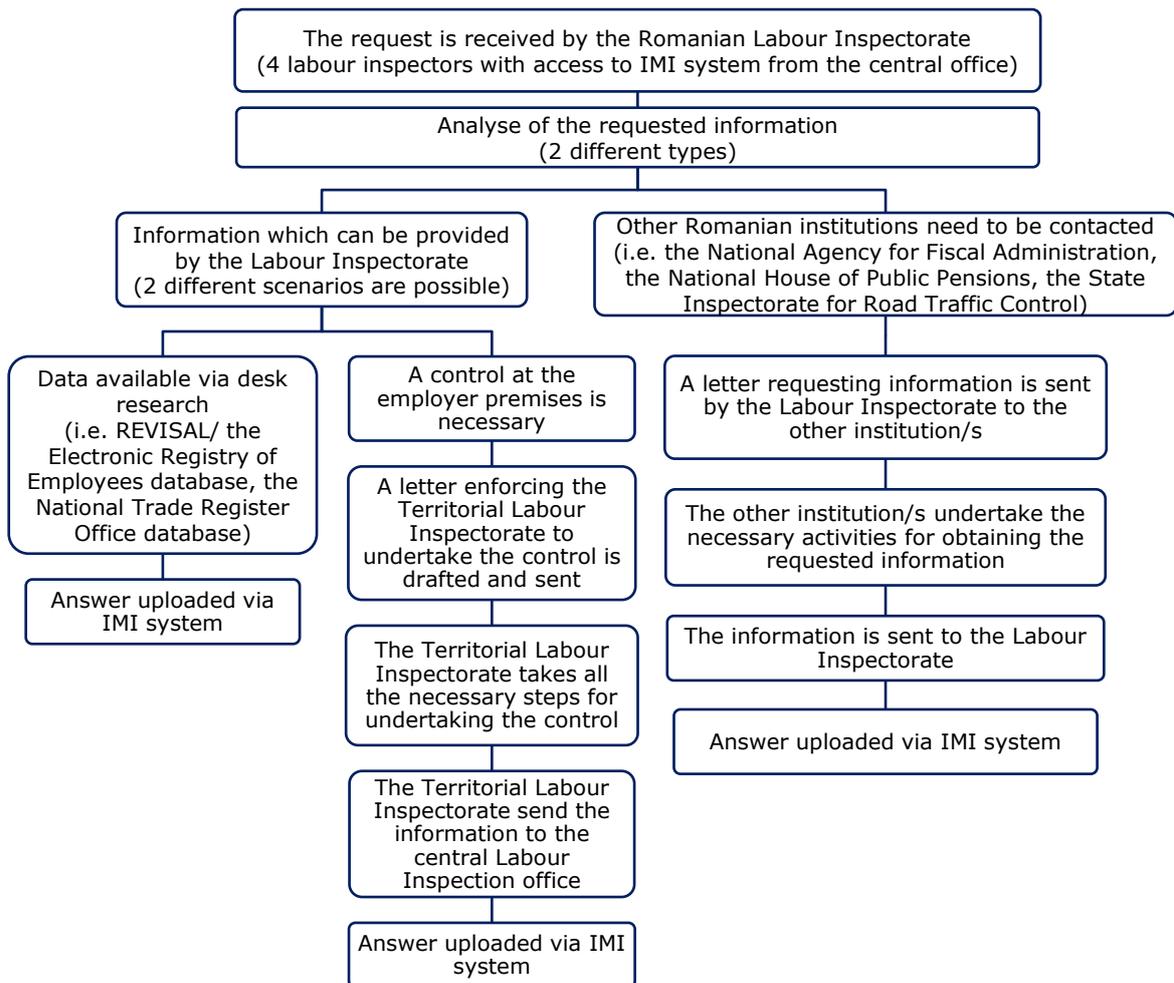
The process is centralised. At the Labour Inspectorate in Bucharest, four labour inspectors are users of the IMI system. When a request is received, the first step is to identify whether the information requested falls only under the competence of the Labour Inspectorate or whether other national institutions need to be contacted (a flow chart with the main steps is provided in Figure 1).

The simplest scenario implies the gathering of information which is directly available to the Labour Inspectorate (which can be extracted from the Electronic Registry of Employees REVISAL or from the National Trade Register Office database to which the Labour Inspectorate has access). In this case, the information is collected and uploaded to the IMI system. However, in 90% of the requests sent by the Belgian authorities until now, a field control has been necessary. In this case, the central office sends a letter requiring the Territorial Labour Inspectorates to undertake the control (the usual deadline is the usual deadline is between 5 and 10 working days from the date of receipt). During this time frame, the territorial office takes all the necessary steps to undertake the control (i.e. inform the employer about the requested documents, carrying out the visit to the employers' premises etc.). Some of the activities at this stage might need to be repeated if it is not possible to contact the employer or if the information received from the employer is incomplete etc. After the control is undertaken the information is sent to the central office (if the control cannot be undertaken a justification needs to be provided) where, based on this, responses to IMI requests are uploaded. If the control could not be undertaken, partial information is sent in the first instance to the IMI system. When information from other institutions (e.g. the National Agency for Fiscal Administration, the National House of

Public Pensions, the State Inspectorate for Road Traffic Control) are needed, the Labour Inspectorate sends letters for requesting this information. The maximum legal time frame in which a public institution needs to answer a request is 30 days.

During this period, the relevant institution/s undertake the necessary activities to obtain the requested information. However, in cases where complex information is requested and controls by the Territorial Labour Inspectorates are required together with information from other institutions, a longer timeframe is needed to gather and make all information available. Moreover, there are cases when further clarifications about the information provided through IMI system are requested from the Romanian Labour Inspectorate.

Figure 1. The main steps necessary to be undertaken by the Romanian Labour Inspectorate for answering to the requests received via IMI system



2.2.4 Costs of cooperation

The cost involved varies from case to case. The Belgian Labour Inspectorate has teams dedicated to cases regarding posted workers and other cross border cases. Each team has at least one person who has access to IMI and can use it to send requests to other countries. As an example, for the construction case study detailed in Appendix 2, two Belgian labour inspectors were involved and undertook around 255 hours of work including the inspection, drafting the documents, sending the information requests etc.

In Romania, 4 labour inspectors are in charge of IMI cases and it is estimated that about 60-70% of their FTE (full-time equivalent) is dedicated to this issue (the gross wage of labour inspector is between 600-1,000 EUR). In total, therefore, the

additional labour costs of operating the IMI system are circa 26,000 – 30,000 EUR per annum (excluding additional overhead costs and Labour Inspectors employer costs). For controls, no additional costs are involved. One of the KPIs (Key Performance Indicators) is the total number of inspections performed per labour inspector involved in controls (the target is 12 inspections per month per labour inspector). The controls undertaken as a result of the IMI cases are taken into account in the calculation of the performance indicator.

2.3 Outcomes

2.3.1 Results

The main result of the collaboration between Belgium and Romania via the IMI system relates to the support provided to the Belgian labour inspectorate in checking suspected cases of wage dumping (when a gap is identified between the wage equivalent to the Belgian minimum wages and the actual wage paid to the posted workers). If this is the case, based on the evidence obtained via the IMI system, the Belgian labour inspectors can take further steps to rectify the situation or to impose sanctions when necessary (e.g. the case presented in the Appendix 2 is now in court).

2.3.2 Success factors of cooperation

One of the success factors of collaboration relates to the standardised questions available on the IMI module used by labour inspectorates. All the predefined questions are already well-known to the Romanian Labour Inspectorate (i.e. they established which questions require information from other institutions and which are the other institutions they need to contact) which facilitates the process once information requests are received. Also, some of the labour inspectors in the two countries met each other for joint visits through other cooperation projects which assists with lines of communication.

2.3.3 Limits of cooperation

The predefined questions do not cover all the specific needs regarding the posting of workers. In these situations, additional comments or supplementary files (e.g. detailed questions) are uploaded via the IMI system. The limit of this functionality is the lack of automatic translation which means that the receiving country may not fully understand the request. Similarly, the attached supporting documents used by the sending country may not be fully understood by the receiving country. Another limit relates to the difficulty of identifying a relevant counterpart (i.e. Belgium has two different types of inspectors, one dealing with the supervision of social legislation which includes for example remuneration and other employment conditions, and one to assess welfare at work which includes safety at work).

2.4 Annexes

2.4.1 Annex 1. Overview of the received/ sent information requests using the IMI system by the Romanian Labour Inspection

IMI system	2016	2017
Received requests	270	333
	Belgium (103) France (88) Italy (51) Austria (19) Other countries (9)	Belgium (89) France (89) Italy (72) Austria (65) Slovakia (6) Germany (4) Other countries (8)
Sent requests	11	10
	Slovakia (2) Poland (2) Hungary (2) Germany (2) Italy (1) Estonia (1) The Netherlands (1)	Italy (4) Germany (2) Latvia (1) The Netherlands (1) Austria (1) Hungary (1)

2.4.2 Annex 2. Bilateral cooperation between Belgium and Romania on posting of workers - Construction industry case study

Origin of the case

Both *Bouwunie* (the Flemish Federation of SMEs of the Construction Sector) and *NAVVB* (The Prevention Institute for the Construction Sector) contacted the labour inspectors regarding concerns about the working conditions and wages of the workers on a construction site.

Site inspections

First inspection, April 2015: 2 labour inspectors of the Limburg Network team visited the construction site. They identified 5 Romanian workers belonging to a Romanian contractor (no PDA1 on the site). After reviewing the answers given by these workers to a standard questionnaire it was decided to conduct a more detailed investigation.

Further investigation included letters sent to the head of the company for which incomplete information had been received as well as documents which raised concerns that parts of the documents had been forged (i.e. signatures on the 'diurna'⁴ listings).

Second inspection, August 2015: an official translator joined the labour inspectors. 8 workers were identified for further assessment. The conclusion was that workers receive a salary of about 7€ per hour.

Given the large gap between the wage due (Belgian minimum wage for the construction sector) and the actual wage paid, the employer was invited to rectify the situation, while simultaneously, a notification letter was sent to the contracting partner on the site. The letter informed the client of the remuneration debts regarding a

⁴ Romanian daily subsistence allowance

historical period of employing these workers, for work done while executing the contract as well as the joint liability imposed for the future (one year, starting 14 days after the reception of the notification). Both the employer and the client are obliged to display the letter on all construction sites where workers for this particular employer are active. The employer has been active on 2 construction sites, contracted by the same client. Usually, the client or the main contractor for the works remove the companies for which notification of joint liability is received from the construction site.

Third inspection, November 2015: The company continued to employ workers on the site and the letter of notification was not displayed. A check of wages and hours worked was again requested. Meanwhile, a solicitor disputed both the labour inspectors' calculations and the notification of joint liability.

Results

The information provided by Romanian counterparts via the IMI system, supported the Belgian team by documenting the situation of the employees of the Romanian contractor and allowed the investigation to go forward.

A judicial report was filed for various infractions against the labour penal code (i.e. minimum wages), failure to display the notification etc. Based on the information received after the judicial report, the conclusion was again that the staff were underpaid for their work in Belgium, and therefore, the employer was invited again to rectify the situation.

When the Romanian contractor did not comply, the Belgian client, who was jointly liable, was invited to rectify the salary debts to the staff of his subcontractor. A judicial report was made against the Belgian client, for not paying the salary of the workers for whom they were jointly liable, and for not displaying the notification.

3 Case Study France-Poland cooperation: Letterbox companies in the food processing sector

3.1 Context of the case study

3.1.1 Issues investigated with the case study

The French and Polish labour inspectorates and social security institutions engaged in a joint investigation of a letterbox companies' fraud scheme in the food-processing sector. Polish workers were hired by Cypriot and UK letterbox (temporary work) companies to work mainly in France (with one user-company also identified in Belgium). The workers themselves believed that they had a Polish based employer. The scheme also involved one French intermediary, while the user (host) companies in France were dozens.

The ultimate aim of the scheme was to avoid the submission of social and fiscal prior declarations in the host country, as well as a violation of the workers' rights in general. It concerned mainly the use of undeclared work and the misuse of posting of workers' provisions within the meaning of Directive 96/71⁵, but also deviations from the provisions of Regulation No 883/2004⁶.

The scheme circumvented the EU rules by setting up fictitious employer companies in the UK and Cyprus, thus wrongfully claiming that the posted workers have more than one employer, and are hence entitled to fill in the A1 form in the country of origin (Poland) and pay social security according to the Polish salary standards, instead of the higher rates of the host country. This involved the combined use of Article 13 of Regulation (EC) 883/2004 and Article 21 (1) and (2) of Regulation (EC) No 987/2009⁷ (see Annex 2 for further details).

The checks performed by the inspectors proved that the letterbox companies were not real places of business (e.g. one of the UK letterbox companies had as its registered address a residential building).

3.1.2 Scope of cooperation

The activity was based on administrative cooperation and exchange of information mainly between the French and Polish labour inspectorates, as well as partially between the French and Belgian, and the French and UK labour inspectorates and social security institutions via the IMI Liaison Offices⁸. The administrative cooperation of Cyprus was not requested because pluriactivity within the meaning of Regulation No 883/2004 was not subject of the French labour inspectorate's controls.

3.1.3 Needs

Social securities and tax data, posting status, A1 forms and other relevant information was gathered through online databases. The inspectors also performed on-site visits and held hearings with the managers and employees, facilitated by the police, as a means for closing gaps in the data.

⁵ Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services.

⁶ Regulation (EC) 883/2004 on the coordination of social security systems, [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32004R0883R\(01\)](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32004R0883R(01))

⁷ Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems, <http://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:32009R0987>

⁸ The Liaison Offices in all EU countries were established in the framework of Directive 96/71.

The documents which were most difficult to gather, were the detachment (posting) declarations⁹ and other documentation throughout the French territory. Posting declarations were prepared by the UK-based companies, however only in paper format, as the online submission of declarations of posted employees in France came in force on October 1, 2016 (with a change of the French Labor Law n°2016-1088 of August 10, 2016).

3.2 Process

3.2.1 Resources employed

Labour inspectors and tax authorities from all countries concerned, as well as the French prosecutors and police were involved when required and consulted over the period of one-year while the investigation progressed.

On the French side, the activity was facilitated by two agents from the national group for monitoring, support and control (GNVAC)¹⁰, who regularly worked on the case. Officers of the regional units for support and control of illegal work and inspection units of the labour inspectorate carried out checks. In addition, the involvement of the prosecution at an early stage allowed the use of the gendarmerie (police) in France for on-site visits, the use of special forensic IT investigative techniques and obtaining of transcripts of mobile phone messages (sms), as well as the support of agents from the Urssaf (Union for the recovery of social security contributions, including 22 regional units, www.urssaf.fr), who estimated the social security costs of the violations.

3.2.2 Basis for cooperation

The collaboration was initially suggested and later coordinated by France. It relied on the support of the French liaison body *Cleiss* (Centre of European and International Liaisons for Social Security), which provided the contacts and access to information from labour inspectorates of the other countries concerned (in particular Poland, and to some extent the UK). Although the collaboration was not based on specific France-Poland bilateral agreement, the liaison by *Cleiss* and the use of the Internal Market Information System ("IMI") proved to be sufficient. Thus the cooperation with Poland was based on Directives 96/71, 2014/67¹¹ and Regulation No 1024/2012 of the Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System ("IMI"). *Cleiss* was set up in the framework of the European Regulations No 883/2004 and No 987/2009 and 37 bilateral agreements signed by France and most of its main non-European partners¹².

3.2.3 Steps identified

As a first step, the administrations in France, Poland and UK performed a simultaneous gathering and exchange of information. In France, the Labour Inspectorate collected information on the whole territory through the GNVAC, including the prior posting declarations (SIPSI). The SIPSI application enables foreign businesses to inform the Labour Inspectorate about workers who are posted to France. The Labour Inspectorate also established close collaboration with the judicial investigation service (OCLTI); the prosecutor's office; the tax services; the French social security institutions (URSSAF/CCMSA/ACOSS); and CLEISS (Centre des Liaisons Européennes et

⁹ Foreign employers transferring employees to France on assignment, under detachment status, regardless of their nationality, are required to indicate the country where the employee will be covered for social security.

¹⁰ The national monitoring, support and control group was created by Decree No. 2014-359 on 20 March 2014 on the organization of the labour inspection system.

¹¹ Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation'), <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32014L0067>

¹² Full list is available at: <http://www.cleiss.fr/docs/textes/index.html>

Internationales de Sécurité Sociale) (including the SIRDAR database where the A1 forms are stored). The cooperation also included exchange of information between the Polish, UK and French labour inspectorates. The contacts were established with help from *Cleiss* - the liaison body between the French social security institutions and their foreign counterparts for the implementation of European Regulations and bilateral or multilateral social security agreements. *Cleiss particularly facilitated the contact with ZUSS* (the Polish Social Insurance Institution, which checked if the A1 forms were authentic), and the British social security institution.

The second step of the joint activity included the judicial proceedings:

In October 2016, the first judicial operation took place; it included a police search at the head office of the host company, intermediates, hearings with managers and employees.

In June 2017, the second judicial operation resulted in police custodies and hearings of employees, including the people investigated for undeclared work in an organised gang: the manager of the main French user (host) company; another user company (that used the same workers); the human resource department of the user company; the Polish workers integrated in the user company; and the French business intermediary.

In October 2017, the correctional hearing was held. The principal manager of the French user company and four others, including the French intermediary, pleaded guilty at the hearing and were convicted of making use of undeclared workers.

The companies abroad were not targeted since they were dissolved and no legal representatives were available.

3.2.4 Costs of cooperation

The cost of the operation mainly included the remuneration for the labour of all public institutions (social, tax, police, prosecution) involved in the operation. A major part of the activity involved the exchange of information between liaison offices, in particular the ones of France and Poland, through the use of the Internal Market Information System (IMI). During the judicial inquiry phase, the operation required the use of interpreters. The exact amount of resources required is difficult to calculate due to the complexity of the process, and the inclusion of numerous authorities.

3.3 Outcomes

3.3.1 Results of the case

ZUSS (the Polish Social Insurance Institution) withdrew the incorrect A1 forms.

The Polish employer was convicted and the company was closed. However soon afterwards the same owner established a new company, with a similar name and purpose.

The Urssaf network (www.urssaf.fr) estimated social costs of the violations to be over EUR 1 800 000 for only one user (host company).

3.3.2 Success factors of cooperation

The quality of the exchanged information with the Polish labour inspection was the key element for the French authorities to understand the situation. The use of online databases also facilitated the investigation. The SIPS database of the labour inspection (where employers submit prior declaration of posting of workers) and SIRDAR social security database (A1 forms) were utilized to gather data on posting of workers; the European declaration of services (VIES) was used for collecting tax data; and last, but not least – the registers for domiciliation companies were checked. Still, the French Labour Inspectorate considers that further steps are needed to enhance the systems for the exchange of information and the cross-checking of data, in

particular, the data related to the breakdown of net sales between the Member State of establishment (sending country) and the host country or countries.

3.3.3 Limits of cooperation

The case involved numerous letterbox companies, located in more than one country outside of France, with limited lifespan, which often changed corporate names and registered addresses. Thus, key challenges represented the size and geographical dispersion of the contractors; the speed of adaptation of the main actors to the fraud schemes; the difficulty of reaching these organizations when they are established outside the host country and when they organize for the disappearance of their legal entities. Although the activity was performed successfully in France, all these factors hindered the gathering, comparison and verification of documents and company records. In addition, the procedures for registering new companies is relatively easy and fast in all of the countries concerned, hence rendering inefficient the use of a business closure penalty.

3.4 Annexes

3.4.1 Annex 1: Bibliography

Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation'), <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32014L0067>

Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services, <http://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A31996L0071>

European Platform Tackling Undeclared Work, Factsheet on Undeclared Work – FRANCE (September 2017), <http://ec.europa.eu/social/BlobServlet?docId=18162&langId=en>

European Platform Tackling Undeclared Work, Good Practice Fiche: Administrative Cooperation Agreement between Belgium and France, <http://ec.europa.eu/social/BlobServlet?docId=18510&langId=en>

European Platform Tackling Undeclared Work, Seminar on Letterbox Companies, 30 November 2017, Brussels, presentation by the French General Department of Labour

Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A02004R0883-20140101>

Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems, <http://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:32009R0987>

3.4.2 Annex 2: Legal basis

According to Article 13 of Regulation (EC) 883/2004 on the coordination of social security systems: "A person who normally pursues an activity as an employed person in two or more Member States shall be subject to: a) the legislation of the Member State of residence if he/she pursues a substantial part of his/her activity in that

Member State or if he/she is employed by various undertakings or various employers whose registered office or place of business is in different Member States"¹³.

In addition, according to Regulation (EC) No 987/2009, Article 21 (1): An employer (i.e. the fictitious UK letterbox company in the current case) who has his registered office or place of business outside the competent Member State (i.e. Poland) shall fulfil all the obligations laid down by the legislation applicable to his employees, notably the obligation to pay the contributions provided for by that legislation, as if he had his registered office or place of business in the competent Member State (i.e. Poland). According to Article 21 (2): An employer (i.e. UK and Cyprus letterbox companies) who does not have a place of business in the Member State whose legislation is applicable (i.e. Poland) and the employee (i.e. the one domiciled in Poland) may agree that the latter may fulfil the employer's obligations on its behalf as regards the payment of contributions without prejudice to the employer's underlying obligations. The employer shall send notice of such an arrangement to the competent institution of that Member State¹⁴.

¹³ Regulation (EC) 883/2004 on the coordination of social security systems, [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32004R0883R\(01\)](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32004R0883R(01))

¹⁴ Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems, <http://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:32009R0987>